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SC Court of Appeals

RECORD ON APPEAL

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

Robert Barnett, as Trustee of the RH 401(k) Plan,
Respondent,

v.

Erica Lynn Davis,
Austin J. Davis,
and
Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization),
Harol Alezu Lozano Moran, Sole Trustee,
Defendants,

of which **Erica Lynn Davis and Austin J. Davis** are the **Appellants**.

Appeal From the Greenville County Court of Common Pleas
Appellate Case No. **2025-002218**

RECORD ON APPEAL

Submitted by:
Austin J. Davis
Appellant, Self-Represented
131 Roundtree Drive,
Simpsonville, SC, 29681

Date: _____

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No: 2025-CP-23-
	)	
Robert Barnett, as Trustee of the RH	)	
401(k) Plan,	)	
	)	
Plaintiff,	)	
	)	
v.	)	LIS PENDENS
	)	
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

NOTICE IS HEREBY GIVEN that an action has been commenced by the Plaintiff above named against the Defendants above named for the foreclosure of a certain mortgage given by Erica Lynn Davis and Austin J. Davis to Synovus Bank dated the 13th day of December, 2019 and recorded the 16th day of December, 2019 in the Office of the Register of Deeds for Greenville County, in Book MO 5511 at Page 4109, and subsequently assigned to the Plaintiff.

The description of the premises as contained in said mortgage is as set out in Exhibit A attached hereto and made a part hereof.

s/J. Kershaw Spong

J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
Robinson Gray Stepp & Laffitte, LLC
P.O. Box 11449
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(803) 929-1400
kspong@robinsongray.com
lweston@robinsongray.com
Attorneys for Plaintiff

June18, 2025

Exhibit A

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Lot No. T1 on a survey prepared for Heritage Village Phase IB, by 3D Land Surveying, Inc., dated April 25, 2019 and recorded in the Office of the Register of Deeds for said County in Plat Book 1336, at Page 86; reference to said plat being hereby made for a more complete metes and bounds description thereof.

This being the same property conveyed to Erica Lynn Davis and Austin J. Davis by deed of NVR, Inc. dated December 13, 2019 and recorded on December 16, 2019 in Book 2583 at Page 1063 in the Office of the Greenville County Register of Deeds. The property was subsequently conveyed to Erica Lynn Davis by deed of Austin J. Davis dated February 26, 2020 and recorded on February 26, 2020 in Book 2588 at Page 2616 in the Office of the Greenville County Register of Deeds. The property was then subsequently conveyed to Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization), Harol Alezu Lozano Moran, Sole Trustee by deed of Erica Lynn Davis dated June 5, 2023 and recorded on June 5, 2023 in Book 2690 at Page 55 in the Office of the Greenville County Register of Deeds.

TMS#: 0323.03-01-029.00

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH 401(k) Plan,	)	Case No. 2025-CP-23-
	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF EXEMPTION
v.	)	FROM ADMINISTRATIVE ORDER
	)	2011-05-02-01
	)	
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

The Plaintiff, by and through its undersigned attorney, does hereby certify as follows:

1. That this is an action for the foreclosure of real property located in Greenville County, South Carolina.

2. That the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01) does not apply to this foreclosure:

_____ in that the real property that is the subject of this foreclosure is not an "Owner-Occupied dwelling" as defined in the Order; or

_____ in that the loan being foreclosed is a commercial loan; or

 x in that the Plaintiff does not offer any form of foreclosure intervention because it is not in the business of regularly making loans.

s/J. Kershaw Spong

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lweston@robinsongray.com
Attorneys for Plaintiff

June 18, 2025

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH 401(k)	)	Case No. 2025-CP-23-
Plan,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF
v.	)	EXEMPTION / WITHDRAWAL
	)	FROM ARBITRATION / MEDIATION
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

- ☐ monetary relief requested in this case exceeds \$25,000.00;
☐ this is a class action;
☐ there is a substantial claim for injunction or declaratory relief in this case;
☒ this case involves (check one or more of the following)
 ☐ title to real estate;
 ☐ wills, trusts and decedents' estates;
 ☒ mortgage foreclosure;
 ☐ partition;
☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas, corpus, or prohibition;
☐ monetary relief requested in this case is unspecified but exceeds \$25,000;
☐ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
☐ this action is appellate in nature;
☐ this is a post-conviction relief matter;
☐ this is a forfeiture proceeding brought by the State; or
☐ this is a contempt of court proceeding.

June 18, 2025

s/J. Kershaw Spong
 J. Kershaw Spong [SC Bar #5289]
 C. Elizabeth Weston [SC Bar #103305]
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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH 401(k)	)	Case No. 2025-CP-23-
Plan,	)	
	)	
Plaintiff,	)	
	)	SUMMONS
v.	)	(Mortgage Foreclosure)
	)	(Deficiency Judgment Waived)
Erica Lynn Davis, Austin J. Davis,	)	Non-Jury
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran, Sole	)	
Trustee,	)	
	)	
Defendants.	)	
	)	

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above entitled action, copy of which is herewith served upon you, and to serve copy of your answer upon the undersigned at their offices, Robinson Gray Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, South Carolina 29211, within Thirty (30) days after service hereof upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that the undersigned attorney on behalf of the Plaintiff herein, will seek the agreement and stipulation of all parties not in default for an Order of Reference to Master in Equity for Greenville County stipulating that said Master may enter a final judgment in this case.

s/J. Kershaw Spong

J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
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Attorneys for Plaintiff

Columbia, South Carolina
June 18, 2025

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH 401(k) Plan,	)	Case No. 2025-CP-23-
	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	(Mortgage Foreclosure)
	)	(Deficiency Judgment Waived)
	)	Non-Jury
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

The Plaintiff above named, complaining of the Defendants herein, alleges that:

1. Plaintiff is the trustee of the RH 401(k) Plan which is organized and existing under and by virtue of the laws of the United States.
2. Upon information and belief, the Defendant **Erica Lynn Davis** is resident and citizen of the County of Greenville, State of South Carolina, and that the subject of this action is real property located in the County of Greenville, State of South Carolina.
3. Upon information and belief, the Defendant **Austin J. Davis** is resident and citizen of the County of Greenville, State of South Carolina, and that the subject of this action is real property located in the County of Greenville, State of South Carolina.
4. Heretofore, under date the **13th day of December, 2019**, Defendant **Erica Lynn Davis** made, executed, and delivered to **Synovus Bank** a certain **Note** in writing, wherein and whereby she promised to pay to **Synovus Bank** the principal sum of **One Hundred Ninety-Seven Thousand Eighty and 00/100 Dollars (\$197,080.00)**, together with interest at the rate of **4.375%** per annum on the unpaid balance; said principal and interest being payable in monthly installments

on terms as set forth therein until said Note is fully paid. True copies of the Note and Allonge are attached hereto as **Exhibit A**.

5. In order to secure the payment of the Note, the said Defendants **Erica Lynn Davis and Austin J. Davis** did on the same date, to-wit, the **13th day of December, 2019** make, execute, and deliver to **Synovus Bank**, its successors and assigns, a certain **Mortgage** covering real property located in the County and State aforesaid and in said Mortgage described as will more fully appear by reference to **Exhibit B** attached hereto and made a part hereof.

6. Thereafter, on the **16th day of December, 2019**, said Mortgage was recorded in the Office of the Register of Deeds for Greenville County in **Book MO 5511** at **Page 4109**. With the formal discontinuance of the Home Affordable Modification Program (HAMP) on December 31, 2016, South Carolina Administrative Order 2009-05-22-01 has expired by operation of law and is no longer applicable.

7. Thereafter, by **Assignment of Note, Mortgage, and Other Loan Documents ("Assignment")** dated on or about the **12th day of May, 2025**, and recorded in said Register of Deeds' Office on the **22nd day of May, 2025** in **Book MO 5822** at **Page 1225**, the said Synovus Bank assigned said Mortgage to the Plaintiff, which is now the owner and holder thereof and the debt secured thereby. A true copy of the Assignment is attached as **Exhibit C**.

8. In and by the terms of said Note and the Mortgage securing same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

9. In and by the terms of the said Note it is further provided that the maker thereof shall pay a reasonable sum as and for an attorney's fee if the said note be placed in the hands of an attorney for collection after default.

10. The installments of principal and interest falling due from and after the **October 1, 2023**, have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of **One Hundred Eighty-Six Thousand Two Hundred Fifty-Seven and 37/100 Dollars (\$186,257.37)**, together with interest thereon at the rate of **4.375%** per annum from **September 1, 2023**, together with a reasonable sum as attorney's fees for the collection thereof and the costs of this action.

11. Plaintiff notified Defendant Erica Lynn Davis of this default by Demand for Payment dated October 10, 2024. A true copy of the Demand for Payment is attached as **Exhibit D**.

12. Upon information and belief, said information having been obtained from the public records of Greenville County, South Carolina, by deed dated on or about February 22, 2023, and recorded in said Register of Deeds' office on June 6, 2023, in Deed Book DE 2690 at Page 553, the Defendant Erica Lynn Davis conveyed the subject premises to the Defendant Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee, who is now the owner and holder of record title thereto and subject to Plaintiff's Mortgage.

13. The Plaintiff demands no personal or deficiency judgment and any right to the same is specifically waived.

WHEREFORE, Plaintiff prays judgment that:

(a) The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(b) Plaintiff's Mortgage be declared a **first** mortgage lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, with a reasonable sum as attorney's fees, and for the costs of this action.

(c) The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third; the surplus, if any, be distributed according to law.

(d) For such other and further relief as may be just and proper.

s/J. Kershaw Spong

J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
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lweston@robinsongray.com

Attorneys for the Plaintiff

Columbia, South Carolina

June 18, 2025

**NOTICE UNDER THE
FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1601 AS AMENDED**

1. The amount of the debt is that as stated in the Complaint attached hereto.
2. The Creditor is the Plaintiff as named in the Summons and Complaint attached hereto.
3. The debt described in the Complaint attached hereto will be assumed to be valid by the Creditor's law firm unless you, the debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the Creditor named in the attached Complaint is not the original Creditor, and if you make a written request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Written requests should be addressed to J. Kershaw Spong, Esquire, Robinson Gray Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, SC 29211.
7. This notice is an attempt to collect a debt and information obtained will be used for that purpose.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No: 2025-CP-23-
	)	
Robert Barnett, as Trustee of the RH	)	
401(k) Plan,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

STATE OF OREGON	)	
	)	
COUNTY OF WASHINGTON	)	VERIFICATION

PERSONALLY appeared before me, Robert Barnett, who being duly sworn, deposes and says that he is the Trustee of the RH 401(k) Plan and is authorized to make this Affidavit on its behalf; that he is familiar with the account and loan documents forming the basis for the within action and has read the foregoing pleadings ; that all of the matters alleged therein are true of his own knowledge, except for those alleged upon information and belief, and as to those, he believes them to be true; that no part of said sum sued for has been paid by discount or otherwise.

Robert Barnett, as Trustee of the RH 401(k) Plan

By: 
Robert Barnett

Its: Trustee

SWORN to before me this
18th day of June, 2025.

Micah Keith Larson
Notary Public for Oregon
My Commission Expires: Jan. 23, 2028



Exhibit A

Note

December 13, 2019
[Date]

Spartanburg
[City]

South Carolina
[State]

131 Roundtree Dr, Simpsonville, SC 29681
[Property Address]

1. Borrower's Promise to Pay. In return for a loan that I have received, I promise to pay U.S. \$197,080.00 (this amount is called "*Principal*"), plus interest, to the order of the Lender. The Lender is Synovus Bank, A Corporation. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "*Note Holder*".

2. Interest. Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 4.375%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. Payments.

(A) Time and Place of Payments. I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on February 1, 2020. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on January 1, 2050, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "*Maturity Date*".

I will make my monthly payments at Synovus Mortgage Corp, PO Box 2868 Columbus, GA 31902-2868 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments. My monthly payment will be in the amount of U.S. \$983.99.

4. Borrower's Right to Prepay.

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "*Prepayment*". When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. Loan Charges. If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. Borrower's Failure to Pay as Required.



(A) Late Charges for Overdue Payments. If the Note Holder has not received the full amount of any monthly payment by the end of fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest.

I will pay this late charge promptly but only once on each late payment.

(B) Default. If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default. If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder. Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses. If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. Giving of Notices. Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. Obligations of Persons Under This Note. If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. Waivers. I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "*Presentment*" means the right to require the Note Holder to demand payment of amounts due. "*Notice of Dishonor*" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. Uniform Secured Note. This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "*Security Instrument*"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay



all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Borrower



Erica Lynn Davis

Seal

[Sign Original Only]

Loan Origination Organization: Synovus Bank

Loan Originator: Travis A Staggs



ALLONGE

Reference is made to that certain Note from Erica Lynn Davis payable to Synovus Bank dated December 13, 2019 in the original principal amount of \$197,080.00 (the "Note"). It is intended that this Allonge be attached to and made a permanent part of the Note.

Pay to the order of ROBERT BARNETT, AS TRUSTEE OF THE RH 401(k) PLAN ("Assignee"), without recourse, representations, or warranties of any kind, express or implied.

[SIGNATURE PAGE FOLLOWS]

Effective as of May 15, 2025.

ASSIGNOR:

SYNOVUS BANK, a Georgia banking corporation

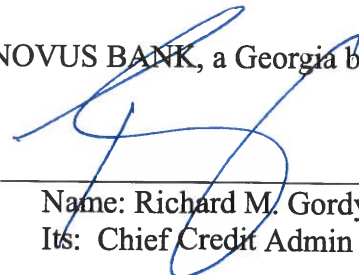
By: 
Name: Richard M. Gordy
Its: Chief Credit Admin Officer



Exhibit B



2019099644

MTG Book: MO 5511 Page: 4109 - 4124

16 Pgs

December 16, 2019 02:16:23 PM

Rec: \$25.00

E-FILED IN GREENVILLE COUNTY, SC

Timothy J. Manning

Return To: Synovus Mortgage Corp.
800 Shades Creek Pkwy MS101
Birmingham, AL 35209

Prepared By: Kimberly Loncher
800 Shades Creek Pkwy MS101
Birmingham, AL 35209

Mortgage

Definitions. Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "**Security Instrument**" means this document, which is dated December 13, 2019, together with all Riders to this document.

(B) "**Borrower**" is Erica Lynn Davis and Austin J Davis; Borrower is the mortgagor under this Security Instrument.

(C) "**Lender**" is Synovus Bank, A Corporation. Lender is a corporation organized and existing under the laws of Georgia. Lender's address is 150 East Henry Street, Spartanburg, SC 29306. Lender is the mortgagee under this Security Instrument.

(D) "**Note**" means the promissory note signed by Borrower and dated December 13, 2019. The Note states that Borrower owes Lender One hundred ninety seven thousand eighty and 00/100 Dollars (U.S. \$197,080.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2050.

(E) "**Property**" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "**Loan**" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "**Riders**" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|--|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☒ Planned Unit Development Rider | ☐ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☐ Other(s) [specify] |

(H) "**Applicable Law**" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.



Return To: Synovus Mortgage Corp.
800 Shades Creek Pkwy MS101
Birmingham, AL 35209

Prepared By: Kimberly Loncher
800 Shades Creek Pkwy MS101
Birmingham, AL 35209

Mortgage

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(H) "*Applicable Law*" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.



(I) "*Community Association Dues, Fees, and Assessments*" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "*Electronic Funds Transfer*" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "*Escrow Items*" means those items that are described in Section 3.

(L) "*Miscellaneous Proceeds*" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "*Mortgage Insurance*" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "*Periodic Payment*" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "*RESPA*" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, RESPA refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "*Successor in Interest of Borrower*" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

Transfer of Rights in the Property. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, the following described property located in the County [Type of Recording Jurisdiction] of Greenville [Name of Recording Jurisdiction]: See Attached Exhibit A

Parcel ID Number: 0323.03-01-029.00 which currently has the address of 131 Roundtree Dr [Street] Simpsonville [City], South Carolina 29681 [Zip Code] ("*Property Address*");

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "*Property*."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Uniform Covenants. Borrower and Lender covenant and agree as follows:



1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower



shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "*covenant and agreement*" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.



5. Property Insurance. 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, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned



premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.



If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(A) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(B) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.



If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance



by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law



might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to



Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Non-Uniform Covenants. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower



to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

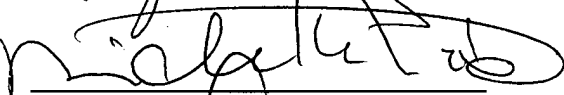
Borrower


Erica Lynn Davis

Seal


Austin J Davis

Seal


Witness


Witness

Witness

Witness



Acknowledgment

State of South Carolina

County of Greenville

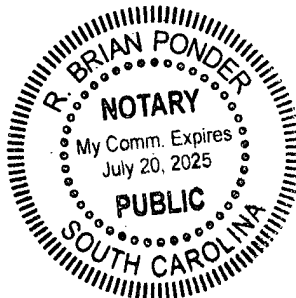
This instrument was acknowledged before me on December 13, 2019 by Erica Lynn Davis.

Notary Public

R. Brian Ponder

(Print Name)

My commission expires: 07/20/2025



Acknowledgment

State of South Carolina

County of Greenville

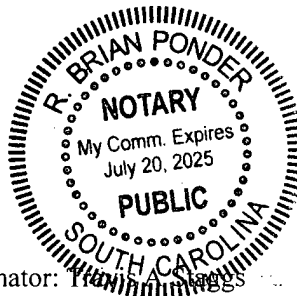
This instrument was acknowledged before me on December 13, 2019 by Austin J Davis.

Notary Public

R. Brian Ponder

(Print Name)

My commission expires: 07/20/2025



Loan Origination Organization: Synovus Bank

NMLS ID: 408043

Loan Originator: Franklin Stagg

NMLS ID: 1603467

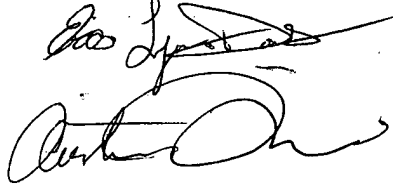


EXHIBIT "A"
LEGAL DESCRIPTION

[REDACTED]

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Lot No. T1 on a survey prepared for Heritage Village Phase IB, by 3D Land Surveying, Inc., dated April 25, 2019 and recorded in the Office of the Register of Deeds for said County in Plat Book 1336, at Page 86; reference to said plat being hereby made for a more complete metes and bounds description thereof.

This being the same property conveyed to Erica Lynn Davis and Austin J. Davis by deed of NVR, Inc. dated December 13, 2019 and being recorded simultaneously herewith.



Planned Unit Development Rider

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 13th day of December, 2019, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "*Security Instrument*") of the same date, given by the undersigned (the "*Borrower*") to secure Borrower's Note to Synovus Bank, A Corporation (the "*Lender*") of the same date and covering the Property described in the Security Instrument and located at: 131 Roundtree Dr, Simpsonville, SC 29681 [Property Address].

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in the Declaration of Covenants, Conditions, and Restrictions. (the "*Declaration*"). The Property is a part of a planned unit development known as Heritage Village/Portion of Simpsonville [Name of Planned Unit Development] ("the PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "*Owners Association*") and the uses, benefits and proceeds of Borrower's interest.

PUD Covenant. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "*Constituent Documents*" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "*Master*" or "*Blanket*" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "*Extended Coverage*", and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.



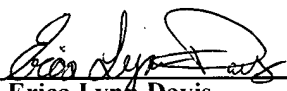
E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, 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.

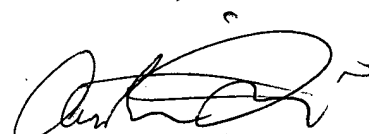
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Signed, sealed and delivered in the presence of:

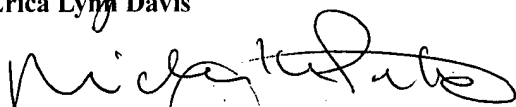
Borrower


Erica Lynn Davis

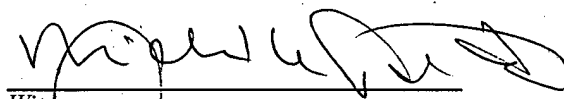
Seal


Austin J Davis

Seal


Witness

Witness


Witness

Witness



Exhibit C



2025031148

5 Pgs

ASMT Book: MO 5822 Page: 1225 - 1229

May 22, 2025 02:14:20 PM

Rec: \$10.00

E-FILED IN GREENVILLE COUNTY, SC

Timothy J. Hanney

After recording return to:
Robert Barnett, Trustee of the RH 401(k) Plan
8375 SW Beaverton Hillsdale Hwy., Ste. 200
Portland, OR 97225

Cross Reference:
Mtg Book MO 5511, Page 4109
Greenville County, SC ROD

ASSIGNMENT OF NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS

THIS ASSIGNMENT OF NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS (the "Assignment") is made by SYNOVUS BANK, a Georgia banking corporation ("Assignor") to and in favor of ROBERT BARNETT, AS TRUSTEE OF THE RH 401(k) PLAN ("Assignee"), whose mailing address is 8375 SW Beaverton Hillsdale Hwy., Ste. 200, Portland, OR 97225.

RECITALS:

A. Assignor is the owner and holder of that certain loan (the "Loan") evidenced by that certain Note from Erica Lynn Davis (the "Borrower") payable to Synovus Bank dated December 13, 2019 in the original principal amount of \$197,080.00 (the "Note").

B. That certain Mortgage from Erica Lynn Davis and Austin J. Davis in favor of Synovus Bank dated December 13, 2019 and recorded in Mtg Book MO 5511, Page 4109 in the Greenville County, South Carolina Register of Deeds (the "Mortgage") and other documents and instruments, all of which may have been subsequently modified or amended all as more particularly described on Schedule "A" attached hereto (the "Schedule") and by this reference made a part hereof were entered into as security for or in connection with the Note or other indebtedness described therein.

C. The Note and the Mortgage, and any other documents evidencing and securing the Loan are hereinafter collectively referred to as the "Loan Documents."

