

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Master-In-Equity

Joseph M. Strickland, Master in Equity

SC Court of Appeals

Case No. 2024 – 000917
Former Case No. 2022-cp-4002905

US BANK TRUST
NATIONAL ASSOCIATION,
Respondent,

v.

Angela T. Franks,
Appellant,

APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF

FEBRUARY 10, 2026

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Table of Authorities

Cases

BB&T of South Carolina v. Fleming, 360 S.C. 341, 601 S.E.2d 540 (2004)

In re Estate of Timmerman, 331 S.C. 455, 503 S.E.2d 476 (1998)

Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011)

Risher v. Risher, 313 S.C. 364, 438 S.E.2d 533 (1993)

State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007)

Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)

Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 689 S.E.2d 244 (Ct. App. 2010)

I. INTRODUCTION

This appeal presents a narrow but dispositive question: whether a foreclosure judgment may stand where the borrower answered the complaint, appeared, and objected, yet the foreclosing party presented no sworn witness and no live testimony, relying instead on affidavits and counsel argument. South Carolina law answers that question clearly: it may not.

The Respondent's brief attempts to avoid this fundamental failure of proof by invoking waiver doctrines and procedural technicalities. Those arguments collapse once the actual posture of this case is acknowledged. This was not a default. It was a contested foreclosure. In such cases, the lender bears the burden of proof and must satisfy that burden with admissible evidence.

II. STATEMENT OF FACTS RELEVANT TO REPLY

Appellant filed an Answer to the foreclosure complaint. Respondent accepted the Answer without objection. No motion to strike was filed. No motion for default judgment was sought. No order of default exists in the record. (Master In Equity May 15, 2024 Order)

At the foreclosure hearing, Appellant appeared and objected to enforcement of the debt, the absence of the promissory note, and the amount claimed due. Respondent presented no sworn witness. No bank representative testified. No custodian of records appeared. No testimony was taken. There was no court reporter, and no transcript exists because no testimony occurred.

Respondent relied exclusively on affidavits, pleadings, and counsel's representations. (Master In Equity May 15, 2024 Order Page 1/Respondent's Initial Brief). The Master nonetheless entered a foreclosure judgment.

III. ARGUMENT

A. Because the Case Was Contested, Respondent Bore the Burden of Proof

Where a borrower answers and appears in a foreclosure action, the lender bears the burden of proving the debt, default, and amount due by competent evidence.

BB&T of South Carolina v. Fleming, 360 S.C. 341, 601 S.E.2d 540 (2004). This case was therefore not a paper foreclosure or default proceeding. Respondent was required to prove its case at a hearing.

B. Respondent Presented No Admissible Evidence

Respondent presented no sworn witness and no live testimony. (Respondent's Record of Hearing). Instead, it relied entirely on affidavits of lost note, default, and fees. Affidavits are not evidence at trial and cannot substitute for testimony subject to cross-examination. *Risher v. Risher*, 313 S.C. 364, 438 S.E.2d 533 (1993). Statements of counsel likewise are not evidence and cannot support factual findings. *State v. Thompson*, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007). Without testimony, Respondent failed as a matter of law to prove standing, default, or the amount due.

C. A Foreclosure Judgment Unsupported by Evidence Is Reversible Error

A foreclosure judgment must be supported by evidence in the record establishing the right to foreclose and the amount due. *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 689 S.E.2d 244 (Ct. App. 2010). Where the record contains no evidence supporting the essential findings, the judgment cannot stand. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

Because no testimony was presented, the record contains no admissible evidence

supporting the judgment. Remand is therefore required.

D. Respondent's Waiver Argument Fails as a Matter of Law

Respondent argues Appellant waived review by failing to file a Rule 59(e) motion. This argument fails. By granting foreclosure, the Master necessarily decided standing, default, and amount due. Where issues are necessarily decided, no Rule 59(e) motion is required to preserve appellate review. In re Estate of Timmerman, 331 S.C. 455, 503 S.E.2d 476 (1998).

Moreover, whether a judgment is supported by evidence is always reviewable on appeal. In an equity action, the appellate court may review the record to determine whether the judgment is supported by the preponderance of the evidence. Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011). Where, as here, there is no evidence, the judgment cannot be affirmed.

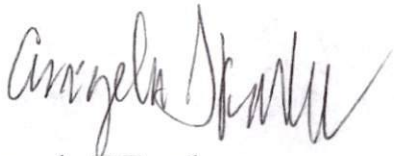
E. Remedy

Appellant does not ask this Court to determine ownership of the debt. (1) Appellant asks only that the foreclosure judgment be vacated and the case remanded for a proper evidentiary hearing requiring Respondent to prove its case through sworn testimony and admissible evidence, and (2) adjudication of Appellant's counterclaims and damages to be proven below upon remand.

IV. CONCLUSION

The foreclosure judgment was entered without proof. Because Respondent presented no sworn witness and no admissible evidence in a contested foreclosure, the judgment must be vacated and the matter remanded.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Angela T Franks". The signature is written in a cursive, flowing style.

Angela T Franks,

Appellant, Pro Se