AGREEMENT:

NOW, THEREFORE, for and in consideration of ten dollars (\$10.00), the covenants herein set forth, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Assignor SELLS, ASSIGNS, ENDORSES, TRANSFERS, GRANTS, CONVEYS, and QUITCLAIMS unto Assignee all of the Assignor's right, title, interest and benefit to, in and under the Loan Documents and the sums payable thereunder, with interest from the Effective Date of this Assignment without representations or warranties, express or implied.

TO HAVE AND TO HOLD the same together with all rights, titles, interests, privileges, claims, demands and equities existing and to exist in connection therewith unto Assignee, its successors and assigns forever.

Assignor expressly waives and releases in favor of Assignee any and all rights that Assignor may now have or hereinafter have to establish or enforce any lien or security interest, if any, securing payment of the indebtedness arising pursuant to the Loan.

Assignor directs that all payments due under the Loan Documents subsequent to the Effective Date be made directly to Assignee.

Except as otherwise specifically stated in this Assignment, Assignor specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future with respect to the Loan Documents, including, without limitation, (i) the validity, existence, or priority of any lien or security interest securing the Loan; (ii) the existence or basis for any claim, counterclaim, defense or offset relating to the Loan; (iii) the financial condition of Borrower or any other obligor under the Loan; (iv) the compliance of the Loan with any laws, ordinances or regulations of any government or other body; (v) the condition of any collateral securing the Loan; (vi) the general assignability of the Loan Documents, and (vii) the future performance of the Borrower, the collateral or any guarantor of the Loan Documents. Assignee acknowledges and represents to Assignor that having been given the opportunity to undertake its own investigation of the Loan Documents, Assignee is relying solely on its own investigation of the Loan Documents and not any information provided or to be provided by Assignor. The sale of the Loan Documents as provided for herein is made on an "AS IS," "WHERE IS" basis, with all faults, and Assignee, by acceptance of this Assignment, expressly acknowledges that **ASSIGNOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW RELATING TO THE LOAN DOCUMENTS, EXCEPT AS SPECIFICALLY SET FORTH HEREIN.** Notwithstanding anything to the contrary in the foregoing, Assignor represents and warrants to Assignee that Assignor is the holder of the Loan Documents and has the right to assign same to Assignee.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Assignor and Assignee have set their hands and affixed their seals to this Assignment effective as of the 15 day of May, 2025 (the "Effective Date").

Signed, sealed and delivered this 12 day of ASSIGNOR: May, 2025 in the presence of:

Barbara Himes Calhoun
Witness

Print Name: Barbara Himes Calhoun

Lacey Harbuck
Witness

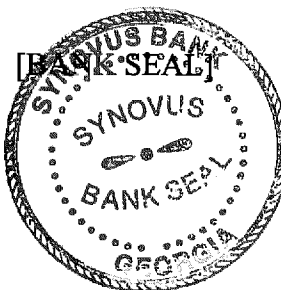
Print Name: Lacey Harbuck

SYNOVUS BANK, a Georgia banking corporation

By: [Signature]

Name: Richard M. Gordy

Title: Chief Credit Admin Officer



STATE OF GEORGIA
COUNTY OF MUSCOGEE

The foregoing instrument was executed before me this 12 day of May, 2025 by Richard M. Gordy, who is known to me, as Chief Credit Admin Officer for Synovus Bank.

Katherine Nottleman
Notary Public

(NOTARY SEAL)



Signed, sealed and delivered this 19th day of May, 2025 in the presence of: **ASSIGNEE:**

Lakesha Knox
Witness
Print Name: Lakesha Knox

ROBERT BARNETT, AS TRUSTEE OF THE
RH 401(k) PLAN

Robert Barnett
Robert Barnett, Trustee

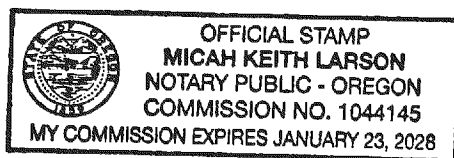
Kelly Pows
Witness
Print Name: Kelly Pows

STATE OF Oregon
COUNTY OF Washington

The foregoing instrument was executed before me this 19th day of May, 2025 by Robert Barnett who is known to me as Trustee of the RH 401(k) Plan.

Micah Keith Larson
Notary Public

(NOTARY SEAL)



SCHEDULE A

1. Note from Erica Lynn Davis payable to Synovus Bank dated December 13, 2019 in the original principal amount of \$197,080.00
2. Mortgage from Erica Lynn Davis and Austin J. Davis in favor of Synovus Bank dated December 13, 2019 and recorded in Mtg Book MO 5511, Page 4109 in the Greenville County, South Carolina Register of Deeds
3. First American Title Short Form Expanded Coverage Residential Loan Policy One-to-Four Family No. 5017800-0089069e dated December 13, 2019

**HAYNSWORTH
SINKLER BOYD**

HAYNSWORTH SINKLER BOYD, P.A.
1201 MAIN STREET, 22ND FLOOR
P.O. BOX 11889 (29211)
COLUMBIA, SOUTH CAROLINA 29201
MAIN 803.779.3080
FAX 803.765.1243
www.hsblawfirm.com

MARY M. CASKEY
CERTIFIED BANKRUPTCY SPECIALIST
DIRECT 803.540.7870
mcaskey@hsblawfirm.com

October 10, 2024

Erica L. Davis
131 Roundtree Drive
Simpsonville, SC 29681

RE: Demand for Payment due under Note from Erica L. Davis to Synovus Bank
Loan No: [REDACTED]

**WE ARE A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT
AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

**HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN
BANKRUPTCY, THIS LETTER IS NOT AND SHOULD NOT BE CONSTRUED AS AN
ATTEMPT TO COLLECT A DEBT, BUT AS AN ATTEMPT TO ENFORCE A LIEN.**

Dear Ms. Davis:

As you know from prior communications, this firm represents Synovus Bank ("Synovus"). The referenced loan is in default as a result of your failure to make payments when due under the Note dated December 13, 2019 (the "Note"). The Note is secured by a Mortgage for property located at 131 Roundtree Drive, Simpsonville, SC 29681 (the "Mortgage").

Please accept this letter as notice that the Note is in default and Synovus demands the entire balance due under the Note. As of October 7, 2024, the amount owed on the Note is as follows:

Principal	\$186,257.37
Interest	\$ 11,108.54
Late Charges	\$ 752.44
Escrow Balance	\$ 585.87
Release Fee	\$ 5.00
Total Amount Due	\$198,709.22

(Interest continues to accrue on the note. The above reflects interest through October 7, 2024, and thereafter at \$22.3254 per day.)

Davis
October 10, 2024
Page 2

Synovus demands payment of the total amount due on the Note within **thirty (30) days** of the date of this letter. If the Note is not paid in full in **30 days**, Synovus will exercise all rights available to it under the Note, Mortgage, and South Carolina law.

All further communications regarding this matter should be directed to my attention.

PLEASE FIND AN IMPORTANT NOTICE ON THE NEXT PAGE.

Sincerely,



Mary M. Caskey

MMC/caw
Enclosure

Haynsworth Sinkler Boyd, PA
Attn: Mary M. Caskey
P.O. Box 11889
Columbia, SC 29211
(803) 540-7777

To: Erica L. Davis
131 Roundtree Drive
Simpsonville, SC 29681
File Number [REDACTED]

Haynsworth Sinkler Boyd, P.A. is a debt collector. We are trying to collect a debt that you owe to Synovus Bank. We will use any information you give us to help collect the debt.

Our information shows:

You have a mortgage loan to Synovus Bank, secured by a mortgage on 131 Roundtree Drive, Simpsonville, SC 29681 with account number 1500633324.

As of September 17, 2024, you owed:	\$	198,570.27
Between September 17, 2024 and October 7, 2024 :		
You were charged this amount in interest and other fees:	+ \$	138.95
Total amount of the debt as of October 7, 2024:	\$	198,709.22

If you are currently in bankruptcy, this notice is for informational purposes only, as required by 12 CFR § 1006.34(c).

How can you dispute the debt?

- **Call or write to us by November 16, 2024, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by November 16, 2024,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically via email to DebtDispute@hsblawfirm.com.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by **November 16, 2024,** we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at DebtDispute@hsblawfirm.com.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.

Mail this form to:

Haynsworth Sinkler Boyd, PA
Attn: Mary M. Caskey
P.O. Box 11889
Columbia, SC 29211

Erica L. Davis
131 Roundtree Drive
Simpsonville, SC 29681

How do you want to respond?

Check all that apply:

- ☐ **I want to dispute the debt because I think:**
 - ☐ This is not my debt.
 - ☐ The amount is wrong.
 - ☐ Other (please describe on reverse or attach additional information).
- ☐ **I want you to send me the name and address of the original creditor.**
- ☐ **I enclosed this amount:** \$

Make your check payable to **Synovus Bank**.
Include the file number [REDACTED]

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2025-CP-23-03796

Plaintiff:

Robert Barnett, as Trustee of the RH 401(k) Plan

vs.

Defendant:

**Erica Lynn Davis, Austin J. Davis, and Signature Gain Express Trust,
DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol
Alezu Lozano Moran, Sole Trustee**

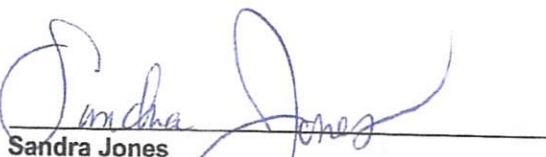
For:

Robinson Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211Received by Palmetto Legal Gophers, LLC to be served on **Signature Gain Express Trust, DTE
06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee c/o
Austin Davis, Authorized Agent, 131 Roundtree Drive, Simpsonville, SC 29681**I, Sandra Jones, being duly sworn, depose and say that on the **26th day of June, 2025** at **6:05 pm**, I:served a **CORPORATION** by delivering a true copy of the **Certificate of Exemption / Withdrawal from
Arbitration / Mediation; Certificate of Exemption from Administrative Order 2011-05-02-01;
Summons; Complaint; Notice Under the Fair Debt Collection Practices Act; Verification; Exhibit(s)
A-C; Lis Pendens w/ Exhibit A to: Austin Davis as Authorized to Accept for Signature Gain Express
Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization), at the address of: 131
Roundtree Drive, Simpsonville, SC 29681.****Description of Person Served:** Age: 35, Sex: M, Race/Skin Color: Black, Height: 6'2", Weight: 200, Hair:
Black, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 27
day of June, 2025 by the affiant who
is personally known to me.

NOTARY PUBLIC

EXP. DATE 04/14/2030
Sandra JonesPalmetto Legal Gophers, LLC
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621Our Job Serial Number: LPW-2025002286
Ref: 30493.1534

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AFFIDAVIT OF SERVICE**State of South Carolina****County of Greenville****Common Pleas Court**

Case Number: 2025-CP-23-03796

Plaintiff:

Robert Barnett, as Trustee of the RH 401(k) Plan

vs.

Defendant:

**Erica Lynn Davis, Austin J. Davis, and Signature Gain Express Trust,
DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol
Alezu Lozano Moran, Sole Trustee**

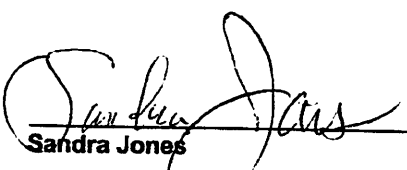
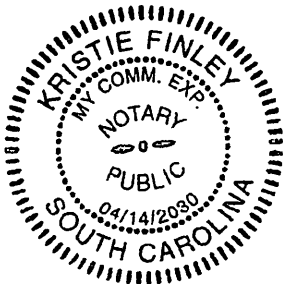
For:

**Robinson Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211****Received by Palmetto Legal Gophers, LLC to be served on Austin J. Davis, 131 Roundtree Drive,
Simpsonville, SC 29681.**I, Sandra Jones, being duly sworn, depose and say that on the **26th day of June, 2025** at **6:05 pm**, I:**INDIVIDUALLY/PERSONALLY** served by delivering a true copy of the **Certificate of Exemption /
Withdrawal from Arbitration / Mediation; Certificate of Exemption from Administrative Order
2011-05-02-01; Summons; Complaint; Notice Under the Fair Debt Collection Practices Act;
Verification; Exhibit(s) A-C; Lis Pendens w/ Exhibit A**, to: **Austin J. Davis** at the address of: **131
Roundtree Drive, Simpsonville, SC 29681.****Description of Person Served: Age: 35, Sex: M, Race/Skin Color: Black, Height: 6'2", Weight: 200, Hair:
Black, Glasses: N**

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 27
day of June, 2025 by the affiant who
is personally known to me.

NOTARY PUBLIC

EXP. DATE 04/14/2030
Sandra Jones**Palmetto Legal Gophers, LLC
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621**Our Job Serial Number: LPW-2025002285
Ref: 30493.1534

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2025-CP-23-03796

Plaintiff:

Robert Barnett, as Trustee of the RH 401(k) Plan

vs.

Defendant:

**Erica Lynn Davis, Austin J. Davis, and Signature Gain Express Trust,
DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol
Alezu Lozano Moran, Sole Trustee**

For:

Robinson Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211Received by Palmetto Legal Gophers, LLC to be served on **Erica Lynn Davis, 131 Roundtree Drive,
Simpsonville, SC 29681.**I, Sandra Jones, being duly sworn, depose and say that on the **26th day of June, 2025** at **6:05 pm**, I:**SUBSTITUTE** served by delivering a true copy of the **Certificate of Exemption / Withdrawal from Arbitration / Mediation; Certificate of Exemption from Administrative Order 2011-05-02-01; Summons; Complaint; Notice Under the Fair Debt Collection Practices Act; Verification; Exhibit(s) A-C; Lis Pendens w/ Exhibit A to: Austin Davis as Husband and Co-Resident** at the address of: **131 Roundtree Drive, Simpsonville, SC 29681**, the within named person's usual place of abode, who resides therein, who is sixteen (16) years of age or older.**Description of Person Served:** Age: 35, Sex: M, Race/Skin Color: Black, Height: 6'2", Weight: 200, Hair: Black, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 27
day of June, 2025, by the affiant who
is personally known to me.

NOTARY PUBLIC

EXP. DATE 04/14/2030
Sandra Jones**Palmetto Legal Gophers, LLC**
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621Our Job Serial Number: LPW-2025002283
Ref: 30493.1534

**IN THE COURT OF COMMON PLEAS
GREENVILLE SOUTH CAROLINA**

~~Signature Gain Express Trust, by Trustee Erica Davis,
Counterclaim Petitioner,~~

V.

~~Robert Barnett, as trustee for the RH 401(k) Plan,
Counterclaim Respondent.~~

Case No. 2025CP2303796

Robert Barnett, as Trustee of the
RH 401(k) Plan,
Plaintiff

v.
Erica Lynn Davis, Austin J. Davis
and Signature Gain Express Trust (An
Irrevocable Trust Organization) Harol
Aleza Lozano Moran, Sole Trustee,
Defendants

VERIFIED COUNTERCLAIM FOR FRAUD UPON THE COURT, NEGLIGENT MISREPRESENTATION, ABUSE OF PROCESS, AND QUIET TITLE

(Brought pursuant to South Carolina Rules of Civil Procedure, Article V, and controlling statutory and constitutional authorities)

NOW COMES Counterclaim Petitioner, Signature Gain Express Trust, by and through its Trustee Erica Davis, who asserts the following Counterclaims against Robert Barnett as Trustee for the RH 401(k) Plan (hereinafter "Counterclaim Respondent"). These claims are presented under Rule 13 of the South Carolina Rules of Civil Procedure, and are based upon facts, public filings, and evidence which will be introduced in support thereof. All claims are founded upon provable acts and omissions of the Plaintiff that resulted in injury, property impairment, and judicial abuse.

ENTERED COMPUTER

FACTUAL BACKGROUND

1. Petitioner re-asserts all points of factual background brought forth in the Petition to Dismiss in addition to the below.
2. Counterclaim Respondent initiated foreclosure proceedings by complaint filed on or about June 18, 2025, purporting to be the lawful assignee and holder of a mortgage and Note originally issued by Synovus Bank.
3. The claimed assignment to the RH 401(k) Plan occurred May 12, 2025, yet the Complaint references and relies on a “Demand for Payment” dated October 10, 2024—predating any purported acquisition of the debt.
4. The Note submitted as Plaintiff’s Exhibit A is not a certified copy, does not evidence ownership of the wet-ink original, nor has it been authenticated as required under South Carolina Rules of Evidence 902(1), (4), or (11); Rule 803(6); or Rule 44(a), SCRPC.
5. Plaintiff submitted this documentation through counsel without an affidavit or declaration from a custodian of record, nor from a party with personal knowledge as required by SCRE 602 and 902(11).
6. The Plaintiff has failed to provide a verified chain of title to demonstrate lawful succession of interest from Synovus Bank to itself, in violation of the judicial foreclosure burden set forth under South Carolina law (see Act No. 100, 1870 Acts of the General Assembly, p. 596 et seq.; codified at [S.C. § 29-3-610]).
7. The lis pendens filed by Plaintiff has clouded title to the subject property, causing direct and measurable harm.

COUNT I – FRAUD UPON THE COURT

(Authority: Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Rule 60(b)(3), SCRPC; South Carolina Constitution Art. I, § 22; Act No. 71, 1868 Acts of the General Assembly)

7. Counterclaim Respondent knowingly submitted materially false documents into judicial proceedings, including:
 - (a) A demand letter (Exhibit D) dated before acquiring the debt, falsely suggesting standing;
 - (b) A Note not verified, not certified, and not accompanied by affidavit of possession or assignment.
8. The submission of fabricated or misrepresented documentation constitutes a fraud upon the tribunal and violates the fundamental duty of candor under South Carolina law.
9. As a direct result, Plaintiff induced judicial process under false pretenses, warranting sanctions, dismissal, and punitive relief.

COUNT II – NEGLIGENT MISREPRESENTATION

(Authority: AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992); Restatement (Second) of Torts § 552)

10. Plaintiff had a duty to present truthful and accurate information in its verified complaint under Rule 11, SCRPC.
11. Plaintiff negligently misrepresented the existence and enforceability of the note, its right to enforce, and the timing of the debt acquisition, causing confusion and legal injury.
12. These misrepresentations led to unnecessary litigation, reputational damage, and expenses to the Petitioner's Trust Organization.

COUNT III – ABUSE OF PROCESS

(Authority: *Hainer v. Am. Med. Int’l, Inc.*, 328 S.C. 128, 492 S.E.2d 103 (1997); *Jennings v. Jennings*, 389 S.C. 190, 697 S.E.2d 671 (2010); *Food Lion, Inc. v. United Food & Commercial Workers Int’l Union*, 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002); *Guider v. Churchey*, 22 F.3d 521 (4th Cir. 1994); Restatement (Second) of Torts § 682)

13. Counterclaim Respondent wrongfully invoked the judicial foreclosure process not to resolve a legitimate debt enforcement action, but to obtain title to real estate without lawful ownership or enforceable rights.

14. Specific abuses of process include:

a. Falsely representing that it was the holder and owner of the Note and mortgage despite lacking lawful possession or enforceable interest in the instrument(s) at the time of filing, thereby misusing SCRCF Rule 3 to commence an action without standing.

b. Filing exhibits that are not properly certified or authenticated under South Carolina Rules of Evidence 902(1), 902(4), or 902(11), and Rule 803(6), and without foundational testimony or affidavit from a qualified records custodian, thereby misusing the evidentiary framework to disguise unverified hearsay as admissible proof.

c. Submitting a “Demand for Payment” dated October 10, 2024 (Exhibit D), before Plaintiff acquired the alleged security interest on May 12, 2025, and presenting it as evidence of a default notice it had no lawful ability to issue—thus misusing Rule 44(a), SCRCF, to launder fabricated timelines through process.

d. Causing a lis pendens to be filed which clouded title to the subject property when it had no lawful claim to enforce, in violation of 1870 Act No. 100 (codified at [S.C. Code Ann. § 15-11-10]), thereby weaponizing statutory remedies intended only for parties with genuine, provable interests in land.

e. Proceeding in the name of “Robert Barnett as trustee of the RH 401(k) Plan,” **while failing to establish that the Trust has capacity to sue or that the trustee met the standing and registration requirements to bring claims on behalf of the Trust** under applicable ERISA guidelines and trust law (see 29 U.S.C. § 1104 and § 1132; and general trust litigation requirements per Restatement (Third) of Trusts §§ 105, 107).

15. Where process is utilized for such unlawful purposes, damages lie regardless of whether the case is dismissed, as the abuse itself offends the integrity of the court. See Jennings, *supra*.

COUNT IV – QUIET TITLE

(Authority: Act No. 288, 1874 Acts of the General Assembly codified at [S.C. Code Ann. § 15-67-10]; 74 Am. Jur. 2d Quieting Title §§ 1, 2)

16. Plaintiff’s actions have clouded title to the subject property despite its failure to demonstrate:

(a) A certified or recorded mortgage interest;

(b) Possession or enforceability of the underlying note.

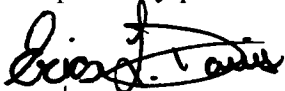
17. The title held by Signature Gain Express Trust is superior, and the claim by Counterclaim Respondent is spurious and without standing.
18. Counterclaim Respondent's continued assertion of interest constitutes a slander of title and warrants judicial relief through quiet title and cancellation of any lis pendens.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim Plaintiff respectfully demands the following:

- A. That judgment be entered in its favor on all counts;
- B. That this Court quiet title in favor of Signature Gain Express Trust and cancel the lis pendens filed by Plaintiff;
- C. That the Court award compensatory damages in excess of \$75,000 for reputational harm, legal fees, and financial impairment;
- D. That the Court award punitive damages as authorized by law for fraud upon the court and abuse of process;
- E. That the Court award actual damages for Slander of Title;
- F. That the Court award such other relief as may be just and equitable, including reasonable attorney fees under the common fund doctrine and judicial discretion.

Respectfully presented,



7/24/2008

131 Roundtree Drive, Simpsonville, South Carolina [29681]

864-398-7735

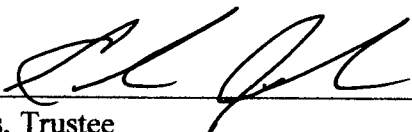
VERIFICATION

I, Erica Davis, Trustee of Signature Gain Express Trust, being duly sworn, depose and state as follows:

I am the duly authorized trustee and representative of the above-named Trust organization. I have drafted the foregoing Counterclaim and know the contents thereof. The statements made therein are true and correct to the best of my knowledge, information, and belief, and based upon personal knowledge where stated.

I make this verification pursuant to Rule 11(a), SCRPC and under penalty of the laws of the United States of America.

Executed on this 21st day of July, 2025, in the County of Greenville, South Carolina.

Signature: 
Erica Davis, Trustee
Signature Gain Express Trust

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

**Sworn to and subscribed
before me this
21st day of July, 2025**

25 JUL 24 01:18 PM
199 GREENHILL DR NW
3A

IN THE COURT OF COMMON PLEAS
GREENVILLE SOUTH CAROLINA

~~Red Hills Holdings, LLC, as trustee of RH 401(k) Plan,~~

~~Plaintiff,~~

v.

~~Signature Gain Express Trust, by Trustee Erica Davis,~~

~~Defendant and Real Party in Interest,~~

Case No. 2025CP2303796

Robert Barnett, as Trustee of the
RH 401(k) Plan,
Plaintiff

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust (an
Irrevocable Trust Organization) Hard
Alezu Lozano Moran, Sole Trustee,

**PETITION TO DISMISS FOR LACK OF STANDING AND DEMAND FOR
EVIDENTIARY HEARING, QUIET TITLE, AND OTHER RELIEF** Defendants

NOW COMES Petitioner and Real Party in Interest, Signature Gain Express Trust by and through its Trustee, Erica Davis, appearing specially, not generally, and without granting jurisdiction, who respectfully moves and petitions this Honorable Court to dismiss the above-captioned case in its entirety, with prejudice, pursuant to Rule 12(b)(1), Rule 12(b)(6), Rule 12(h)(3), and Rule 43, South Carolina Rules of Civil Procedure (SCRCP), for lack of subject-matter jurisdiction, failure to state a claim, lack of standing, misrepresentation of material facts, and failure to provide competent evidence in support of standing or according to the rules of evidence. In further support thereof, Petitioner states as follows:

I. FACTUAL BACKGROUND

1. The original creditor or lender named on the Note and/or Deed of Trust was Synovus Bank.
2. Synovus Bank did not initiate this foreclosure proceeding.

3. Instead, Red Hills Holdings, LLC, acting in its purported capacity as trustee for the RH 401(k) Plan, initiated this suit immediately after acquiring an alleged interest in the instrument.
4. At no time has Plaintiff produced a wet-ink original note, certified copy of the note, or chain of assignments showing lawful transfer of the mortgage and Note from the originating lender to itself.
5. Plaintiff alleges it acquired the interest in the subject mortgage and note via an Assignment of Mortgage dated May 12, 2025.
6. The language of said assignment explicitly states that Synovus Bank "sells" the mortgage and note to Red Hills Holdings, LLC, indicating a purported transfer of ownership that must be validated through proper evidentiary support.
7. Plaintiff is a trustee of the RH 401(k) Plan and, upon information and belief, brings this action in its fiduciary capacity on behalf of said trust entity.
8. When trusts purchase securities or mortgage-backed instruments, they are governed by a range of federal and state laws, including but not limited to the Securities Act of 1933, the Investment Company Act of 1940, and relevant provisions under the Internal Revenue Code and ERISA regulations where applicable. The purchase and enforcement of such instruments must be authorized under the trust instrument and must comply with all recording and transfer requirements to be valid under state real property law.

II. PLAINTIFF LACKS STANDING TO FORECLOSE

9. Under South Carolina law, only the real party in interest—typically the holder of the original note and mortgage with the right to enforce the instrument—may initiate a

foreclosure action. See Act No. 100, 1870 (codified at S.C. Code Ann. § 15-5-20); see also *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006).

10. Plaintiff has not alleged nor demonstrated that it is the original lender, holder in due course, or lawful assignee with rights of enforcement.
11. Plaintiff has failed to establish possession of the original Note and Deed of Trust or a valid, authenticated, and certified assignment thereof.
12. The Uniform Commercial Code (UCC), which governs negotiable instruments, including the Petitioner's Note, requires Plaintiff to prove possession or enforcement rights. UCC § 3-301, as adopted by South Carolina (S.C. Code Ann. § 36-3-301).
13. In the absence of this proof, the court lacks jurisdiction to proceed and must dismiss for lack of standing. See Rule 12(h)(3), SCRCP ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.")
14. Where the servicing agent or plaintiff is in possession of only the mortgage, and not the original promissory note, this bifurcation severs the enforceability of the security instrument from the obligation it secures. See *Carpenter v. Longan*, 83 U.S. 271, 274 (1872) ("The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.") See also *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011) (explaining that a party must demonstrate both the right to enforce the note and a valid interest in the deed of trust). Plaintiff cannot be assigned a copy of the Note, but must be assigned the bona fide wet-ink original, which it lacks.
15. South Carolina is a judicial foreclosure state, meaning all foreclosures must proceed through the court system, and the foreclosing party bears the burden of pleading and

proving standing and the validity of its claim through competent evidence. See Act No. 100, 1870 Acts of the General Assembly of the State of South Carolina, p. 596 et seq. (codified at S.C. Code Ann. § 29-3-610); *Carolina Holdings, Inc. v. Davis*, 354 S.C. 47, 50, 579 S.E.2d 334, 336 (Ct. App. 2003). This includes providing certified, original documentation and establishing the chain of title and enforceability of the debt. Plaintiff's failure to plead or prove ownership of the original Deed of Trust and its enforceability renders the complaint facially defective under the requirements of a judicial foreclosure.

III. FRAUD UPON THE COURT AND MISREPRESENTATION OF PLAINTIFF'S STATUS

16. Plaintiff has presented itself as having authority to bring foreclosure **without disclosing or proving how it acquired legal ownership of the note and deed.**
17. Plaintiff's claim to be the holder of the Note is based upon Exhibit A—a mere copy, not a certified copy or original—of the promissory note, which lacks any qualifying “original” stamp or certification as required to demonstrate admissibility and authenticity under S.C. Rule of Evidence 901(a).
18. By contrast, Defendant has submitted a copy of the mortgage instrument marked with a circular "original" stamp. This **may suggest** physical ownership of the Mortgage, however in contrast also further suggests that Plaintiff's submission of the Note is an uncertified reproduction.
19. This discrepancy alone undermines Plaintiff's standing, and the intentional or reckless presentation of non-original documents as if they bear the authoritative weight required to enforce a foreclosure action constitutes fraud upon the court.

20. To prove standing in a foreclosure, the plaintiff must demonstrate both possession of the original note and a valid assignment or endorsement. Mere recitation of ownership is insufficient. See *Deutsche Bank Nat'l Tr. Co. v. Johnston*, 369 S.C. 301, 633 S.E.2d 864 (Ct. App. 2006).
21. Furthermore, Plaintiff claims that they notified Petitioner of default via a Demand for Payment that was sent on October 10, 2024 as 'Exhibit D of the Complaint' See Complaint ¶11). However, Plaintiff did not acquire the alleged deed of trust until May 12, 2025—**seven months later**. This constitutes a demonstrably false representation and fabrication of fact, thereby compounding the fraud on the record.
22. Fraud upon the court justifies dismissal with prejudice. See *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575 (1946); *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir. 1978).

IV. INADMISSIBLE EVIDENCE AND HEARSAY – CHALLENGE TO PLAINTIFF'S VERIFICATION

23. Plaintiff submitted with its complaint a "Verification" signed by its purported representative. However, this verification is not a sworn affidavit executed under penalty of perjury based on firsthand knowledge of the account, nor is it sufficient to transform the pleadings or the attached documents into admissible evidence under South Carolina Rules of Evidence.
24. A verification, while confirming that the contents of a pleading are believed to be true, does not rise to the level of an affidavit unless it is explicitly sworn to, executed under oath, **and based on personal, firsthand knowledge of the facts asserted**. See SCRC

Rule 11(a); see also S.C. Code Ann. § 15-13-10 (Verification defined under South Carolina law).

25. The South Carolina Supreme Court has emphasized that documents offered through attorneys or agents lacking personal knowledge are inadmissible hearsay if they are not supported by properly authenticated affidavits or testimony. See *McCall v. Finley*, 294 S.C. 1, 3–4, 362 S.E.2d 26, 28 (1987); see also S.C. R. Evid. 802.
26. The undersigned attorney of the Plaintiff, not the original creditor or a direct witness to the underlying transaction, submitted documents purporting to validate Plaintiff's right to foreclose. However, the Plaintiff acquired the alleged interest in the mortgage and note only recently, on or around May 12, 2025. It is inconceivable that Plaintiff's representative possesses competent firsthand knowledge of prior alleged defaults, payments, or communications between the borrower and Synovus Bank, the original creditor.
27. Plaintiff's use of such verification to support its claims is defective and constitutes an impermissible attempt to convert inadmissible hearsay into evidence. See S.C. R. Evid. 801(c) (defining hearsay); see also *In re Roche*, 566 B.R. 616, 624 (Bankr. D. Mass. 2017) (unsworn, unauthenticated business records submitted through attorneys do not constitute competent evidence of standing or debt ownership).
28. For any document to be admissible, it must be properly authenticated under Rule 901, SCRE, and supported by a competent witness with knowledge of the record-keeping practices of the entity from which the records originate. The Plaintiff, having acquired the alleged account post-default, lacks the capacity to provide such authentication.
29. Accordingly, all documents attached to Plaintiff's complaint, including the verification and "Exhibit D" Demand for Payment, must be excluded as hearsay and unauthenticated

evidence. Without admissible evidence to support standing or a default, the complaint fails as a matter of law.

V. DEMAND FOR EVIDENTIARY HEARING

30. Petitioner demands a formal evidentiary hearing pursuant to Rule 43, SCRCR.

31. Plaintiff must be required to produce the following:

- a. A wet-ink original of the promissory note;
- b. A certified copy of the Deed of Trust;
- c. A complete chain of assignments showing lawful transfer of interest (e.g., recorded assignment documents, properly executed endorsements, trust acquisition authorizations);
- d. Proof that Plaintiff is the party entitled to enforce the obligation (e.g., PSA agreements, trust acquisition authority, custodian receipts for the note);

32. Failure to produce these documents should result in immediate dismissal for lack of standing and fraud on the court.

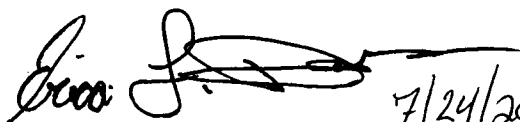
33. The Court must act swiftly in granting this evidentiary hearing to preserve the integrity of its process and of the rules that govern its proceedings. This filing is a frivolous affront to the integrity of due process and must be immediately tested according to the provisions and scrutiny of Rule 43, applicable trust governance, the Securities Act of 1933, and applicable sanctions for fraud upon the court.

VI. RELIEF REQUESTED

WHEREFORE, Defendant respectfully prays for the following relief:

- A. That this Court dismiss the foreclosure complaint with prejudice for lack of standing;
- B. That this Court strike any and all pleadings or notices filed by Red Hills Holdings, LLC and its trust entity RH 401(k) Plan;
- C. That this Court remove any lis pendens or cloud on title placed upon the property located at 131 Roundtree Drive, Simpsonville, South Carolina;
- D. That the Court enter an Order of Quiet Title in favor of Signature Gain Express Trust as the rightful title holder and owner of full legal and equitable title;
- E. Cancellation of the invalid mortgage and rescission of the unaccounted-for and unevidenced Note and associated alleged debt;
- F. That an evidentiary hearing be granted for Plaintiff to substantiate its claims, with certified and original documentation so that Petitioner may substantiate countersuit;
- G. That any and all costs, assessments, and damages caused by the unlawful filing be charged against Plaintiff;
- H. Any other and further relief this Court deems just and proper in law and in equity.

Respectfully Presented,


7/24/2023

Erica Davis

Trustee/ Authorized Representative

131 Roundtree Drive, Simpsonville, South Carolina [29681]

864-398-7735

AMENDED AFFIDAVIT OF SERVICE**State of South Carolina****County of Greenville****Common Pleas Court**

Case Number: 2025-CP-23-03796

Plaintiff:

Robert Barnett, as Trustee of the RH 401(k) Plan

vs.

Defendant:

**Erica Lynn Davis, Austin J. Davis, and Signature Gain Express Trust,
DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol
Alezu Lozano Moran, Sole Trustee**

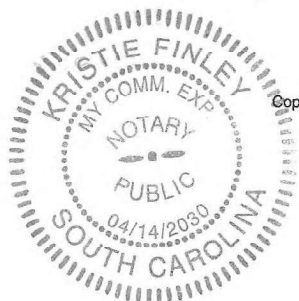
For:

Robinson Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211Received by Palmetto Legal Gophers, LLC to be served on **Austin J. Davis, 131 Roundtree Drive,
Simpsonville, SC 29681.**I, Sandra Jones, being duly sworn, depose and say that on the **26th day of June, 2025** at **6:05 pm**, I:**INDIVIDUALLY/PERSONALLY** served by delivering a true copy of the **Certificate of Exemption /
Withdrawal from Arbitration / Mediation; Certificate of Exemption from Administrative Order
2011-05-02-01; Summons; Complaint; Notice Under the Fair Debt Collection Practices Act;
Verification; Exhibit(s) A-C; Lis Pendens w/ Exhibit A, to: Austin J. Davis** at the address of: **131
Roundtree Drive, Simpsonville, SC 29681.****Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.**Marital Status:** Based upon inquiry of party served, Defendant is married.**Description** of Person Served: Age: 35, Sex: M, Race/Skin Color: Black, Height: 6'2", Weight: 200, Hair: Black, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 28
day of July, 2025, by the affiant who
is personally known to me.

NOTARY PUBLIC

EXP. DATE 04/14/2030
Sandra Jones**Palmetto Legal Gophers, LLC
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621**Our Job Serial Number: LPW-2025002285
Ref: 30493.1534

AMENDED AFFIDAVIT OF SERVICE**State of South Carolina****County of Greenville****Common Pleas Court**

Case Number: 2025-CP-23-03796

Plaintiff:

Robert Barnett, as Trustee of the RH 401(k) Plan

vs.

Defendant:

**Erica Lynn Davis, Austin J. Davis, and Signature Gain Express Trust,
DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol
Alezu Lozano Moran, Sole Trustee**

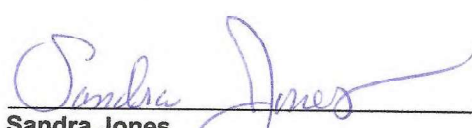
For:

Robinson Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211Received by Palmetto Legal Gophers, LLC to be served on **Erica Lynn Davis, 131 Roundtree Drive,
Simpsonville, SC 29681.**I, Sandra Jones, being duly sworn, depose and say that on the **26th day of June, 2025** at **6:05 pm**, I:**SUBSTITUTE** served by delivering a true copy of the **Certificate of Exemption / Withdrawal from Arbitration / Mediation; Certificate of Exemption from Administrative Order 2011-05-02-01; Summons; Complaint; Notice Under the Fair Debt Collection Practices Act; Verification; Exhibit(s) A-C; Lis Pendens w/ Exhibit A to: Austin Davis as Husband and Co-Resident** at the address of: **131 Roundtree Drive, Simpsonville, SC 29681**, the within named person's usual place of abode, who resides therein, who is sixteen (16) years of age or older.**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.**Marital Status:** Based upon inquiry of party served, Defendant is married.**Description of Person Served:** Age: 35, Sex: M, Race/Skin Color: Black, Height: 6'2", Weight: 200, Hair: Black, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 28
day of July, 2025 by the affiant who
is personally known to me.

NOTARY PUBLIC

EXP. DATE 04/14/2030
Sandra JonesPalmetto Legal Gophers, LLC
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621

Our Job Serial Number: LPW-2025002283

Ref: 30493.1534

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Certificate of Electronic Notification

Recipients

Joseph Spong - Notification transmitted on 07-29-2025 10:45:19 AM.

Clara Weston - Notification transmitted on 07-29-2025 10:45:19 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2025CP2303796

Official File Stamp: 07-29-2025 10:45:00 AM

Court: CIRCUIT COURT

Common Pleas

Greenville

Case Caption: Robert Barnett , plaintiff, et al vs. Erica Lynn Davis , defendant, et al

Document(s) Submitted: Service/Affidavit Of Service

Service/Affidavit Of Service

Filed by or on behalf of: Joseph Kershaw Spong

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Clara Elizabeth Weston for Robert Barnett

Joseph Kershaw Spong for Robert Barnett

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Austin J Davis

Signature Gain Express Trust

Dte 06/22/2022

Harol Alezu Lozano Moran

Harol Alezu Lozano Moran Trustee

Erica Lynn Davis for Erica Lynn Davis

Robert Barnett Trustee

Erica Lynn Davis for Erica Lynn Davis

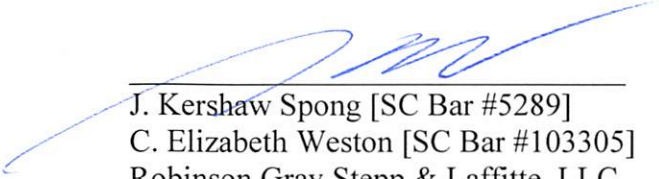
Rh 401K Plan

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH 401(k) Plan,	)	Case No. 2025-CP-23-03796
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT
	)	
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

Personally appeared, J. Kershaw Spong, attorney for the Plaintiff, who being duly sworn, doth state:

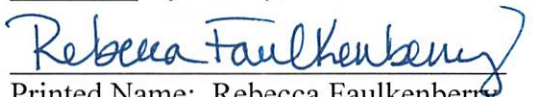
1. That he is one of the attorneys for Plaintiff in this action;
2. That the Defendants above named were duly served with the Lis Pendens, Certificate of Exemption/Withdrawal from Arbitration/Mediation, Certificate of Exemption from Administrative Order 2011-05-02-01, Summons, Complaint, Notice Under the Fair Debt Collection Practices Act, Verification, and Exhibits as evidenced by the Affidavits of Service on file with the Clerk of Court;
3. That the Defendant Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee filed a Petition to Dismiss and Counterclaim, but no issues have been raised which would preclude this foreclosure from being referred to the Master in Equity under the mandatory referral provisions of S.C. Rules of Civil Procedure 53 and 71, and the Administrative Order of Chief Justice Jean Hoefer Toal dated July 15, 2010 (#2010-07-15-01).

[Signature page to follow]


J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
Robinson Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
kspong@robinsongray.com
lweston@robinsongray.com

Attorneys for Plaintiff

SWORN to before me this
30th day of July, 2025.


Printed Name: Rebecca Faulkenberry
Notary Public for South Carolina
My Commission Expires: 1-11-2032

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH	)	Case No. 2025-CP-23-03796
401(k) Plan,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF NON-MILITARY SERVICE
	)	
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express	)	
Trust Organization) Harol Alezu Lozano	)	
Moran, Sole Trustee,	)	
	)	
Defendants.	)	

PERSONALLY appeared before me J. Kershaw Spong, one of the attorneys for the Plaintiff, who, after being duly sworn, says that he is familiar with the provisions of Servicemembers Civil Relief Act of 2003, as amended, and to induce the Court to enter a default judgment against the Defendant Erica Lynn Davis and Austin J. Davis, represents to the Court that from his file in this matter and on information and belief, the Defendant are not in the military service of the United States and are not entitled to the protection of the Servicemembers Civil Relief Act of 2003, nor any amendments thereto.


 J. Kershaw Spong [SC Bar #5289]
 C. Elizabeth Weston [SC Bar #103305]
 Robinson Gray Stepp & Laffitte, LLC
 P.O. Box 11449
 Columbia, SC 29211
 (803) 929-1400
kspong@robinsongray.com
lweston@robinsongray.com
 Attorneys for Plaintiff

SWORN to before me this
30th day of July, 2025.

Rebecca Faulkenberry

Printed Name: Rebecca Faulkenberry

Notary Public for South Carolina

My Commission Expires: 1-11-2032

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH 401(k)	)	Case No. 2025-CP-23-03796
Plan,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF DEFAULT
	)	
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

Personally appeared, J. Kershaw Spong, attorney for the Plaintiff, who being duly sworn,
doth state:

1. That he is the attorney for Plaintiff in this action;
2. That the Defendant hereinafter named were duly served with the Lis Pendens, Certificate of Exemption/Withdrawal from Arbitration/Mediation, Certificate of Exemption from Administrative Order 2011-05-02-01, Summons, Complaint, Notice Under the Fair Debt Collection Practices Act, Verification, and Exhibits as follows:

(a) Austin J. Davis by service thereof on him personally on June 26, 2025.

(b) Erica Lynn Davis by service thereof on Austin J. Davis, a person of discretion residing at the residence of said Defendant on June 26, 2025.

3. That more than thirty (30) days have elapsed since the date of service and the Defendants have failed to plead, appear, or otherwise defend as provided by the South Carolina Rules of Civil Procedure and the Defendants are now in default; and

4. That on information and belief the Defendants are over the age of eighteen (18) years and are not incompetent.



J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
Robinson Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
kspong@robinsongray.com
lweston@robinsongray.com

SWORN to before me this
30th day of July, 2025.



Name: Rebecca Faulkenberry

Notary Public for South Carolina

My Commission Expires: 1-11-2032

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH	)	Case No. 2025-CP-23-03796
401(k) Plan,	)	
	)	
Plaintiff,	)	ORDER OF REFERENCE
	)	(Foreclosure)
v.	)	
	)	
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express	)	
Trust Organization) Harol Alezu Lozano	)	
Moran, Sole Trustee,	)	
	)	
Defendants.	)	

IT APPEARING that the above entitled action for foreclosure of a mortgage on real property situated in Greenville County, South Carolina, is a proper matter to refer to the Master in Equity for Greenville County, upon motion of J. Kershaw Spong, Esquire of the law firm of Robinson Gray Stepp & Laffitte, LLC, attorneys for Plaintiff, it is

ORDERED that the above entitled action be, and the same hereby is, referred to the Master in Equity for Greenville County to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case; order a judicial sale on any day, not just the regular judicial sale day; hear and dispose of any issues after sale or judgment, including, but not limited to, issuance of a Writ of Assistance and any issues involving appraisal under Code Section 29-3-680, et seq.

Any appeal from the decision of the Master in Equity shall be made directly to the Appellate Court, as provided in Rule 203, SCACR.

IT IS SO ORDERED.

I SO MOVE:

Robinson Gray Stepp & Laffitte, LLC

s/J. Kershaw Spong

J. Kershaw Spong [SC Bar #5289]

C. Elizabeth Weston [SC Bar #103305]

Robinson Gray Stepp & Laffitte, LLC

P.O. Box 11449

Columbia, SC 29211

(803) 929-1400

kspong@robinsongray.com

lweston@robinsongray.com

Attorneys for the Plaintiff



Greenville Common Pleas

Case Caption: Robert Barnett , plaintiff, et al vs. Erica Lynn Davis , defendant, et al

Case Number: 2025CP2303796

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jay Gresham, Clerk of Court

**IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA**

Robert Barnett, as Trustee of the RH 401(k) Plan,

Plaintiff (Respondent),

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant (Petitioner)

Case No: Case No. 2025-CP-23-03796

**RULE 60(B) PETITION TO VACATE ORDER ENTERED WITHOUT JUDICIAL
AUTHORITY**

I. NOTICE & RESERVATION OF RIGHTS

Comes now the Petitioner, Signature Gain Express Trust, by and through its Trustee, and hereby expressly notices the Court and all parties that this presentment and all future presentments under this docket number are executed solely to correct the record and to preserve rights under applicable law. Petitioner presents this filing (and any future action or filing) in the interest of truth, lawful remedy, and the redress of fraud and procedural violations under law and equity, and does so without voluntarily submitting to the jurisdiction of this court where none lawfully exists.

Petitioner specifically reserves all unalienable rights including, but not limited to:

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- The right not to be compelled to perform under any unrevealed adhesion contract or commercial agreement without full disclosure;
- The right to remain outside of statutory jurisdiction where the same has not been lawfully conferred by contract or verified law;
- All rights preserved under UCC 1-308 (codified where applicable [SC § 36-1-308]), with respect to non-waiver of rights when compelled to respond;
- All protections under the Constitution for the United States of America and South Carolina Constitution, particularly Article I, §§ 3, 9, and 22, and Amendments IV, V, and XIV (Constitution for the United States of America).

This filing (and all future filings and presentments under this docket) is made with full reservation of rights, not as a general appearance, nor as a submission to in personam jurisdiction where such has not been duly conferred by proper presentment of claim, verified proof of standing, or a lawful summons in accordance with due process. Petitioner presents this petition for lawful determination under protest and by necessity, without granting jurisdiction where it does not lawfully exist.

II. RULE 60(B) PETITION TO VACATE ORDER ENTERED WITHOUT JUDICIAL AUTHORITY

NOW COMES the Petitioner and Real Party in Interest, Signature Gain Express Trust, by and through its Trustee, and respectfully moves this Court, pursuant to Rule 60(b), South Carolina Rules of Civil Procedure (SCRCP), and all other applicable authorities, to vacate and set aside the purported “Order of Reference” entered by the Clerk of Court on or about July, 30, 2025, and in support thereof states:

1. Rule 60(b), SCRCP provides for relief from a final judgment or order on several grounds, including mistake, inadvertence, surprise, excusable neglect, **or where the judgment is void.**
2. The "Order of Reference" in question was issued and signed by the Clerk of Court—not by a judge—in a matter where Petitioner filed a substantive and timely response contesting Plaintiff's claims and **demanding dismissal for lack of standing** (standing being a crucial element needed to substantiate jurisdiction), evidentiary insufficiency, and legal infirmities (including fraudulent filings and material misrepresentations). In support:
 - a. **Ex parte Levier**, 250 S.C. 503, 159 S.E.2d 396 (1968):

"A court is without jurisdiction to proceed in a cause where standing is not affirmatively established on the record."
 - b. **Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dep't of Natural Resources**, 345 S.C. 594, 550 S.E.2d 287 (2001):

"Without standing, the trial court lacks subject matter jurisdiction."
 - c. **SCRCP Rule 12(h)(3)** (Authority from 1985 Act No. 100, § 1, p. 327):

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."
3. Although Rule 53(b), SCRCP, as amended in 2002, permits a Clerk of Court to issue an order of reference in foreclosure cases, **such delegation of authority is explicitly conditioned upon the matter being uncontested, a default, or where the parties consent.** See SCRCP 53(b) ("...some or all of the causes of action in a case may be

referred to a master or special referee by order of a circuit judge or the clerk of court” in such limited instances).

4. Once Petitioner filed a Petition to Dismiss (raising jurisdictional and evidentiary challenges under Rules 12(b)(1), 12(b)(6), and 12(h)(3)), the action became contested as a matter of law. The Clerk’s ministerial authority under Rule 53(b) was thereby divested.
5. **The South Carolina Constitution, Article V, § 11, requires that the judicial power of the State be exercised by courts and judges duly vested with authority to decide legal disputes. A Clerk of Court is not a judge and does not possess constitutional adjudicative authority.**
6. Clerks of Court are ministerial officers. They may not enter binding judicial orders unless specifically authorized by statute or rule, **and only within the narrow bounds of their administrative functions.** See *State v. Galloway*, 263 S.C. 585, 588, 211 S.E.2d 885 (1975); see also *Ex parte Morris*, 254 S.C. 516, 176 S.E.2d 307 (1970).
7. The Order of Reference in this case materially affects Petitioner’s rights by transferring the matter for adjudication to the Master-in-Equity in the absence of lawful authority. It is therefore void ab initio and must be vacated. See SCRCP 60(b)(4); see also *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010) (a judgment entered without subject-matter jurisdiction or proper authority is void and must be set aside).
8. No evidentiary hearing or judicial adjudication preceded the entry of this Order, and the matter is actively contested, in violation of Petitioner’s due process rights under U.S. Const. amend. XIV and S.C. Const. art. I, § 3.

WHEREFORE, Petitioner seeks redress under the aforementioned authorities of law for remedy without waiving rights, status, or immunities.

- VACATE the “Order of Reference” entered by the Clerk of Court on July 30, 2025 as void;
- CONFIRM that the Clerk lacked jurisdiction or authority to issue such an order in a contested case;
- RESTORE the matter to the docket of the Circuit Court for adjudication and determination of standing by evidentiary hearing presided over by a judge;
- And for any further relief this Court deems just and proper in the interest of justice and equity.

Respectfully presented,

A handwritten signature in black ink, appearing to read "Erica Davis". The signature is fluid and cursive, with the first name "Erica" and last name "Davis" clearly distinguishable.

Erica Davis
Trustee/ Authorized Representative
Date: August 04, 2025

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V.

Case No: Case No. 2025-CP-23-03796

1. The attorney's affidavit is inadmissible. It is not made on personal knowledge of the underlying debt or note prior to the assignment and fails to conform with SCRCP Rule 56(e) and SCRE Rule 602 (requiring personal knowledge).
2. The affidavit lacks proper verification, not being sworn before a notary or made under penalty of perjury, and does not meet the standards of SCRE Rule 902(8) (self-authenticating documents) or Rule 803(6) (business record exception).
3. Counsel is not a competent witness under Rule 3.7, South Carolina Rules of Professional Conduct, which prohibits an attorney from acting as both witness and advocate on contested facts.

4. Under SCRCP Rule 12(f), this Court may strike any “redundant, immaterial, impertinent, or scandalous matter” from the record. The documents identified are not only unauthorized but legally defective and misleading.

II. ADDITIONAL GROUNDS TO STRIKE ATTORNEY AFFIDAVIT BASED ON ERRONEOUS ASSERTION OF MANDATORY REFERRAL AUTHORITY

5. Petitioner further challenges and moves to strike the affidavit submitted by Plaintiff’s counsel on the ground that it contains a materially misleading assertion regarding the authority for referral to the Master in Equity. In paragraph 3 (three) of the affidavit, Plaintiff’s **counsel** states:

- a. "...no issues have been raised which would preclude this foreclosure from being referred to the Master in Equity under the mandatory referral provisions of S.C. Rules of Civil Procedure 53 and 71, and the Administrative Order of Chief Justice Jean Hoefer Toal dated July 15, 2010 (#2010-07-15-01)."

This statement is legally inaccurate, misleading, and constitutes an improper legal conclusion by counsel masquerading as fact. The South Carolina Rules of Civil Procedure do not contain any provision making referral “mandatory” in a contested foreclosure matter, especially once a substantive pleading is filed.

6. **Rule 53(b), SCRCP** authorizes reference to the Master in Equity by “a circuit judge or the clerk of court” only “in an action where the parties consent, in a default case, or an action for foreclosure.” However, even in foreclosure actions, this permissive grant of authority does not override constitutional and procedural protections once the case becomes contested. The rule does not mandate reference—particularly where Petitioner

has raised jurisdictional and evidentiary objections in a properly filed petition to dismiss. Such a filing removes the matter from the ministerial reach of the Clerk and requires judicial adjudication. See S.C. Const. Art. V, § 11; see also *State v. Galloway*, 263 S.C. 585, 588 (1975) (“The clerk of court is a ministerial officer and has no authority to enter orders or judgments unless expressly authorized by statute.”).

7. **Rule 71, SCRCP** governs procedure in special statutory proceedings and does not in any way create or authorize a mandatory referral mechanism. It explicitly provides: “These rules shall apply to all statutory proceedings of a civil nature not otherwise provided for by statute or by these rules.” There is no independent statutory foreclosure scheme displacing judicial procedure in this matter; thus, Rule 71 has no bearing.
8. Plaintiff’s reliance on **Administrative Order 2010-07-15-01**, issued by Chief Justice Jean Hoefer Toal, is also misplaced. That Order was administrative in nature, aimed at streamlining foreclosure dockets at a time of high caseloads. It did not and could not override the South Carolina Constitution or the Rules of Civil Procedure. More importantly, it applies only in **uncontested foreclosure actions** or where judicial discretion permits referral—neither of which conditions are satisfied here. The Petitioner’s Petition to Dismiss for lack of standing and fraud, filed prior to referral, constitutes a substantive contest of the Plaintiff’s claims and divests any presumption of procedural regularity under that order.
9. Counsel’s use of these legal citations to imply an uncontested, mandatory, and ministerial referral process is a misstatement of law presented as fact, further disqualifying the affidavit under **SCRCP Rule 56(e)** and **SCRE Rule 602**, and reinforcing the need for it to be struck under **Rule 12(f), SCRCP**.

WHEREFORE, Petitioner seeks the following redress under the aforementioned authorities of law for remedy without waiving rights, status, or immunities:

- Strike the affidavit of Plaintiff's attorney from the record in its entirety;
- And award any further relief this Court deems just and proper.

Respectfully presented,

A handwritten signature in black ink, appearing to read "Erica Davis", with a large, stylized flourish extending from the end of the name.

Erica Davis
Trustee/ Authorized Representative
Date: August 04, 2025

**IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA**

Robert Barnett, as Trustee of the RH 401(k) Plan,

Plaintiff (Respondent),

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant (Petitioner)

Case No: Case No. 2025-CP-23-03796

OBJECTION TO CLERK'S ENTRY OF ORDER WITHOUT JUDICIAL AUTHORITY

Petitioner, Signature Gain Express Trust, by Trustee Erica Davis, hereby objects to the Order of Reference issued on [Insert Date] and states:

1. Under Article V, § 11 of the South Carolina Constitution (1895 S.C. Acts p. 550) and Act No. 279 of the 1985 Acts of the General Assembly (now codified at S.C. Code § 14-11-60), only a duly authorized judge may refer a case to the Master-in-Equity **when the matter is contested.**
2. **The Clerk of Court is without authority to issue binding judicial orders in contested proceedings.** See State ex rel. McLeod v. Civil and Criminal Court of Horry, 265 S.C. 114, 217 S.E.2d 23 (1975).
3. The current matter is actively contested. Petitioner filed a Petition to Dismiss under SCRCR Rule 12(b)(1), 12(b)(6), and 12(h)(3), **asserting lack of standing** (and consequently lack of subject matter jurisdiction) and evidentiary deficiencies, thereby removing the matter from uncontested status.
4. The Clerk's issuance of an Order—bearing the caption of judicial authority, affecting the rights of parties, and purporting to transfer venue—is void and constitutes an ultra vires act.

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CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA
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5. Such a procedural action taken outside the scope of authority and without a ruling from the bench violates the Petitioner procedural due process rights.

Petitioner hereby demands that:

- The Clerk's order be declared void and of no legal effect;
- All parties be restrained from proceeding under its purported authority;
- The matter proceed under judicial supervision consistent with the Constitution and applicable Acts of the General Assembly.

Respectfully presented,

A handwritten signature in black ink, appearing to read "Erica L. Davis", with a long horizontal flourish extending to the right.

Erica Davis
Trustee/ Authorized Representative
Date: August 04, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No: 2025-CP-23-03796
	)	
Robert Barnett, as Trustee of the RH 401(k)	)	
Plan,	)	
	)	NOTICE OF MOTION AND MOTION
Plaintiff,	)	TO STRIKE AND FOR DEFAULT
	)	JUDGMENT
v.	)	
	)	
Erica Lynn Davis, Austin J. Davis, and	)	
Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

Plaintiff, Robert Barnett, as Trustee of the RH 401(k) Plan, moves the Court pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, to strike the (1) Petition to Dismiss for Lack of Standing and Demand for Evidentiary Hearing, Quiet Title, and Other Relief (the “Motion to Dismiss”) and the (2) Verified Counterclaim for Fraud upon the Court, Negligent Misrepresentation, Abuse of Process, and Quiet Title (the “Counterclaim”) of Defendant, Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee, who submitted the Motion to Dismiss and Counterclaim as the Signature Gain Express Trust, by and through its Trustee Erica Davis (“Signature Gain Express Trust”), because Signature Gain Express Trust is not represented by counsel. *See* S.C. Code Ann. § 40-5-310; *Real Estate Unlimited, L.L.C. v. Rainbow Living Tr.*, No. 2004-UP-019, 2004 S.C. App. Unpub. LEXIS 8, at *5 (Ct. App. Jan. 15, 2004) (holding that “section 40-5-80 does not authorize a non-attorney trustee of a valid trust to represent the trust in the court of

common pleas because the action would not be the trustee's "own cause" but rather that of the trust and its beneficiaries.”); *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651 (1999) (“[A] non-lawyer cannot represent a corporation in circuit or appellate courts.”). Plaintiff further moves, pursuant to Rule 55, SCRCP, for a Default Judgment against Defendant, Signature Gain Express Trust, because its previously filed Motion to Dismiss and Counterclaim should both be struck.

s/C. Elizabeth Weston
J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
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(803) 929-1400
phoefer@robinsongray.com
lweston@robinsongray.com

Attorneys for the Plaintiff

August 13, 2025

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Robert Barnett, as Trustee of the RH 401(k)	)	Case No. 2025-CP-23-03796
Plan,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S RESPONSE TO
v.	)	DEFENDANT SIGNATURE GAIN
	)	EXPRESS TRUST'S
	)	COUNTERCLAIM
Erica Lynn Davis, Austin J. Davis,	)	
and Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

Plaintiff Robert Barnett, as Trustee of the RH 401(k) Plan ("Plaintiff"), by and through its undersigned attorneys, hereby replies to the document titled *Verified Counterclaim For Fraud Upon the Court, Negligent Misrepresentation, Abuse of Process, and Quiet Title* (the "Counterclaim") filed allegedly on behalf of Signature Gain Express Trust, which Plaintiff assumes refers to Defendant Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee (the "Trust Defendant"), as follows:

1. The allegations of Plaintiff's Complaint are reiterated herein.
2. That each allegation contained in the Trust Defendant's Counterclaim which is not specifically admitted or otherwise qualified is denied.

FOR A FIRST DEFENSE

3. No responses are required to the introductory paragraph of Trust Defendant's Answer. However, to the extent that responses are deemed required, they are denied.

4. Responding to the allegations of Paragraph 1, Plaintiff reiterates all allegations of the Complaint and denies that Trust Defendant is entitled to the relief requested in its referenced Motion to Dismiss.

5. Responding to the allegations of Paragraph 2, Plaintiff admits that it initiated foreclosure proceedings by filing a Complaint and Trust Defendant and other parties with this Court on June 18, 2025, as the holder of the subject Note and Mortgage. The remaining allegations of Paragraph 2 do not require a response, and to the extent that responses are deemed necessary, they are denied.

6. Responding to the allegations of Paragraph 3, Plaintiff admits that the Complaint included references to the assignment of the subject Note and Mortgage and a Demand for Payment was sent on behalf of the original holder of the loan documents.

7. Plaintiff denies the allegations and legal conclusions of Paragraph 4.

8. Plaintiff denies the allegations and legal conclusions of Paragraph 5 and notes that the Complaint was verified by Plaintiff.

9. Plaintiff denies the allegations and legal conclusions of Paragraph 6.

10. Plaintiff denies the allegations and legal conclusions of Paragraph 7 and asserts that the Lis Pendens filed in connection with this action is proper.

11. Plaintiff denies the allegations of Paragraphs 7 (second paragraph numbered at “7”), 8, and 9 and all subparts therein.

12. Responding to the allegations of Paragraph 10, Plaintiff admits that a Verified Complaint must include truthful and accurate information and reaffirms all allegations contained in said Complaint.

13. Plaintiff denies the allegations of Paragraphs 11 and 12.

14. Plaintiff denies the allegations of Paragraphs 13 and 14.

15. Plaintiff denies the legal conclusions of Paragraph 15.
16. Plaintiff denies the legal conclusions of Paragraph 16.
17. Plaintiff denies the allegations of Paragraphs 17 and 18.
18. Plaintiff denies that Trust Defendant is entitled to any recovery or has been damaged by any act or omission of Plaintiff.

FOR A SECOND DEFENSE

(Failure to State a Claim)

19. Some or all of Trust Defendant's counterclaims fail to state causes of action upon which relief may be granted and should be dismissed, with prejudice, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(Failure to Mitigate)

20. Some of all of Trust Defendant's counterclaims are or may be barred by failure to mitigate damages.

FOR A FOURTH DEFENSE

(Equitable Defenses)

21. Plaintiff would show that the Trust Defendant's claims are barred by all equitable doctrines available to it, including, but not limited to, the doctrines of laches, unclean hands, ratification, waiver, consent, and estoppel.

FOR A FIFTH DEFENSE

(Good Faith)

22. Plaintiff's actions were in good faith, reasonable, justified, and in conformity with applicable rules, regulations, and statutory interpretations, which acts as a complete defense to this action.

FOR A SIXTH DEFENSE
(Additional Affirmative Defenses)

23. To the extent applicable and not already asserted hereinabove, Plaintiff pleads all affirmative defenses listed in Rule 8(c), SCRCP, and is entitled to the benefits of all defenses and presumptions contained in, or arising from, the applicable rules and laws of the State of South Carolina.

FOR A SEVENTH DEFENSE
(Reservation of Defenses)

24. Plaintiff intends to act as best it can to inform itself as to the pertinent facts or prevailing circumstances surrounding any claim as alleged in the Answer and gives notice of its intent to assert any affirmative defenses that its information gathering process may indicate are supported by law and fact, including, but not limited to, the action is barred in whole or in part by any applicable statute, contract, release, or covenant. Plaintiff reserves the right to amend this Reply to assert any such defenses to the Trust Defendant's Counterclaim.

WHEREFORE, having fully responded to Trust Defendant's Counterclaim, Plaintiff prays for an order of this Court dismissing the same, with costs and fees awarded to it, the relief prayed for in the Complaint granted, and any other relief the Court deems just and proper.

s/C. Elizabeth Weston

J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
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kspong@robinsongray.com
lweston@robinsongray.com

Attorneys for Plaintiff

August 13, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No: 2025-CP-23-03796
Robert Barnett, as Trustee of the RH 401(k)	)	
Plan,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S NOTICE OF MOTION
v.	)	AND MOTION FOR SUMMARY
	)	JUDGMENT
Erica Lynn Davis, Austin J. Davis, and	)	
Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS ABOVE-NAMED:

PLEASE TAKE NOTICE that Plaintiff, Robert Barnett, as Trustee of the RH 401(k) Plan, through its undersigned attorneys, hereby moves for an order before Master in Equity for Greenville County, pursuant to Rule 56, SCRCP, granting summary judgment against the Defendants in favor of Plaintiff in its foreclosure action based on the loan documents attached to its verified Summons and Complaint.

There is no genuine issue of material fact, and Plaintiff is entitled to summary judgment as a matter of law as to the liability of Defendant Erica Lynn Davis on the loan documents attached to its verified Summons and Complaint. It is undisputed that the funds were disbursed, the loan is in default, and Plaintiff has not been repaid on the loan obligations. No legal justification has been raised by Defendants and there are no defenses to this action as a matter of law. This motion is further supported by the verified Summons and Complaint, the loan documents attached thereto as exhibits, Plaintiff's Affidavit, Defendant Signature Gain Express Trust, DTE 06/22/2022 (An

Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee's Answer, and such memorandum of law and other documents as may be served and filed hereafter.

s/J. Kershaw Spong

J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
Robinson Gray Stepp & Laffitte, LLC
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lweston@robinsongray.com

Attorneys for Plaintiff

Columbia, South Carolina

August 14, 2025

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

) IN THE COURT OF COMMON PLEAS

Robert Barnett, as Trustee of the RH
401(k) Plan,)

Case No. 2025-CP-23-03796

Plaintiff,)

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

v.)

Erica Lynn Davis, Austin J. Davis, and
Signature Gain Express Trust, DTE
06/22/2022 (An Irrevocable Express
Trust Organization) Harol Alezu Lozano
Moran, Sole Trustee,)

Defendants.)

Robert Barnett, as Trustee of the RH 401(k) Plan ("Plaintiff") hereby states as follows:

1. Plaintiff is the trustee of the RH 401(k) Plan which is duly organized and existing under and by virtue of the laws of the United States. Statements contained in this Affidavit (except those matters stated as to information and belief, and as to those matters affiant believes them to be true) are based on my personal knowledge of the account and loan documents forming the basis of this action and/or the business records of Plaintiff which are kept in the ordinary course of Plaintiff's regularly conducted business activity and it is the regular practice of Plaintiff to maintain and compile the acts, events, and records at or near the time of the event. Plaintiff relies on these records to be accurate in conducting its servicing activities.

2. That on or about December 13, 2019, Defendant Erica Lynn Davis made, executed, and delivered to Synovus Bank a certain Note in writing, wherein and whereby she promised to pay to Synovus Bank the principal sum of One Hundred Ninety-Seven Thousand Eighty and 00/100 Dollars (\$197,080.00), together with interest at the rate of 4.375% per annum on the unpaid balance; said principal and interest being payable in monthly installments on terms as set forth

therein until said Note is fully paid. A copy of the Note and Allonge are attached hereto as **Exhibit A**.

3. That in order to secure the payment of the Note, on or about December 13, 2019, the Defendants Erica Lynn Davis and Austin J. Davis did make, execute, and deliver to Synovus Bank, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid. A true copy of the said Mortgage is attached as **Exhibit B**.

4. That on December 16, 2019, said Mortgage was recorded in the Office of the Register of Deeds for Greenville County in Book MO 5511 at Page 4109.

5. That by Assignment of Note, Mortgage, and Other Loan Documents ("Assignment") dated May 12, 2025 and recorded in said Register of Deeds' Office on May 22, 2025 in Book MO 5822 at Page 1225, the said Synovus Bank assigned said Mortgage to the Plaintiff, which is now the owner and holder thereof and the debt secured thereby. A true copy of the Assignment is attached as **Exhibit C**.

6. That the terms of said Note and the Mortgage securing same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

7. That the terms of the said Note it is further provided that the maker thereof shall pay a reasonable sum as and for an attorney's fee if the said note be placed in the hands of an attorney for collection after default.

8. That the installments of principal and interest falling due from and after the October 1, 2023, have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said Note and Mortgage, has and does hereby elect to declare the

entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of One Hundred Eighty-Six Thousand Two Hundred Fifty-Seven and 37/100 Dollars (\$186,257.37), together with interest thereon at the rate of 4.375% per annum from September 1, 2023 as provided in the Note and late charges, plus a reasonable sum as attorney's fees for the collection thereof and the costs of this action.

Principal:	\$186,257.37
Interest:	15,627.76
Late Charges:	1,047.58
Escrow adjustments:	6,117.12
(Insurance: \$1,331.53; Taxes – \$4,785.59)	
Uncollected interest:	<u>2,146.81</u>
	\$211,196.64

9. That Plaintiff notified Defendant Erica Lynn Davis of this default by Demand for Payment dated October 10, 2024. A true copy of the Demand for Payment is attached as **Exhibit D**.

10. A current statement of account is attached as **Exhibit E**.

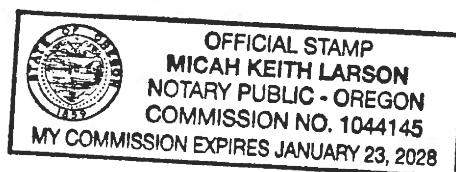
11. A payment history is attached as **Exhibit F**.

Robert Barnett, as Trustee of the RH 401(k) Plan

By: 
 Its: Robert Barnett
Trustee

SWORN TO before me this
14th day of August, 2025


 Notary Public for Oregon
 My Commission Expires: Jan. 23, 2028



**IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA**

Robert Barnett, as Trustee of the RH 401(k) Plan,

Plaintiff (Respondent),

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant (Petitioner)

Case No: Case No. 2025-CP-23-03796

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RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE

Preamble and Reservation

Appearing specially and not generally, Petitioner expressly reserves all rights and does not consent to jurisdiction. See S.C. Const. art. V, §4 (Supreme Court rule-making authority over practice and procedure); all relief requested herein is for the limited purpose of challenging jurisdiction and preserving rights.

Governing Standard

The authority to regulate practice and procedure lies in the Supreme Court of South Carolina under Article V, § 4 of the South Carolina Constitution. Under that authority, the Court promulgated Rule 12(f), South Carolina Rules of Civil Procedure, permitting a

court to strike matter only if “redundant, immaterial, impertinent, or scandalous.”

Motions to strike are disfavored and are not a substitute for a motion to dismiss or for summary judgment; **they should be granted only where it is clear the challenged matter can have no possible bearing on the litigation and no evidence could make the allegations material.** The Court’s task is to read the pleading in the light most favorable to the non-movant and accept well-pleaded facts as true for purposes of the motion.

I. Threshold: Standing and Subject-Matter Jurisdiction Must Be Resolved Before Any Merits or Striking

By constitutional design, a court must confirm its jurisdiction and the parties’ standing first. Article V vests the judicial power in courts of record; if the plaintiff lacks standing, there is no case or controversy the circuit court may hear. The Supreme Court has repeatedly treated standing as a threshold justiciability question in South Carolina; **without it, the court is without power to proceed.** See, e.g., *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 648–49, 528 S.E.2d 647, 654 (1999) (discussing justiciability/standing as antecedent to merits); cf. *Florence County v. West Florence Fire Dist.*, 301 S.C. 118, 121, 390 S.E.2d 401, 403 (1990) (subject-matter jurisdiction is fundamental and may be raised at any time). **The Rules codify this imperative: SCRPC 12(h)(3) requires dismissal “whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter.”**

Petitioner’s petition to dismiss for lack of standing lays out facial and evidentiary deficiencies (See Jurisdictional Memorandum on Standing). **Until Plaintiff proves the**

right to enforce, the Court lacks authority to issue any order that presupposes a valid claim. Plaintiff's motion to strike, which asks the Court to remove the very allegations that call standing into question, puts the cart before the horse and must be denied.

II. Rebuttal to Plaintiff's Representation Argument

Specifically, out of an abundance of caution, and not as an involuntary submission to jurisdiction, and to preserve the record for appellate review if necessary, the Trust addresses the Plaintiff's assertion that "Signature Gain Express Trust is not represented by counsel" and thus cannot appear through its Trustee. Plaintiff relies on [S.C. Code Ann. § 40-5-310] and cases like *Real Estate Unlimited, L.L.C. v. Rainbow Living Tr.*, No. 2004-UP-019 (Ct. App. Jan. 15, 2004), **but omits the critical statutory language: "except where allowed by statute."** South Carolina law—specifically [S.C. Code Ann. § 62-7-815(24)]—expressly authorizes a trustee to prosecute or defend actions, claims, or proceedings for the protection of trust property. This statutory authorization squarely places the Trustee's appearance within the 'except where allowed by statute' clause of [§ 40-5-310] **and effectively rebuts the Plaintiff's incorrect presumption within the very same statutory framework.**

Separately, the governing Trust Instrument explicitly grants the Trustee and/or Trust Protector the power within the management of trust property and business, to initiate or defend any action in the name of the Trust to protect its property and interests. Trustee Erica Davis acts within this express grant of authority. Therefore, Plaintiff's premise is factually and legally incorrect, and the cited cases—which involved trustees or

non-lawyers without such statutory or trust-instrument authority—are inapposite. **The Court must apply the statutory exception before accepting Plaintiff's premise.** The binding terms of the trust instrument, while applicable, are of no consequence as the very statute cited by the Plaintiff allows for a competent trustee to handle the legal matters of the trust pertaining to the protection of trust property. Accordingly, this argument in Plaintiff's motion fails as a matter of law and procedure.

III. Point-by-Point Rebuttal of Plaintiff's Presumptions Made In Plaintiff's Motion to Strike

1. The plaintiff's attorney argues the presumption that Petitioner's standing allegations are immaterial; in rebuttal, the Signature Gain Express Trust (*Trust*) asserts that standing is never 'immaterial.' It is jurisdictional. See Art. V (S.C. Const.); Joytime, 338 S.C. at 648–49; SCRCP 12(h)(3). Allegations showing lack of possession of the original note, absence of a certified chain of assignments, and a claimed notice of default dated before Plaintiff acquired the loan (Plaintiff's Exhibit C) are directly material to standing. A Rule 12(f) motion cannot erase jurisdictional defects.
2. The plaintiff's attorney argues the presumption that attorney verification cures evidentiary defects; in rebuttal, the *Trust* asserts that **a lawyer's verification is not an evidentiary foundation for business records or negotiable instruments.** Authentication and hearsay exceptions are governed by the Rules of Evidence adopted under Art. V, §4. To establish admissibility of the note, assignments, and 'default' records, Plaintiff **MUST** satisfy SCRE 803(6), and SCRE 902(4)/(11).

Attorney assertions **are not a substitute** for a custodian's affidavit based on personal knowledge. See SCRE 602.

3. The plaintiff's attorney argues the presumption that exhibits may be considered as if originals; in rebuttal, the *Trust* asserts that copies are not 'originals,' and unauthenticated copies are not self-authenticating. SCRE 1002–1003; SCRE 902(1), (4), (11). Plaintiff's Exhibit A (copy of a copy of the Note) lacks certification; Petitioner's Exhibit B (a Mortgage) bears an official original stamp (evident in its photocopying) which is absent on the copy of the Note. **These facts go to competency and weight and require an evidentiary hearing under SCRCP 43.**
4. The plaintiff's attorney argues the presumption that timing inconsistency in Exhibit C is irrelevant; in rebuttal, the *Trust* asserts that Plaintiff claims to have issued a default notice dated October 10, 2024 yet admits acquiring the loan May 12, 2025. **This contradiction is central to the right-to-enforce narrative and requires proof of agency or assignment.**
5. The plaintiff's attorney argues the presumption that references to evidentiary rules and chain-of-title requirements are 'scandalous' or 'impertinent' (by way of their motion to strike); in rebuttal, the *Trust* asserts that **such jurisdictional facts are required under South Carolina's judicial foreclosure framework** (derived from Act No. 100, 1870 Acts of the General Assembly; codified at [S.C. Code Ann. § 29-3-610]). See also *Carolina Holdings, Inc. v. Davis*, 354 S.C. 47, 579 S.E.2d 334 (Ct. App. 2003).
6. The plaintiff's attorney argues the presumption that lis pendens and referral presumptively validate standing; in rebuttal, the *Trust* asserts that a lis pendens

creates a cloud but does not establish standing, and referral does not relieve the plaintiff from proving the right to enforce with admissible evidence.

IV. Why Plaintiff's Rule 12(f) Motion Fails as a Matter of Law and Procedure

- a). It seeks to remove allegations that go to jurisdiction and standing, which must be decided first (Art. V; SCRCP 12(h)(3)).
- b). It asks the Court to resolve factual disputes (authenticity, chain of title, timing of default) on a papers-only motion designed for patently irrelevant or scandalous material—not this.
- c). It would improperly insulate Plaintiff from the evidentiary burden in a judicial foreclosure action (Act No. 100 (1870); Carolina Holdings).

V. Requested Disposition

- Deny Plaintiff's Motion to Strike in full, as it is both premature and improper.
- Set a Rule 43 evidentiary hearing limited to standing and admissibility (original note, certified chain of assignments, custodian affidavits satisfying SCRE 803(6), 902(4), 902(11), 602).
- **If Plaintiff cannot meet its burden, the Court must dismiss for lack of standing and consequently lack of subject matter jurisdiction under SCRCP 12(h)(3).**

Respectfully presented,

A handwritten signature in black ink, appearing to read "Erica Davis". The signature is written in a cursive style with a large, looped "D" and a horizontal line crossing through the middle of the name.

Erica Davis
Trustee/ Authorized Representative
Date: August 17, 2025

**IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA**

25 AUG 18 AM 8:43 P
JAY GRESHAM COC GVL SC

Robert Barnett, as Trustee of the RH 401(k) Plan,
Plaintiff (Respondent),
v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant (Petitioner)

Case No: Case No. 2025-CP-23-03796

**PETITIONER'S JURISDICTIONAL MEMORANDUM ON STANDING AND
SUBJECT-MATTER JURISDICTION**

Preamble and Reservation

Appearing **specialty** and not generally, Defendant expressly reserves all rights; no consent to jurisdiction is given. Relief is sought only to require the Court to resolve standing as a threshold matter pursuant to **Article V of the South Carolina Constitution** and **SCRCP 12(h)(3)**.

I. Standing Is a Threshold Requirement; Without It, the Court Lacks Power to Act

Petitioner feels the overwhelming need to remind all parties that South Carolina courts are courts of limited, constitutional authority. **Article V** of the South Carolina Constitution vests judicial power in the courts and authorizes the Supreme Court to prescribe rules of practice and procedure (**Art. V, §4**). Standing is a **threshold justiciability** doctrine: a plaintiff must

demonstrate a personal stake—here, a legally cognizable right to enforce the note and mortgage—**before** the court may proceed. See **Joytime Distributors & Amusement Co. v. State**, 338 S.C. 634, 648–49, 528 S.E.2d 647, 654 (1999) (standing/justiciability); **Florence County v. West Florence Fire Dist.**, 301 S.C. 118, 121, 390 S.E.2d 401, 403 (1990) (subject-matter jurisdiction is fundamental; court must notice lack of jurisdiction at any time).

The Rules implement this command: **SCRCP 12(h)(3)** requires dismissal “whenever” lack of subject-matter jurisdiction appears. In a **judicial foreclosure** (deriving from **Act No. 100, 1870 Acts**), the plaintiff bears the burden to **plead and prove** the right to enforce with **competent evidence**.

II. The Evidentiary Showing Required to Establish Standing in a Judicial Foreclosure

To carry its burden, Plaintiff **must** produce **admissible** proof showing:

1. **Possession of the original note** at the time the action was commenced, and
2. A **certified chain of title/assignments** from the original lender to Plaintiff, sufficient to show entitlement to enforce both the **note** and the **mortgage** (the mortgage follows the note). See **Carolina Holdings, Inc. v. Davis**, 354 S.C. 47, 50, 579 S.E.2d 334, 336 (Ct. App. 2003) (foreclosure plaintiff must show it is the proper party); **Carpenter v. Longan**, 83 U.S. 271, 274 (1872) (note and mortgage are inseparable; assignment of mortgage alone is a nullity).

Authentication/Hearsay Requirements (Rules Adopted under Art. V, §4):

3. **SCRE 803(6)** (business-records exception) requires a **qualified custodian** with personal knowledge of record-keeping practices. The plaintiff’s attorney does not qualify.
4. **SCRE 902(4)** (certified copies of public records) and **902(11)** (certified records of regularly conducted activity) govern **self-authentication**; unauthenticated copies are not

self-authenticating. The plaintiff has already admitted in their 'CERTIFICATE OF EXEMPTION FROM ADMINISTRATIVE ORDER' that they: "...[are] not in the business of regularly making loans."; we can also ascertain from their exhibits and filings that the documents are not certified copies.

5. **SCORE 602** requires **personal knowledge**; an attorney verification does not establish custodial foundation or personal knowledge of predecessor records.

III. Why the Present Record Thoroughly Fails the Threshold

1. **Copy of Note (Exhibit A)** is not certified; no custodian foundation; no wet-ink original; no matching original stamp (mirroring the one present on the mortgage).
2. **Assignments**: no complete **certified** chain from Synovus to Plaintiff as trustee; the assignment language "sells" requires proof of a **valid transfer** linking the note and mortgage together; no verifiable and competent proof of an obligation or debt.
3. **Default Letter (Exhibit C)**: dated **Oct. 10, 2024**—**before** Plaintiff acquired any interest (**May 12, 2025**). The contradiction undermines the alleged acceleration and enforcement narrative described by the Plaintiff in the complaint.
4. **Attorney Verification** is not a custodian affidavit or one of corresponding merit and does not satisfy **SCORE 803(6), 902(11), 602**.

IV. Required Procedure and Disposition

Under **SCRCP 43**, the Court should convene a **limited evidentiary hearing** on standing and admissibility **before** any further step. If Plaintiff cannot prove standing with competent evidence, the Court must dismiss under **SCRCP 12(h)(3)**.

This Court **must** resolve standing first by setting a Rule 43 hearing limited to standing, inspection of the "evidence" submitted by Plaintiff, and the opportunity for the admissibility of competent evidence. On failure of proof via competent and admissible evidence proving standing, the Court **must** dismiss with prejudice for lack of subject-matter jurisdiction.

Respectfully presented,

A handwritten signature in black ink, appearing to read "Erica Davis", written in a cursive style.

Erica Davis
Trustee/ Authorized Representative
August 17, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No: 2025-CP-23-03796
Robert Barnett, as Trustee of the RH 401(k) Plan,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NOTICE OF HEARING
	)	
Erica Lynn Davis, Austin J. Davis, and Signature	)	
Gain Express Trust, DTE 06/22/2022 (An	)	
Irrevocable Express Trust Organization) Harol	)	
Alezu Lozano Moran, Sole Trustee,	)	
	)	
Defendants.	)	
	)	
	)	

TO: THE DEFENDANTS ABOVE-NAMED:

THIS IS TO ADVISE YOU that a hearing on Plaintiff's Motion to Strike and for Default Judgment, Plaintiff's Response to Defendant Signature Gain Express Trust's Counterclaim, Plaintiff's Motion for Summary Judgment, and any Objections, Responses, and Petitions filed by Defendant Signature Gain Express Trust in the above-captioned action will be held on the merits before the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, on **September 17, 2025 at 10:00 a.m.** to be held at the Greenville County Courthouse, 305 E. North Street, Greenville, South Carolina.

You will also take notice that the Plaintiff's attorney will submit written testimony on behalf of the Plaintiff pursuant to South Carolina Code Ann. §14-11-110 (as amended). All issues raised in the pleadings will be decided at this hearing.

You may attend this hearing.

s/J. Kershaw Spong
J. Kershaw Spong [SC Bar #5289]
C. Elizabeth Weston [SC Bar #103305]
Robinson Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
kspong@robinsongray.com
lweston@robinsongray.com

Attorneys for Plaintiff

Columbia, South Carolina
August 19, 2025

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Robert Barnett, as Trustee of the RH 401(k) Plan,	)	Case No. 2025-CP-23-03796
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Erica Lynn Davis, Austin J. Davis, and Signature	)	
Gain Express Trust, DTE 06/22/2022 (An	)	
Irrevocable Express Trust Organization) Harol	)	
Alezu Lozano Moran, Sole Trustee,	)	
	)	
Defendants.	)	
	)	
	)	

CERTIFICATE OF SERVICE BY MAIL

This is to certify that I, Rebecca Faulkenberry, a legal assistant with the law firm of Robinson Gray Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below the **NOTICE OF HEARING** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Erica Lynn Davis
131 Roundtree Drive
Simpsonville, SC 29681

Austin J. Davis
131 Roundtree Drive
Simpsonville, SC 29681

Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee
c/o Austin Davis, Authorized Representative
2607 Woodruff Road, Suite E-1023
Simpsonville, SC 29681

Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,
c/o Erica Davis, Trustee
131 Roundtree Drive
Simpsonville, SC 29681

Dated at Columbia, South Carolina on August 19, 2025.


Rebecca Faulkenberry

**IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA**

Robert Barnett, as Trustee of the RH 401(k) Plan,

Plaintiff (Respondent),

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant (Petitioner)

Case No: Case No. 2025-CP-23-03796

25 AUG 25 AM 11:52
JAY GRESHAM CDC GVL SC
KP

**OBJECTION TO “NOTICED” HEARING FOR LACK OF PRIOR STANDING
DETERMINATION**

Appearing specially and not generally, and expressly reserving all rights, objections, and defenses—including all objections to personal and subject-matter jurisdiction—Petitioner objects to the “noticed” hearing set by Plaintiff’s counsel on the ground that the Court must first determine, on competent evidence, whether Plaintiff has standing and whether this Court possesses subject-matter jurisdiction over a justiciable controversy.

South Carolina’s judicial power is vested in courts of record under Article V of the South Carolina Constitution; the Supreme Court exercises constitutional authority to regulate practice and procedure (S.C. Const. art. V, § 4). Standing is a threshold component of justiciability in South Carolina; **without it, the court has no power to act on the merits.** Yet the Plaintiff’s Notice states:

*“THIS IS TO ADVISE YOU that a hearing on [...] in the above-captioned action **will be held on the merits** before the Honorable Charles B. Simmons, Jr., Master in Equity...”*

Because Petitioner has specifically and timely challenged Plaintiff’s standing and right to enforce (**via Petition to Dismiss presented by Petitioner onto the record 07/24/2025-11:43**), the Court must first receive competent evidence under Rule 43, SCRCP (testimony taken in open court), sufficient to establish Plaintiff’s status as the party entitled to enforce the mortgage in this judicial foreclosure. As a judicial-foreclosure state, South Carolina places the burden on the foreclosing party to plead and prove, **with admissible evidence, its ownership of the debt and right to enforce**. See Act No. 100, 1870 Acts of the General Assembly (establishing foreclosure practice through the courts) (later codified in relevant titles); *Carolina Holdings, Inc. v. Davis*, 354 S.C. 47, 50, 579 S.E.2d 334, 336 (Ct. App. 2003).

Mere docketing or “noticing” a hearing under SCRCP 40 is administrative; it neither supplies jurisdiction nor permits the Court to proceed while standing is disputed. Before any other hearing occurs, Plaintiff must produce, and the Court must evaluate, **competent proof meeting the South Carolina Rules of Evidence: the original wet-ink note (Best Evidence: SCRE 1002–1003), the certified mortgage and every certified assignment in a complete chain (SCRE 902(4)), and a qualified custodian affidavit satisfying SCRE 803(6) and 902(11), along with live testimony grounded in personal knowledge (SCRE 602)**. The timing discrepancy in Plaintiff’s own exhibit purporting to notice default before Plaintiff’s acquisition heightens the need for Rule 43 evidence.

Requested Disposition. Petitioner objects to the presently noticed hearing and requests that the Court (i) vacate that hearing, and (ii) first set a Rule 43 evidentiary hearing limited to standing

and admissibility. **Should Plaintiff fail to carry its burden, the Court must (iii) dismiss for lack of subject-matter jurisdiction under SCRPC 12(h)(3).**

Respectfully presented,

A handwritten signature in black ink, appearing to read "Erica Davis", written in a cursive style.

Erica Davis

Trustee/ Authorized Representative

August 15, 2025

**IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA**

25 AUG 25 PM 12:03
JAY GRESHAM CDO GVL SC

Robert Barnett, as Trustee of the RH 401(k) Plan,

Plaintiff (Respondent),

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant (Petitioner)

Case No: Case No. 2025-CP-23-03796

PETITION TO STRIKE SCHEDULED HEARING

NOW COMES Petitioner, appearing specially and not generally, expressly reserving all rights and without consenting to jurisdiction, and respectfully moves this Court to strike from the docket the hearing unilaterally noticed by Plaintiff's counsel.

The Court cannot schedule or hold a hearing until standing and subject matter jurisdiction are first established. Jurisdiction is not presumed; it must be affirmatively proven by the party invoking it. See *Joytime Distributors*, supra; *Florence County*, supra. A Rule 43 evidentiary hearing is the only appropriate means by which Plaintiff may attempt to establish its standing through admissible, certified evidence. No such hearing has occurred, and no judicial order has directed this matter ("Notice of Hearing") to be heard.

The attempted scheduling by Plaintiff's counsel, absent an evidentiary hearing on standing and absent a judicial determination of jurisdiction, **is procedurally defective, ultra vires, and void as a matter of law.**

WHEREFORE, Petitioner requests that this Court strike the "noticed" hearing from the docket in its entirety, and direct that no further proceedings occur **until Plaintiff has first established standing through competent evidence at a Rule 43 evidentiary hearing only; not a hearing based on any merits of the plaintiffs action or anything in the pleadings of the action with the exception of the challenge to subject matter jurisdiction based on the Plaintiff's lack of standing.**

Respectfully presented,



Erica Davis

Trustee/ Authorized Representative

August ~~25~~ 2025

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) AFFIDAVIT OF ATTORNEYS FEES
) Case No. 2025-CP-23-03796

PERSONALLY APPEARED BEFORE ME, C. Elizabeth Weston, Esquire, who first being duly sworn, deposes and states that she is an associate with the law firm of Robinson Gray Stepp & Laffitte, LLC, and that she represents the Plaintiff in the following foreclosure action:

Robert Barnett, as Trustee of the RH 401(k) Plan

v.

Erica Lynn Davis, Austin J. Davis, and Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee

Since the inception of this action, her office has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the subject property or the date the mortgage was executed unto the date of the filing of the Lis Pendens. She has been responsible for the preparation of the following pleadings:

- 1) Lis Pendens
- 2) Summons and Complaint
- 3) Affidavit of Default
- 4) Order of Reference
- 5) Notice of Hearing
- 6) Proposed Final Decree
- 7) Notice of Sale
- 8) Record of Hearing
- 9) Study Answer; Motion for Summary Judgment and Supporting Affidavits

Additionally, we have arranged for service of process of the Defendants and scheduled and attended the hearing in this matter.

Future duties include forwarding copies of the Decree to the Defendants, advising the Defendants of the date that the property will be sold; arranging and coordinating the amount to be bid by the Plaintiff; representation of the Plaintiff at the sale; preparation of a Report on Sale, Deed and any other documents as may be necessary to this action and/or required by the court.

The contract rate between Plaintiff's law firm and the Plaintiff provides the firm be compensated at its usual and customary hourly rates. Mr. Spong is currently charging \$300.00 per hour, Ms. Weston is charging \$225.00 per hour, and their paralegal is charging \$140.00 per hour. Attached is a detailed summary of the actual time spent on this case.

Under NationsBank v. Scott Farm, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995) and Dede v. Strickland, 414 S.E.2d 134 (S.C. 1992), the Supreme Court of South Carolina has set forth the factors to be considered in an award of attorney's fees in real property actions. These factors include nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:

- a. Nature, Extent, and Difficulty of the Legal Services Rendered. As stated earlier, this is an action to foreclose a mortgage on real property. The case required a detailed knowledge of real property and foreclosure law. A hearing was held by the Master, who requires an order to be prepared by Plaintiff's counsel. Accordingly, the factual and legal issues presented were specialized in nature, the extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of legal and factual detailed specialty.
- b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved issues of both legal and factual natures. Attached is detailed summary of actual hours devoted to the case by my firm. Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case.
- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina. I completed law school approximately 8 years ago. For approximately the last 3 years, I have practiced with the Robinson Gray Stepp & Laffitte, LLC law firm in Columbia, South Carolina, and currently am an associate of the firm. I am a member of the Richland County Bar Association, the South Carolina Bar Association, the Bratton Davis Bankruptcy Inn of Court, and other professional organizations. Approximately 60% of my practice consists of real property litigation, including foreclosure cases, collection cases, bankruptcy cases, land title questions, and other land related litigation. Representation of the Plaintiff has been undertaken by the firm of Robinson Gray Stepp & Laffitte, LLC. In regards to the professional standing of counsel, the Plaintiff's firm consists of 43 attorneys, including the attorney who is primarily responsible for this case, who has extensive experience in foreclosure practice. My practice is concentrated in the areas of bankruptcy, creditors rights, foreclosure and real estate. I have handled numerous foreclosure and bankruptcy cases in South Carolina and the federal Bankruptcy Court. Accordingly, I submit that I have a high professional standing in general and in this area of practice.
- d. Contingency of Compensation. As recited above, compensation in this case is based on an hourly rate.
- e. Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with clients, other attorneys in the Foreclosure Bar in the Midlands region of South Carolina, and from my general familiarity with the legal profession, that the fees charged for services similar to those in contested cases like this case are comparable. As stated earlier, my rate is within this range in this case.

Accordingly, this rate is the fee customarily charged in this locality for similar services.

- f. Beneficial Results Obtained. This attorney obtained beneficial results for the Plaintiff in this action by securing a Judgment enforcing Plaintiff's mortgage rights with regard to the subject real property. Accordingly, it is submitted that beneficial results were obtained by this firm on the Plaintiff's behalf.

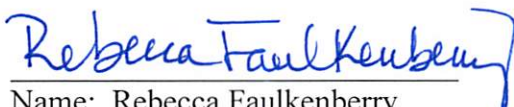
In addition to the time expended to date in prosecution of this action, we anticipate a minimum additional four hours after the hearing. Moreover, depending upon the interest shown by defendants, third parties, or counsel for either and the negotiations required thereby, other time may also be committed to the completion of the case. I reserve the right to re-visit the question of attorney fees should the action proceed in an unexpected way.

The amount of the attorney fee requested in this matter is \$7,850.00. This fee is in line with the fee customarily charged by counsel with similar experience in this particular locality. Also the Plaintiff's attorney has achieved the beneficial result of a prompt foreclosure of the Mortgages.



C. Elizabeth Weston

SWORN to before me this
14th day of September, 2025



Name: Rebecca Faulkenberry

Notary Public for South Carolina

My Commission Expires: 1-11-2032

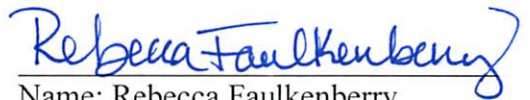
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No: 2025-CP-23-03796
Robert Barnett, as Trustee of the RH 401(k)	)	
Plan,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF COSTS
v.	)	
	)	
Erica Lynn Davis, Austin J. Davis, and	)	
Signature Gain Express Trust, DTE	)	
06/22/2022 (An Irrevocable Express Trust	)	
Organization) Harol Alezu Lozano Moran,	)	
Sole Trustee,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED, C. Elizabeth Weston, attorney for the Plaintiff, who being duly sworn and states that the costs incurred in this action total Seven Hundred Ninety-Eight and 62/100 Dollars (\$798.62) and is detailed below:

Title report and update:	\$170.00
Filing fee for Summons & Complaint:	180.32
Process Server fee:	167.45
Copies:	54.00
Postage:	1.03
Filing fee for Motion to Strike:	31.74
Filing fee for Order of Reference:	31.74
Filing fee for Motion for Summary Judgment:	31.74
Pacer charges:	5.60
Master in Equity fee:	<u>125.00</u>
Total:	\$798.62


 J. Kershaw Spong [SC Bar # 5289]
 C. Elizabeth Weston [SC Bar #103305]
 Robinson Gray Stepp & Laffitte, LLC
 P.O. Box 11449
 Columbia, SC 29211
 (803) 929-1400
kspong@robinsongray.com
lweston@robinsongray.com
 Attorneys for Plaintiff

SWORN to before me this
1st day of September, 2025


Name: Rebecca Faulkenberry
Notary Public for South Carolina
My Commission Expires: 1-11-2032

COURT OF COMMON PLEAS AND GENERAL SESSIONS

EXHIBIT RECORD AND RECEIPT FORM

PLAINTIFF Robert Barnett

DEFENDANT Erica Davis & Austin Davis

CASE NO. 2025-CP-23-03796

DATE 09/17/2025

DATE ENDED 09/17/2025

ATTORNEY Kirk Spong

ATTORNEY Pro se defendants

JUDGE Charles B. Simmons, Master in Equity

COURT REPORTER Julie Cendroski

[illegible]

Court Reporter Julie A. Condroski Date 9-19-25
Justin Thibault 9/19/25

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
Robert Barnett, as Trustee of the)
RH 401 (K) Plan)
Plaintiff,)
vs.)
Erica Lynn Davis, et. al)
Defendant.)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2025 -CP- 23 - 03796

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

25 SEP 24 PM 8:49
JAY GRESHAM CDC GVL SC

KP

Plaintiff's Attorney: <u>Pro Se</u> , Bar No. _____		Defendant's Attorney: _____, Bar No. _____	
Address: _____		Address: _____	
Phone: _____ Fax _____		Phone: _____ Fax _____	
E-mail: _____ Other: _____		E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)			
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____			
Estimated Time Needed: _____		Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type			
☒ Written motion attached			
☒ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>[Signature]</u> <u>Pro Se</u>		<u>September 24</u> , 20 <u>25</u>	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ <u>25</u>			
☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse or Abuse and Neglect			
☐ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☒ Other: <u>Emergency Motion for Rule 43 Hearing</u>			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	
☐ Other: _____		Date: _____, 20____	
CLERK'S VERIFICATION			
Collected by: <u>KP</u>		Date Filed: <u>9-24</u> , 20 <u>25</u>	
☒ MOTION FEE COLLECTED: \$ <u>KP</u>			
☐ CONTESTED - AMOUNT DUE: \$ _____			

**IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY, SOUTH CAROLINA**

Robert Barnett, as Trustee of the RH 401(k) Plan,

Plaintiff,

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant(s)

Case No: Case No. 2025-CP-23-03796

25 SEP 24 PM 3:49
JIN GREENVILLE CO. CL SC

**EMERGENCY MOTION FOR LIMITED RULE 43 HEARING ON STANDING
AND TEMPORARY RESTRAINING ORDER**

NOW COMES Defendant, Signature Gain Express Trust, appearing specially and not generally, expressly reserving all rights and without consenting to jurisdiction, and respectfully moves this Court for an emergency evidentiary hearing pursuant to Rule 43, South Carolina Rules of Civil Procedure, limited solely to the issue of Plaintiff's standing.

I. Jurisdictional Priority

A court must first establish its subject matter jurisdiction before acting on any other issue. A *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 648—49, 528 S.E.2d 647, 654 (1999); *Florence County v. West Florence Fire Dist.*, 301 S.C. 118, 121, 390 S.E.2d 401, 403 (1990). Without evidence of a valid debt there is no valid controversy. Without a valid controversy, the Court's subject matter jurisdiction fails as a matter of law. Standing is a component of jurisdiction.

Under SCRCP 12(h)(3), dismissal is mandatory "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter."

II. Requirement of Competent Proof

South Carolina's foreclosure procedure, established by Act No. 100 of the 1870 Acts of the General Assembly (codified at [S.C. Code Ann. § 29-3-610]), requires that the plaintiff plead and prove its right to enforce through competent evidence. This requires:

- Production of the wet-ink original promissory note attached to the mortgage (*Carpenter v. Longan*, 83 U.S. 271 (1872));
- A certified, complete chain of assignments;
- A custodian of record affidavit satisfying SCRE 803(6) and SCRE 902(4), (11); and
- Proof of entitlement to enforce under [S.C. Code Ann. § 36-3-301] (UCC 3-301).

In South Carolina, for closing documents (deeds, mortgages, satisfactions, etc.) to be considered *certified or verified* under the Rules of Evidence, a notary **must attach a seal**. Without the seal, they are not self-authenticating under Rules 902 and 44(a), and their evidentiary weight collapses **unless cured by live testimony from a qualified witness**.

III. Emergency Basis

Plaintiff has noticed a hearing without judicial order, attempting to advance the case before standing has been established via the existence of a valid controversy. This was not a Rule 43 hearing that was initially petitioned for in the Defendant's *Petition to Dismiss For Lack of Standing*. As a result, the Defendant was not able to depose, examine, or otherwise inquire of the Plaintiff's custodial knowledge or authority, the validity of the documents presented, or any other matters pertaining to this action. This constitutes a violation of due process, a cornerstone in Article III adjudication. Such proceedings are improper until due process is effected and

jurisdictional defects are resolved. **The integrity of the judicial process requires that standing be adjudicated first, through competent evidence presented under Rule 43.**

IV. Relief Requested

Defendant respectfully requests that this Court:

1. Schedule and conduct a Rule 43 evidentiary hearing limited solely to examining the evidence on the record by a competent certified professional in order to definitively prove the Plaintiff's standing including but not limited to:
 - (a) Requiring Plaintiff to produce the wet-ink original note, certified chain of assignments, and obtain the live testimony of a qualified custodian of records;
 - (b) Requiring Plaintiff to produce the evidence of disbursement of funds to the Defendant (e.g. check number and bank clearing, confirmation ID #'s, amounts, bookkeeping entries, GAAP Accounting records in connection with the disbursement of loan funds, and the Deposit Account Control Agreement/ Collateral Account where the Defendant's pledged collateral was deposited, or any certifiable documentation identifying the specific account or check number by which Synovus "funded" the transaction referenced in the deed's "hand paid" recital.)
 - (c) Requiring the Plaintiff (a trustee of a Trust entity) to produce:
 - (i) the PSA or trust agreement;
 - (ii) the **loan schedule page** identifying Defendant's loan;
 - (iii) the **endorsement/allonge** chain into the trustee **before the action was brought** and;
 - (iv) servicer authority.
2. **Enjoin** Plaintiff, its agents, the master-in-equity/special referee, and any substitute trustee or auctioneer from advertising, scheduling, conducting, or ratifying any foreclosure sale of the Property, and from conveying, assigning, or otherwise

transferring any interest arising out of this foreclosure action, **until further order** of this Court.

3. Grant such other relief as this Court deems just and proper.

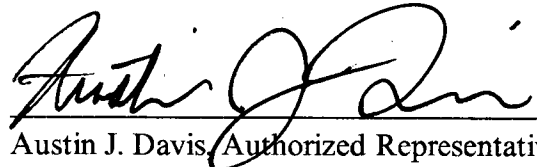
V. VERIFICATION OF EMERGENCY - IF TRO IS NEEDED

If a sale, advertisement, or transfer is imminent before Plaintiff can be heard, Defendant requests an ex parte TRO under Rule 65(b) preserving the status quo for 14 days, with an expedited hearing date, to prevent irreparable harm pending adjudication of this Motion; or 28 days should there be any delays in scheduling said hearing.

Respectfully presented,



Erica L. Davis, Authorized Representative
Dated:



Austin J. Davis, Authorized Representative
Dated:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

Robert Barnett, as Trustee of the
RH 401 (k) Plan

Plaintiff,

vs.

Erica Lynn Davis, et al

Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2025 -CP- 23 - 03796

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Kp
25 SEP 24 PM 3:49
JAY GRESHAM COC GUL 5C

Plaintiff's Attorney:

Pro Se, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Austin J Davis pro se
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

09/24/, 2025
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☒ Other: Motion to Compel

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____, 20

CLERK'S VERIFICATION

Collected by: Kp

Date Filed: 9-24, 2025

☒ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE: \$ _____

IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY

25 SEP 24 PM 3:49
JAY GREENHAM CJC GVL SC

Robert Barnett, as Trustee of the RH 401(k) Plan,

Plaintiff,

v.

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization)
Harol Alezu Lozano Moran, Sole Trustee,

Defendant(s)

Case No: Case No. 2025-CP-23-03796

**DEFENDANT'S MOTION TO COMPEL PRODUCTION OF EVIDENCE
OF FUNDING**

NOW COMES the Defendant, Signature Gain Express Trust, appearing specially and not generally and expressly reserving all rights, and respectfully moves this Honorable Court pursuant to Rule 37(a), South Carolina Rules of Civil Procedure, to **compel the Plaintiff to produce documents and evidence proving the actual funding of the alleged loan transaction that underlies this foreclosure action.**

I. FACTUAL AND LEGAL BASIS

1. Plaintiff asserts standing to foreclose based upon an alleged promissory note and mortgage originally issued by Synovus Bank, which Plaintiff claims to have acquired by assignment.

2. Defendant has consistently challenged Plaintiff's standing and the validity of the alleged debt on the grounds that no competent evidence has been provided that funds were ever advanced to or on behalf of the Defendant in exchange for the pledged collateral.
3. The original deed (Certified Copy Attached and presented into evidence as Exhibit A) of conveyance expressly recites that the purchase price of \$197,080 was **"hand paid [to the seller, NVR, Inc., at closing] by Erica Lynn Davis and Austin J. Davis..."**. However, Plaintiff has not produced any certified documentation showing:
 - Into what account those funds were deposited;
 - The Deposit Account Control Agreement (DACA) and/ or any DACA or collateral account associated with the borrower;
 - Whether any check or draft was issued by Synovus (including check number and bank clearing, confirmation ID #'s, amounts, bookkeeping entries, and any other certified records to sufficiently demonstrate any funds were dispersed to Defendant),
 - Whether Defendant ever received or had access to such funds.

What the Plaintiff *has* produced is an uncertified copy of the original Note; and in addition, on 09/22/2025, a statement of Loan Disclosures describing what should have been dispersed to the Defendant. As for this there is no controversy, however there is still no certifiable proof that the Defendant ever received those funds or explicitly authorized Synovus to pay NVR on her behalf.

4. **Without competent proof of funding, the note and mortgage fail for want of consideration.** See *Carpenter v. Longan*, 83 U.S. 271, 274 (1872) (a mortgage is a mere incident to the debt it secures; without a debt, the mortgage is a nullity).

5. **South Carolina courts require that foreclosure plaintiffs plead and prove ownership of the debt (which includes its existence and/ or validity) and the right to enforce.**

Carolina Holdings, Inc. v. Davis, 354 S.C. 47, 50, 579 S.E.2d 334, 336 (Ct. App. 2003)

demonstrates this necessity and includes proof of funding of the debt obligation.

6. Defendant therefore seeks an order compelling Plaintiff to produce, and if necessary to subpoena from Synovus Bank and NVR, Inc., the following:

- Certified copies of all wire transfer receipts, canceled checks, or other banking instruments evidencing disbursement of loan proceeds at the closing in question (including check number and bank clearing, confirmation ID #'s, amounts, and any other certified records to sufficiently demonstrate any funds were dispersed to Defendant or on the Defendant's behalf);
- Identification of the account into which funds were deposited (specifically, who owns the account and/or the custodian of record, the name of the person or entity listed on the account, the date of opening of the account, and such other records that would sufficiently demonstrate an such account exists);
- Any and all closing documents reflecting the flow of funds, including settlement statements, endorsements, and escrow ledgers (including check number and bank clearing, confirmation ID #'s, amounts, bookkeeping entries, ;
- Documentation showing that Defendant, as borrower, had access to or control over the alleged funds.

II. CONCLUSIONS OF LAW

7. Under Rule 26(b), SCRCP, parties may obtain discovery regarding any matter, not privileged, **that is relevant to the claim** or defense. Proof of consideration and funding goes directly to the validity of Plaintiff's claim and standing.
8. Rule 37(a), SCRCP authorizes the Court to compel discovery where a party fails to provide requested information. Plaintiff's refusal or failure to produce competent proof of funding frustrates the truth-seeking function and impairs Defendant's due process rights.
9. Moreover, the absence of such documentation **(the uncertified document presented as the original wet ink note in the hearing held 09/17/2025, fails the burden imposed by the rules of evidence 902(1), (4), (11) (self-authenticating documents); 44(a) (authenticated official records) as it is not under seal of notary or other authorized person to certify official records)** supports Defendant's claim of constructive fraud and misrepresentation, insofar as Synovus acted merely as an intermediary without ever lending its own funds, contrary to federal law governing banking institutions.

III. RELIEF REQUESTED

WHEREFORE, Defendant respectfully requests that this Court:

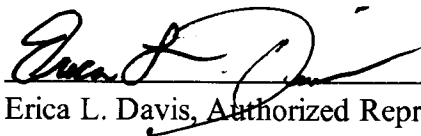
- A. Order Plaintiff, within 30 days, to produce all documentation described in Paragraph 6 above;
- B. Authorize Defendant to issue subpoenas duces tecum to Synovus Bank and NVR, Inc. to compel production of said documents if Plaintiff cannot or will not provide them;
- C. Direct that failure to produce competent proof of funding shall preclude Plaintiff from claiming standing to enforce the alleged note and mortgage;

D. Order the removal of the Lis Pendens filed by the Plaintiff until they can produce such documentation and/or records as listed in paragraph 6;

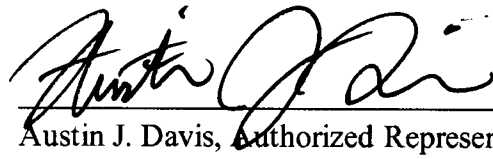
E. Order and schedule a Rule 43 Hearing where the documentation submitted can be examined by a certified professional of this Court's choosing, with proper educational background, training, experience, etc to examine and or trace the disbursement of funds and to testify to his/her findings;

F. Grant such further relief as this Court deems just and proper.

Respectfully presented,

A handwritten signature in cursive script, appearing to read "Erica L. Davis", written over a horizontal line.

Erica L. Davis, Authorized Representative
Dated:

A handwritten signature in cursive script, appearing to read "Austin J. Davis", written over a horizontal line.

Austin J. Davis, Authorized Representative
Dated:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel was served upon Plaintiff's counsel by electronic service on September 24, 2025.


Austin J. Davis

Exhibit A



Electronically Certified Official Record

DOCUMENT INFORMATION

Agency Name:	Greenville County Register of Deeds
Register of Deeds:	Timothy L. Nanney
Date Issued:	9/24/2025 1:05:43 PM
Unique Reference Number:	BAA-CACDACAGBCEDDF-EFAEFBAA-DGGBFBH- FGJAAI-I
Instrument Number:	3661517
Requesting Party Code:	20230206124335
Requesting Party Reference:	pmartin@greenvillecounty.org

CERTIFICATION

Pursuant to Rules of evidence 901(7), 901(9) and 902(4), South Carolina statutes, and Federal Rules of Evidence 901(a), 901(b)(7), and 902(1), the attached document is electronically certified by Timothy L. Nanney, Greenville County Register of Deeds, to be a true and correct copy of an official record or document authorized by law to be recorded or filed and actually recorded or filed in the office of the Greenville County Register of Deeds. The document may have redactions as required by law.

HOW TO VERIFY THIS DOCUMENT

This document contains a Unique Reference Number for identification purposes and a tamper-evident seal to indicate if the document has been tampered with. To view the tamper-evident seal and verify the certifier's digital signature, open this document with Adobe Reader software. You can also verify this document by scanning the QR code or visiting <https://www.clerkecertify.com/VerifyImage>.

**The web address shown above contains an embedded link to the verification page for this particular document.



DATE SEP 24 2025
CERTIFIED TO BE A TRUE AND CORRECT COPY
OF DOCUMENT ON FILE IN THIS OFFICE
Timothy L. Nanney
REGISTER OF DEEDS, GREENVILLE COUNTY



2019099643

2 Pgs

DEED Book: DE 2583 Page: 1063 - 1064

December 16, 2019 02:16:22 PM Cons: \$197,080.00

Rec: \$15.00 Cnty Tax: \$217.25 State Tax: \$513.50

E-FILED IN GREENVILLE COUNTY, SC

*Timothy L. Nanne***DEED BY A CORPORATION OR PARTNERSHIP**

State of South Carolina

)

LIMITED WARRANTY

County of Greenville

)

KNOW ALL MEN BY THESE PRESENTS: That NVR, Inc., (hereinafter called "Grantor") for and in consideration of the sum of **One Hundred Ninety Seven Thousand Eighty Dollars and No Cents (\$197,080.00)** to it in hand paid at and before the sealing of these presents by **Erica Lynn Davis and Austin J. Davis** (hereinafter called "Grantee"), **as joint tenants, with the right of survivorship and not as tenants in common** in the State aforesaid, (the receipt and sufficiency whereof is hereby acknowledged,) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the Grantees, **as joint tenants, with the right of survivorship and not as tenants in common**, their heirs, successors, and assigns.

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Lot No. T1 on a survey prepared for Heritage Village Phase IB, by 3D Land Surveying, Inc., dated April 25, 2019 and recorded in the Office of the Register of Deeds for said County in Plat Book 1336, at Page 86; reference to said plat being hereby made for a more complete metes and bounds description thereof.

This being a portion property conveyed to NVR, Inc. by deed from Mark III Properties, LLC, a Delaware limited liability company, successor by merger with Mark III Properties, Inc., dated 8/30/19 and recorded 8/30/19 in the Office of the ROD County of Greenville in Deed Book 2574 and Page 3631 .

TMS #: 0323.03-01-029.00**Grantee's Mailing Address:** 131 Roundtree Drive, Simpsonville, SC 29681

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the Premises belonging; or in anywise incident appertaining;

TO HAVE AND TO HOLD all and singular the Premises mentioned unto the Grantees, **as joint tenants, with the right of survivorship and not as tenants in common** their heirs, successors and assigns, forever.

AND the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the premises unto the Grantee his heirs successors, and assigns, against itself and its successors.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.



9/24/2025 1:05:46 PM

Timothy L. Nanne

TIMOTHY L. NANNEY GREENVILLE COUNTY REGISTER OF DEEDS, SC

WITNESS the grantor's hand and seal this 13th day of December, 2019

SIGNED, SEALED AND DELIVERED *NVR, Inc.*

IN THE PRESENCE OF:

Heather Propper

BY: *Melissa Koelle* (SEAL)
Its: Melissa Koelle
Assistant Secretary

JB 14

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGEMENT

COUNTY OF GREENVILLE)

I, the undersigned Notary Public of the state and county aforesaid, do hereby certify that NVR, Inc., by and through its duly authorized officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this

13th day of December, 2019

JB 14 (SEAL)

Notary Public for S. C.

My Commission Expires: Brittany Hall
Notary Public
South Carolina
My Commission expires:
11/02/2027

[Signature]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) Case No. 2025-CP-23-03796

Robert Barnett, as Trustee of the RH)
401(k) Plan,) MASTER'S ORDER AND JUDGMENT
Plaintiff,) OF FORECLOSURE AND SALE
v.) (Deficiency Judgment Waived)
Erica Lynn Davis, Austin J. Davis,)
and Signature Gain Express Trust, DTE)
06/22/2022 (An Irrevocable Express)
Trust Organization) Harol Alezu Lozano)
Moran, Sole Trustee,)
Defendants.)

RECEIVED
Nov 14 2025
SC Court of Appeals

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and upon the stipulation and agreement of all parties hereto, not in default, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the case.

Pursuant to the said Order of Reference, a hearing was held on September 17, 2025 on Plaintiff's Motion for Summary Judgment, which hearing was attended by the attorneys of record and Erica Lynn Davis and Austin J. Davis, and at which time, the record and evidence were considered, which is herewith reported. In response to the arguments made by Austin J. Davis, counsel for Plaintiff subsequently provided the Court and the Davis's with a copy of the closing documents of the subject note, which clearly show that the money for the loan went to purchase the subject property. Plaintiff's attorney also presented to the Court and the Davis's what clearly appears to be the original of the Promissory Note. From the record and evidence, I find there is

no material fact in dispute, Defendants have no defense, and Plaintiff is entitled to the relief requested as a matter of law and therefore, conclude and order as follows:

THE RECORD

The record before this Court consists of Plaintiff's verified Complaint with supporting exhibits cited below, Defendant Signature Gain Express Trust's Counterclaim, Petition to Dismiss, Petitions, Objections, and miscellaneous Motions, Plaintiff's Motion to Strike and For Default Judgment, Plaintiff's Affidavit of Debt and the loan documents attached thereto. Defendants Erica Lynn Davis and Austin J. Davis have not filed an Answer and are in default.

UNDISPUTED FACTS:

1. The Lis Pendens was filed on **June 18, 2025**.
2. The Summons and Complaint were filed on **June 18, 2025**.
3. Service was made upon the Defendants named in this Order as is shown by the Affidavits of Service previously filed with the Court.
4. The Defendants **Erica Lynn Davis and Austin J. Davis** are in default as shown by the Affidavit on file with the Court.
5. According to the Affidavit filed with the Court, no Defendants in default are in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act of 2003, as amended.
6. For value received, **Erica Lynn Davis** made, executed and delivered a **Note** dated **December 13, 2019**, promising thereby to pay to the order of **Synovus Bank** the sum of **One Hundred Ninety-Seven Thousand Eighty and 00/100 Dollars (\$197,080.00)**, with interest at **4.375%** per annum. Other terms and conditions are stated in the Note, which is of record herein.

7. To better secure the payment of the Note described above, the said Defendants **Erica Lynn Davis and Austin J. Davis** made, executed and delivered to **Synovus Bank** a **Mortgage** in writing, dated December 13, 2019, covering real property in Greenville County, which is the same as that described in the Complaint. The mortgage was filed on **December 16, 2019**, and is of record in the Office of the Register of Deeds for Greenville County in **Book MO 5511 at Page 4109**.

8. Thereafter, by **Assignment of Note, Mortgage, and Other Loan Documents** ("**Assignment**") dated May 12, 2025 and recorded in said Register of Deeds' Office on May 22, 2025 in Book MO5822 at Page 1225, for value received, Synovus Bank assigned said Note and Mortgage unto Plaintiff, and by virtue of such Assignment the Plaintiff herein is now the owner and holder of the Note and Mortgage which are the subject of this action.

9. By deed dated on or about February 22, 2023, and recorded in said Register of Deeds' office on June 6, 2023, in Deed Book DE 2690 at Page 553, the Defendant Erica Lynn Davis conveyed the subject premises to the Defendant Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu Lozano Moran, Sole Trustee, who is the owner and holder of record title at the time of filing of the Lis Pendens and subject to Plaintiff's Mortgage.

10. This Mortgage constitutes a **first** lien on the subject property

11. Payment due on the Note has not been made as provided for in the Note, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of an attorney herein for collection.

12. The sum of \$7,850.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and Mortgage.

13. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage is as follows:

(a)	Principal due October 1, 2023		\$	186,257.37
(b)	Interest from September 1, 2023 to July 31, 2025 at 4.375% per annum		\$	15,627.76
(c)	Late charges		\$	1,047.58
(d)	Costs of collection prior to hearing (service, filing, etc.)		\$	798.62
(e)	Taxes - \$4,785.59; Insurance - \$1,331.53 (not included above)		\$	6,117.12
(f)	Uncollected interest		\$	2,146.81
(g)	Attorney's fee		\$	7,850.00
TOTAL DEBT secured by Note and Mortgage including interest to date shown			\$	219,845.26

Interest for the period from the date shown in (b), above through the date of this judgment at above stated rate to be added to the above stated "total debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of **4.375%** per annum (pursuant to the terms of the note and mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by mortgage through the date to which such interest is computed.

14. The Plaintiff is seeking the usual foreclosure of the Mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment. The Court has proper jurisdiction, and the venue is proper in Greenville County.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the Mortgage.
2. The mortgaged property should be ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments that are due on the day of such sale.
3. That after making the required deposit the successful bidder at the sale shall be required to pay interest at the rate set forth in the obligation described in the Complaint from date of sale to the date of compliance.
4. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, and next, to the payment and discharge of the amount of Plaintiff's debt and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further order of the Court.

Now, on motion of Plaintiff's attorney, J. Kershaw Spong,

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of **\$219,845.26** representing the "Total Debt" due Plaintiff as set out in Paragraph 14, supra, together with interest at the rate provided in said obligation on the balance of principal from the aforesaid date to the date hereof.
2. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph 14, supra, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of **4.375%** per annum.

3. That the Defendants liable for the aforesaid mortgage debt do, on or before the date of sale of the property hereinafter described, pay to the Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master in Equity, at public auction, at the Greenville County Courthouse, in the City of Greenville, County of Greenville and state aforesaid, on some convenient Salesday hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the Salesday shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: the undersigned Master in Equity will require a deposit of 5% of the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 4.375%.

c. The sale shall be subject to taxes and assessments due on the day of such sale, existing easements and easements and restrictions of record.

d. Purchaser to pay for the preparation of the deed, deed stamps and costs of recording the deed.

5. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. The undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within Twenty (20) days after date of sale, then the undersigned Master in Equity may advertise the said premises for sale on the next or some other subsequent Salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its option, or the option of the assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this Order and hereinafter more fully described.

8. The undersigned Master in Equity to apply the proceeds of the sale as follows:

First: to payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court.

Next: to the payment to the Plaintiff or Plaintiff's attorneys, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same.

9. Any surplus should be held pending further Order of this Court.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendants in possession of the subject property and title by deed from the court is vested in such purchaser, the Sheriff of Greenville County is ordered

and directed to eject and remove from the property the occupant/s of the property sold, together with all personal property located thereon, and put the successful bidder or his or its assigns in full, quiet and peaceable possession of said property without delay, and to keep said successful bidder or his or its assigns in such peaceable possession.

11. In the event the successful purchaser is someone other than the Defendant(s) in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, and title by deed from the court is vested in such purchaser, the purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

12. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

13. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

14. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a writ of assistance.

15. It is further ordered, that if the Plaintiff nor the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales date.

16. It is ordered, that the Petition to Dismiss and the Counterclaim are without merit and are hereby dismissed.

17. The premises herein ordered to be sold are as follows:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Lot No. T1 on a survey prepared for Heritage Village Phase IB, by 3D Land Surveying, Inc., dated April 25, 2019 and recorded in the Office of the Register of Deeds for said County in Plat Book 1336, at Page 86; reference to said plat being hereby made for a more complete metes and bounds description thereof.

This being the same property conveyed to Erica Lynn Davis and Austin J. Davis by deed of NVR, Inc. dated December 13, 2019 and recorded on December 16, 2019 in Book 2583 at Page 1063 in the Office of the Greenville County Register of Deeds. The property was subsequently conveyed to Erica Lynn Davis by deed of Austin J. Davis dated February 26, 2020 and recorded on February 26, 2020 in Book 2588 at Page 2616 in the Office of the Greenville County Register of Deeds. The property was then subsequently conveyed to Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization), Harol Alezu Lozano Moran, Sole Trustee by deed of Erica Lynn Davis dated June 5, 2023 and recorded on June 5, 2023 in Book 2690 at Page 55 in the Office of the Greenville County Register of Deeds.

TMS #: 0323.03-01-029.00

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

Nov 14 2025

SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025-CP-23-03796

Robert Barnett, as Trustee of the RH 401(k) Plan

Erica Lynn Davis, Austin J. Davis,
and Signature Gain Express Trust, DTE
06/22/2022 (An Irrevocable Express Trust
Organization) Harol Alezu Lozano Moran,
Sole Trustee

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: J. Kershaw Spong
C. Elizabeth Weston
Robinson Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCF; ☐ Rule 41(a), SCRCF (Vol. Nonsuit); ☐ Rule 43(k), SCRCF (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCF; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☒ ends ☐ does not end the case. (Foreclosure case)

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Master in Equity	Judge Code	Date
-------------------------	-------------------	-------------

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2025 and a copy mailed first class or placed in the appropriate attorney’s box on this _____ day of _____, 2025 to attorneys of record or to parties (when appearing pro se) as follows:

J. Kershaw Spong

Robinson Gray Stepp & Laffitte, LLC

P.O. Box 11449

Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk’s entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Greenville Common Pleas

Case Caption: Robert Barnett , plaintiff, et al vs. Erica Lynn Davis , defendant, et al

Case Number: 2025CP2303796

Type: Master/Order/Foreclosure & Sale and Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

STATE OF SOUTH CAROLINA

) IN THE COURT OF
) COMMON PLEAS
) OF THE THIRTEENTH
) JUDICIAL CIRCUIT
)

COUNTY OF GREENVILLE

ROBERT BARNETT, AS TRUSTEE OF THE)
RH 401(K) PLAN,)

Plaintiff,)

VS.)

ERICA LYNN DAVIS, AUSTIN J. DAVIS,)
AND SIGNATURE GAIN EXPRESS TRUST,)
DTE 06/22/2022 (AN IRREVOCABLE)
EXPRESS TRUST ORGANIZATION) HAROL)
ALEZU LOZANO MORAN, SOLE TRUSTEE,)

Defendants.)

TRANSCRIPT OF RECORD
2025-CP-23-03796

September 17, 2025
Greenville, SC

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., Judge.

A P P E A R A N C E S

KIRK SPONG, ESQUIRE
For Plaintiff

AUSTIN J. DAVIS,
Pro se Defendant

ERICA LYNN DAVIS,
Pro se Defendant

Julie A. Cendroski,
Master in Equity Court Reporter
Thirteenth Judicial Circuit

1 ROBERT BARNETT VS. ERICA DAVIS

2 THE COURT: For the record this is 2025-3796, in
3 the matter of Barnett versus Davis and others. Now, Mr.
4 and Ms. Davis, I've reviewed the file and there have
5 been any number of motions one or both of you had filed.
6 So I've looked at them. And, certainly, will be glad to
7 allow you to make your arguments for the record.

8 So, Ms. Davis, let me start with you, as far as
9 any of the number of motions that you filed. Be glad to
10 hear from you, ma'am.

11 MS. DAVIS: Well, I'm sorry.

12 THE COURT: And, I'm sorry, under the court
13 rules, I do need you standing --

14 MS. DAVIS: Yes.

15 THE COURT: -- when you're addressing the Court.

16 MS. DAVIS: So I have vertigo. Our daughter was
17 in the hospital all night last night.

18 THE COURT: I'm sorry.

19 MS. DAVIS: And we just got released this
20 morning, so it is hard for me to stand right now.

21 THE COURT: And in light of that, have a seat.
22 And if you'll pull the microphone closer to you for my
23 court reporter to be sure we have a good record.

24 MS. DAVIS: So because I do have vertigo, there
25 will be a lot of stuttering and slow speaking, so I do

1 want to just reserve and have Austin speak for me,
2 please.

3 THE COURT: All right. Then Mr. Davis.

4 MR. DAVIS: Yes, sir.

5 THE COURT: Now, if you don't have vertigo
6 then ---

7 MR. DAVIS: Yeah, I don't. Apologies.

8 THE COURT: All right, thank you.

9 MR. DAVIS: Yes, sir. Quite frankly, we're here
10 to establish subject matter jurisdiction, which hasn't
11 affirmatively been proven on the record. Standing by
12 the Plaintiff was challenged in a timely matter by the
13 Trust. They still have not affirmatively proven their
14 standing either on the record with certifiable,
15 admissible evidence under the rules of evidence.

16 THE COURT: All right.

17 MR. DAVIS: So we're still awaiting jurisdiction
18 to be affirmatively declared on the record by way of the
19 Plaintiff's standing.

20 THE COURT: Well, jurisdiction ---

21 MR. DAVIS: And affirmative, affirmative action
22 of the court, subject matter jurisdiction.

23 THE COURT: All right. Jurisdiction and standing
24 are two different legal concepts, so help me understand.
25 Let's start with the jurisdiction. Let me hear your

1 argument on why the Court does not have jurisdiction.

2 MR. DAVIS: It's not our argument, sir. It's a
3 lawful assertion. The Plaintiff doesn't have standing.
4 If the Plaintiff cannot prove their standing, the courts
5 don't have subject matter jurisdiction to even hear the
6 case.

7 THE COURT: All right. Your ---

8 MR. DAVIS: Rule 12(h)(3).

9 THE COURT: May I finish my question, please,
10 sir?

11 MR. DAVIS: Oh, absolutely.

12 THE COURT: You're conflating the two. You're
13 using the two interchangeable. They're two different
14 legal concepts. Jurisdiction is one thing. Standing is
15 another thing. So I'm glad to hear your argument on
16 either one of them, but I need them to be separated out
17 just so that we have it clear on the record what your
18 arguments are.

19 MR. DAVIS: Okay.

20 THE COURT: So let's start with jurisdiction.
21 You're alleging that the Court does not have subject
22 matter jurisdiction. What's your argument or assertion
23 in that regard, please, sir?

24 MR. DAVIS: Absolutely. So... I'm sorry, I was
25 in there with her in the hospital and just trying to

1 make sure I, I have everything here. Rule -- excuse me.
2 The Plaintiff has failed to state a cause of action that
3 is actual by this Court. They have not proven standing
4 on the record.

5 THE COURT: I'm gonna give ---

6 MR. DAVIS: I'm gonna start with standing, if you
7 don't mind. They have no standing. They are not the
8 real party in interest to bring a suit here in
9 foreclosure. They don't have any admissible proof on
10 the record, and I'm more than willing to put their
11 exhibits up to the test.

12 They have Exhibit A, which is an apparent copy of
13 a, of a Note, an alleged Note. Does not have -- it
14 does not have the original certifying stamp, as on the
15 Mortgage in Exhibit B. It does not have a certified
16 chain of assignments showing a transfer from the alleged
17 intermediary to themselves. Themselves being Red Hills.
18 And then from Red Hills to the Trustee. And then from
19 the Trustee to the RH 401k plan. They're missing
20 assignments, both on the record here and recorded in the
21 County, so their evidence is inadmissible. They have
22 not affirmatively proven standing with what they have
23 submitted to the Court.

24 THE COURT: All right. And from my review of the
25 record, are you aware that there has been a formal

1 assignment of the mortgage that the Register of Deeds
2 office here in Greenville County?

3 MR. DAVIS: What appears is an allonge as a
4 separate document. And that is on the record by all
5 appearances. However, again, the rest of the
6 assignments are missing. The assignment from themselves
7 to -- we don't know how it got to the RH 401K plan. It
8 was the Red Hills and RH 401k are separate entities;
9 therefore there has to be a certified transfer. It does
10 not exist or they have not submitted it to the record
11 for the Court to view.

12 THE COURT: All right. I'm looking at the
13 Complaint that was filed June 18, 2025. And in the
14 Complaint it says in Paragraph 7 that by assignment of
15 Note and Mortgage and other documents, the Synovus Bank
16 assigned the Mortgage to Plaintiff. So I'm not familiar
17 with Red, whoever you're talking about. What is their
18 involvement?

19 MR. DAVIS: Red Hills Holdings is apparently the
20 -- and I don't have the trust documentation to, you
21 know, I don't have the trust instrument to prove how
22 their organization is setup, but it's the parent holding
23 company that we received a notice from dated May 16th of
24 this year.

25 It is somehow apparently (hits microphone.)

1 Excuse me. Apologies. But somehow apparently the
2 alleged debt was sold or transferred or assigned somehow
3 to them initially. And then from them to the RH 401K
4 plan. But, again, we're missing that chain of
5 assignment.

6 THE COURT: All right. Let me go back to kind of
7 the basics. The Complaint alleges that back in December
8 of 2019 that Erica Lynn Davis borrowed \$197,0080.00 from
9 Synovus Bank. So, Ms. Davis, do you agree that back in
10 December of 2019 you borrowed some money from Synovus
11 Bank?

12 MS. DAVIS: That's what we intended to do, yes.

13 THE COURT: So you acknowledge and admit that
14 obligation?

15 MS. DAVIS: That money was never received in any
16 one of my bank accounts.

17 THE COURT: I'm not asking that.

18 MS. DAVIS: So there was nothing borrowed. If
19 there was nothing received, how can something be
20 borrowed?

21 THE COURT: I'm asking you, did you sign
22 documents with Synovus?

23 MS. DAVIS: Yes. Yes.

24 MR. DAVIS: That we intended to receive a loan
25 for. It was in good faith that we signed those

1 documents.

2 THE COURT: So are you now telling me that there
3 were no funds advanced either to you or to some ---

4 MR. DAVIS: Sir?

5 THE COURT: Let me finish, please, sir.

6 MR. DAVIS: I'm sorry.

7 THE COURT: That no funds were advanced, Ms.
8 Davis, to you or to some other entity to purchase
9 property?

10 MR. DAVIS: Sir, I fail to see how this at all
11 involves this particular action, seeing as how ---

12 THE COURT: Sir, I'm gonna tell you what, okay?
13 It is my job today to find out what happened. So
14 whether you agree or disagree with what I'm trying to
15 find out, it's not your call today. My call today is to
16 get to the bottom line. I'm trying to do that. If
17 you'll answer the questions and Ms. Davis will answer
18 the questions, we're gonna move right along. But right
19 now I'm asking a straight forward question. Ms. Davis,
20 the Complaint says that you signed a Promissory Note, it
21 was attached to the Complaint, where you borrowed
22 \$197,000. Did you sign that Promissory Note?

23 MS. DAVIS: There was a Promissory Note signed by
24 myself, yes, sir.

25 THE COURT: Okay.

1 MS. DAVIS: With the intentions of receiving
2 those funds for the purchase of an asset, yes.

3 COURT REPORTER: Ma'am, I need you to speak up a
4 little bit.

5 MS. DAVIS: Can you hear me?

6 COURT REPORTER: Barely.

7 MS. DAVIS: I'm sorry, I'm doing the best I can.

8 THE COURT: All right. So, Ms. Davis, what
9 happened to the money -- to the funds?

10 MS. DAVIS: That's what we're wanting to find out
11 as well, sir.

12 THE COURT: So you're telling me you don't have a
13 clue what happened to \$197,000? All right. Raise your
14 right hand for me, please. (Complies.)

15 Do you swear to tell the truth, whole truth, and
16 nothing but the truth?

17 MS. DAVIS: Yes, sir.

18 THE COURT: All right. State your full name.

19 MS. DAVIS: Erica Davis.

20 THE COURT: All right. Mr. Davis, raise your
21 right hand. (Complies.)

22 Do you swear to tell the truth, whole truth, and
23 nothing but the truth?

24 MR. DAVIS: Yes.

25 THE COURT: State your full name, please.

1 MR. DAVIS: Austin Davis.

2 THE COURT: All right. So now, Ms. Davis, are
3 you telling me you don't have any idea what happened to
4 the \$197,000?

5 MS. DAVIS: It was never transferred to my
6 account.

7 THE COURT: That's not what I'm asking, ma'am.
8 You're telling me under oath that you don't have any
9 idea what happened to the \$197,000?

10 MS. DAVIS: The idea doesn't matter when it comes
11 to actual fact, sir, is what I'm trying to say. I
12 understand the question that you're asking me and I
13 understand what you're trying to get me to say. There
14 was a home received. The Promissory Note was to receive
15 the funds. I'm a borrower, right? I never received
16 funds in any account.

17 THE COURT: Were the funds ---

18 MS. DAVIS: So we signed those papers in good
19 faith.

20 THE COURT: Were the funds paid to someone else
21 on your behalf?

22 MS. DAVIS: We tried to ask the company for that
23 information to find out. They keep withholding it.

24 MR. DAVIS: And, and we're actually not aware
25 that the funds were paid to any other company in

1 relation.

2 THE COURT: Did you sign the Note, Ms. Davis, in
3 order to purchase a house?

4 MS. DAVIS: Yes, sir.

5 THE COURT: Did you go to a closing with a
6 lawyer?

7 MS. DAVIS: Yes, sir.

8 THE COURT: Was the deed, as a result of that
9 closing, transferred into your name and/or Mr. Davis's
10 name?

11 MS. DAVIS: Yes, sir.

12 THE COURT: Where did that money come from in
13 order for the deed to be placed in your name and/or Mr.
14 Davis's name?

15 MS. DAVIS: That's the record and the tracks that
16 we're trying to cover. I don't know, because --

17 THE COURT: So you're telling me --

18 MS. DAVIS: -- it was never given to my account.

19 THE COURT: -- you bought a house --

20 MS. DAVIS: Yes, sir.

21 THE COURT; -- went to a closing, you signed a
22 Note, but you don't know where the money came from that
23 you bought the house with? Is that what you're telling
24 me?

25 MS. DAVIS: I know where the money came from. I

1 don't know where it went. I know where it came from. I
2 requested to borrow it. I don't know where it went. I
3 never received it.

4 THE COURT: Yes, ma'am.

5 All right. Mr. Spong, can you help me out, sir?
6 All right. Let me hear first, do you have a copy of the
7 original Note with you?

8 MR. SPONG: Yes, sir, Your Honor.

9 THE COURT: Can you provide it for them?

10 MR. SPONG: Yes, sir, Your Honor.

11 THE COURT: I've been handed by Attorney Spong
12 what appears to be an original Note with original
13 signatures and seals dated December 13, 2019 payable to
14 Synovus Mortgage Company and in the amount of \$197,080.

15 MR. DAVIS: Sir, I'm sorry, you ---

16 THE COURT: I'm gonna let you look at it in just
17 a moment.

18 MR. DAVIS: Well, I just wanted to clarify
19 because you asked him if he had a copy of the Note, he
20 responded yes and then he handed you something. I just
21 want to clarify that that is the original Note that
22 you're holding in your hand?

23 THE COURT: I asked the attorney if he had the
24 original, he said yes, and he's just handed me this
25 document.

1 MR. DAVIS: I'm sorry, sir. It's on record you
2 said a copy of the original. You did.

3 THE COURT: Yes, sir. What I've been handed, as
4 I noted, appears to be the original Note. And I'm gonna
5 ask that you show that to Mr. and Ms. Davis.

6 MR. DAVIS: Thank you, sir. And, I'm sorry, I --
7 I don't see a notary seal here. It seems to just be an
8 assigner, a signature by an apparent signer and -- how
9 did the allonge -- okay. Sir, I, I'm not sure how this
10 passes as an original document, especially when it's
11 separated from the Mortgage. It's unstapled and
12 separated from the Mortgage. How does this pass for an
13 original document without a notary, a notary seal? It's
14 not under seal.

15 THE COURT: All right. Any other questions about
16 that document?

17 MR. DAVIS: Other than the main ones that I just
18 posed, no, sir.

19 THE COURT: And, Mr. Spong, was the original
20 mortgage then recorded? Well, let me hear -- you know,
21 obviously, you know, I've heard from the Davis's. Let
22 me hear on behalf of your client.

23 MR. SPONG: Thank you, Your Honor. Kirk Spong on
24 behalf of the Plaintiff, Robert Barnett, as Trustee of
25 RH 401k Plan. Your Honor, we're here today on a Motion

1 for Summary Judgment on a foreclosure action against
2 Erica Lynn Davis, Austin Davis, Signature Gain Trust.

3 Your Honor, this foreclosure arises out of a
4 purchased money mortgage that was given on December --
5 on/or around December 13, 2019 from Defendant, Erica
6 Lynn Davis, in the amount of \$197,080. On or around
7 that date of December 13th, the Note was used to
8 purchase the funds for the subject property we're here
9 today and a deed that was issued by NVR, Inc., dated
10 December 13, 2019 and recorded in Greenville County.

11 Your Honor, the -- in terms of the procedure
12 here, Erica Lynn Davis has been served but has not
13 answered in this case. She is in default. Austin J.
14 Davis has been served and is also in default.

15 There were subsequent transfers from the original
16 closing whereby Ms. Davis transferred the property to
17 Mr. Davis, and then he in turn transferred to Signature
18 Gain Trust DTE, who was made a defendant by virtue of
19 those transfers.

20 These were post closing of the original Note and
21 Mortgage. Property was secured by a Mortgage, which has
22 been filed in Greenville County. It's attached to the
23 Motion for Summary Judgment, then also attached to the
24 verified complaint. And that was recorded in Greenville
25 County Book MO551 at Page 4109.

1 Your Honor, in further support of our motion, I
2 call the Court's attention to the assignment of the
3 Note, Mortgage, and other loan documents whereby Synovus
4 Bank assigned it to the current Plaintiff, which is
5 attached as Exhibit C.

6 The Defendants are in default under the terms of
7 the Note and Mortgage. And I have submitted an
8 affidavit from the current Note holder and, of course,
9 have presented the Court with the original Note.

10 In terms of the amount of debt owed and supported
11 by the affidavit from my client, principal amount due
12 from October 1, 2023 is \$186,257.37. Interest accrued
13 to date of \$15,627.76. Late charges of \$1,047.58. Cost
14 of collection supported by the Affidavit of Costs of
15 \$798.62.

16 Your Honor, the taxes ---

17 MR. DAVIS: Sorry, objection.

18 MR. SPONG: The local tax -- the County taxes
19 have not been paid or -- excuse me. They have been
20 paid, but they were advanced by my client in the amount
21 of \$4,785.59, which would constitute an additional
22 ground of default. Insurance has been advanced to
23 insure the property of \$1,331.53, which would be an
24 additional ground of default.

25 Your Honor, there was deferred interest from

1 Synovus of \$2,146.91. And I submit herewith an
2 Affidavit of Attorneys' Fees, \$7,850. Total debt owed
3 is \$219,845.26.

4 As I stated, the defendants ---

5 THE COURT: Have copies of the affidavits been
6 provided to the Davis's?

7 MR. SPONG: Yes, sir, Your Honor. They've been
8 filed and served, yes, sir.

9 In terms of the -- so the Davis's have not
10 responded either by affidavit to our motion here today
11 or have not filed any answers. There's been some answer
12 filed by this trust, which I'm really not clear of what
13 that trust is all about. Of course a trust needs to be
14 represented by counsel, and we have filed a motion to
15 that effect, but I'm ready to proceed and have argued my
16 Motion for Summary Judgment, Your Honor. And that's all
17 I have at this point.

18 THE COURT: Do you by chance have a copy of the
19 closing statement?

20 MR. SPONG: I do not have it with me, Your Honor.
21 I certainly can request it.

22 THE COURT: All right. So, Mr. and Ms. Davis,
23 I'll be glad to hear from you in light of Mr. Spong's
24 items and assertions and arguments he just made.

25 MR. DAVIS: The affidavit that's on the record, I

1 believe, is by Robert Barnett, who has no personal
2 knowledge of the alleged debt. They apparently came
3 into ownership of it on May -- well, that's when it was
4 effective. It was effective May 31st, but they
5 apparently allegedly came into ownership of it May 16th
6 of this year. So it's impossible that the Plaintiff can
7 file an affidavit with personal knowledge of the event.
8 It's hearsay, honestly.

9 THE COURT: All right. Any other arguments?

10 MR. DAVIS: Um...

11 THE COURT: So you're saying that the person
12 that, at least according to the records, now owns the
13 Note is not in a position to know what the debt on the
14 Note is?

15 MR. DAVIS: What I'm saying is they are
16 referencing a certain Note and Mortgage that was signed
17 long before they came into existence of the Note. They
18 -- I mean, they don't have any personal knowledge of it.
19 They weren't there. I didn't hear this particular
20 entity until this year. So it's -- the affidavit is,
21 I'm not sure what they're testifying to or affirming in
22 that application.

23 Also, there's no controversy here, Your Honor.
24 The Note, the Mortgage, they're all lacking certified --
25 we still don't have the certified check. We have no

1 clue how it got to Robert Barnett. There's a middleman
2 here, the Red Hills Holdings. I'd like to hear from the
3 Plaintiff about who Red Hills Holdings is and why I
4 received a notice from them claiming that they own the
5 record debt.

6 THE COURT: Do you have something from them that
7 claims that you're the owner?

8 MR. DAVIS: I do, Your Honor.

9 THE COURT: Can you hand that to my deputy?

10 MR. SPONG: Your Honor, I believe Red Hills is
11 the servicer of the Note. Thank you, Your Honor.

12 THE COURT: All right. What I've been handed by
13 Mr. Davis is a letter dated May 16, 2025 from Red Hills
14 Holding, LLC to Erica Davis at 131 Roundtree Drive in
15 Simpsonville advising Ms. Davis that Robert Barnett is
16 trustee of the RH 401k plan, now the other. And that
17 Red Hills Holding is now the servicer of the former
18 Synovus Bank Loan and provided payment instructions.

19 Would you make a copy of that and we'll mark that
20 as a Defendant's exhibit? I think you can use this one.

21 THE BAILIFF: Is this -- oh.

22 THE COURT: Is that ---

23 THE BAILIFF: Oh, this one. It's right in my
24 face, huh?

25 THE COURT: Try it face down.

1 THE BAILIFF: Julie? Julie I'm not sure.

2 THE COURT: Get my deputy to take it back and ask
3 my staff to immediately make a copy.

4 All right. So Mr. and Ms. Davis, anything else
5 you'd like to have on the record, as far as -- further
6 motions or objections?

7 MR. DAVIS: Sorry, I'm just -- I'm searching the
8 Plaintiff's complaint, just for reference, just so I can
9 be specific.

10 THE COURT: Yes, sir. Take your time.

11 MR. DAVIS: I'm sorry. My wife needs to use the
12 bathroom. She has vertigo, sometimes that happens.

13 THE BAILIFF: I'll show her to the bathroom.

14 THE COURT: We'll take a brief break.

15 MR. DAVIS: Thank you, sir.

16 (Recess was taken from 10:30 - 10:59 a.m.)

17 THE COURT: Ms. Davis, I'm sorry. I've never
18 dealt with vertigo, but I understand it's a very
19 debilitating issue when it hits --

20 MS. DAVIS: Thank you.

21 THE COURT: -- so I'm glad that EMS was able to
22 get here. And I understand there will not be transport,
23 so Mr. Davis, is there anything else you'd like to have
24 on the record here this morning?

25 MR. DAVIS: Yes, several things. Thank you for

1 the recess to attend to my wife. I did want to point
2 out the misrepresentation of material fact in the
3 Plaintiff's Complaint. Paragraph 11, it says:
4 Plaintiff notified Erica Lynn Davis of this default by
5 demand for payment dated October 10, 2024. It didn't
6 come into alleged ownership with a Note until 2025.
7 That's a misrepresentation of material fact on the
8 record.

9 THE COURT: All right. But that letter was sent
10 on behalf of Synovus's law firm, correct?

11 MR. DAVIS: I believe so, but they're not the
12 Plaintiff.

13 THE COURT: But at that time they were the owner
14 of the Note and Mortgage, correct?

15 MR. DAVIS: Are you referring to Synovus?

16 THE COURT: Yes, sir.

17 MR. DAVIS: At that time.

18 THE COURT: Okay. All right. Anything else,
19 then for the record?

20 MR. DAVIS: The Plaintiff hasn't met their
21 evidentiary burden imposed by the judicial foreclosure
22 framework. The absence of certified chain of title,
23 reliance on attorney affidavit hearsay, exhibits, and
24 contradictory timing between the assignment and their
25 default notice that Plaintiff alleges they sent in 2024,

1 they rendered the Plaintiff's case factually deficient.

2 We're requesting that the Court dismiss this with
3 prejudice under Rule 12(h) of the Rules of Civil
4 Procedure, as well as to address the counterclaim on the
5 record filed by the Trust along with the challenge to
6 standing.

7 THE COURT: All right. Now, what counterclaim of
8 what trust are you referencing?

9 MR. DAVIS: So on -- on July 24th we presented
10 verified counterclaim for fraud upon the court,
11 negligent misrepresentation, abuse of process, and quiet
12 title that we were expecting to have resolved before any
13 merits hearing. But that is on record, the
14 counterclaim.

15 THE COURT: All right. You had mentioned a
16 counterclaim filed on behalf of the trust. What -- I've
17 seen that some of the documents have been signed by
18 Erica Davis, Trustee, but I'm not familiar with a Trust
19 being involved in the 2019 loan.

20 MR. DAVIS: No. But the trust -- the property
21 was conveyed into the trust in 2023, I believe. And the
22 Trust was placed on the docket by the Plaintiff, not us.

23 THE COURT: All right. Again I find myself
24 confused. You had said you wanted to address a
25 counterclaim filed by the Trust.

1 MR. DAVIS: Well, correct, as -- well, filed by
2 the Trustee on behalf of the Trust, as the Trust is
3 named on the docket.

4 THE COURT: All right. But a counterclaim would
5 be something that a Defendant sues the Plaintiff on.

6 MR. DAVIS: Correct.

7 THE COURT: So what Trust are you saying is suing
8 the Plaintiff?

9 MR. DAVIS: The Signature Gain Express Trust that
10 the Plaintiff named on the docket.

11 THE COURT: All right. Who is Signature Gain
12 Express Trust?

13 MR. DAVIS: A Trust is an entity, sir. I don't
14 know what you mean by who, who is the Signature Gain
15 Express.

16 THE COURT: Are you telling me that you are
17 Signature Gain Express Trust?

18 MR. DAVIS: No, sir. I'm simply an authorized
19 representative for Signature Gain Express Trust. The
20 Trust is an entity, it's not a person, sir. I don't
21 understand what you mean.

22 THE COURT: All right. How does Signature Gain
23 Express Trust become involved in the transaction between
24 Synovus and you and Ms. Davis?

25 MR. DAVIS: Equitable title was placed -- excuse

1 me, was conveyed to the Trust and recorded in the
2 county. So the Trust by way of conveyance is -- I'm
3 assuming that's why they named the Trust on the
4 document, but I mean the Trust holds equitable title.

5 THE COURT: Mr. Spong, help me out here. What's
6 Signature Gain Express Trust?

7 MR. SPONG: So at some point after the closing
8 and the Note and Mortgage, Mrs. Davis quitclaimed the
9 deed to Signature Gain Trust.

10 THE COURT: Okay.

11 MR. SPONG: And so, by virtue of the subsequent
12 conveyance, they are named a party to the action, Your
13 Honor.

14 THE COURT: Okay, thank you. All right. Here's
15 -- anything else, Mr. and Ms. Davis?

16 MR. DAVIS: No, sir.

17 THE COURT: All right. Here's what I'm gonna do.
18 Mr. Spong -- well, before I do that. All right. So,
19 Mr. and Ms. Davis, is the end result of your argument to
20 ask that you keep the house without any type of debt on
21 it?

22 MR. DAVIS: The request for relief is simply to
23 dismiss this action, because they don't hold -- they're
24 not a real party in interest. They have no interest in
25 the property.

1 THE COURT: All right. But if their action is
2 dismissed with prejudice, as you are asserting, that
3 means they can never bring the lawsuit again, so the end
4 result would be you're asking that you get the house
5 free and clear of any mortgage debt; is that correct?

6 MR. DAVIS: There's a separate matter before the
7 District Court, and we actually are filing paperwork
8 with the SEC for security fraud with the original
9 intermediary. So, I mean, it's -- the goal here is to
10 prevent any foreclosure action. We're dealing with the
11 collateral security with Synovus in another matter with
12 the SEC for securities fraud.

13 THE COURT: All right. My preliminary findings
14 are, first, the Court has jurisdiction. Second,
15 Plaintiff does have standing as a result of the
16 assignment that's been recorded at the ROD office. Out
17 of an abundance of caution for the Davis's sake, I am
18 gonna ask Mr. Spong to provide a copy of the Closing
19 Statement. If, in fact, it shows that the loan proceeds
20 were used to acquire the property, then I'm granting
21 Plaintiff's Motion for Summary Judgment.

22 MR. DAVIS: Sir, if I may? The original contract
23 was not signed for the house, it was signed for a loan
24 for the house. And as we well stated on the record,
25 those funds were never transferred into any accounts

1 that we own or have access to.

2 THE COURT: I understand.

3 MR. DAVIS: Okay.

4 THE COURT: And that's why I asked multiple times
5 if the funds were deposited into an account to some
6 other person or entity in order for you to get the
7 house, and I never really got a straight answer to that.
8 That's why I want to see the closing statement.

9 MR. DAVIS: Fair enough. That's fair enough,
10 sir. All I'm saying is if we didn't necessarily sign
11 anything for anyone to receive on our behalf. We were
12 under the impression when we signed in good faith, that
13 the loan proceeds would be transferred to us for the
14 purchase of the house. And again ---

15 THE COURT: But ultimately the loan proceeds were
16 used to buy the house, correct?

17 MR. DAVIS: No, sir. If we want to address that
18 better.

19 THE COURT: All right. We're -- it's not gonna
20 do any good to rehash it.

21 MR. DAVIS: Fair enough.

22 THE COURT: The money was borrowed in 2019. The
23 deed on that same day was put into Ms. Davis's name. I
24 don't know any other conclusion to draw other than
25 that's what happened, but yet out of an abundance of

1 caution, if you'll expedite that, Mr. Spong. And if
2 you'll mail or e-mail a copy to the Davis's at the same
3 time you e-mail it to my court reporter.

4 MR. SPONG: Yes, sir, Your Honor.

5 THE COURT: All right. Thank y'all for coming
6 in. And, Ms. Davis, thank you for coming in and I hope
7 you feel better, ma'am.

8 MS. DAVIS: Thank you.

9 (Hearing concluded at 11:20 a.m.)

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11 --- THIS ENDS TRANSCRIPT OF RECORD ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Thirteenth Judicial Master In Equity Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17th day of September, 2025. I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Julie A Cendroski

S/O Julie A. Cendroski
Julie A. Cendroski
Master In Equity Greenville County