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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY

The Honorable William B. Cox, Master-In-Equity
Civil Action 2025-CP-28-00383

Appellate Case No.: 2025-002267

Ex Parte: Laura Bowen, Appellant

In re:

GITSIT Solutions, LLC, not in its individual capacity but solely in its capacity as separate Trustee of GITSIT Mortgage Loan Trust BBPLCP, ……...Respondent.

v.

Calvin Theodore Bowen, Jr., individually and as Personal Representative of the Estate of Calvin T. Bowen, Sr. a/k/a Calvin Theodore Bowen, Sr.; Ronald J. Bowen, and any other Heirs-at-Law or Devisees of Calvin T. Bowen, Sr. a/k/a Calvin Theodore Bowen, Sr., Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interest in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe; Ascension Point Recovery Services, LLC; Bank of America, N.A.; Safe Federal Credit Union; and Kershaw County EMS, …….Defendants.

RESPONDENT'S INITIAL BRIEF

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3. Did the Master-In-Equity correctly find that the First Mortgage was not satisfied?
4. Does Appellant lack standing to challenge the foreclosure?
5. Does Appellant lack standing to appeal the Order at issue?

STATEMENT OF THE CASE

This appeal concerns a foreclosure action on a home equity conversion mortgage made by Alma T. Bowen and Calvin T. Bowen on August 21, 2012. The foreclosure action named the two known heirs as Defendants and their heirs, lienholders, along with any unknown persons having an interest in the mortgaged property. (Summons and Complaint, filed April 21, 2025). A Guardian Ad Litem was appointed to represent any unknown defendants who may be in the military service or under a disability. Any other unknown defendants were served by publication, with a deadline of June 27, 2025 to answer or otherwise appear. (Affidavit of Publication filed June 4, 2025). Other than the Guardian ad Litem representing the classes of John Doe and Richard Roe, none of the named or any unnamed Defendants appeared or answered the Complaint. (Notice of Default, filed July 17, 2025). Appellant failed to answer the Complaint or otherwise appear.

The case was referred to the Kershaw County Master-In-Equity on July 17, 2025 for an uncontested foreclosure hearing. On September 24, 2025, the Guardian ad Litem filed her Affidavit to the Court stating that she inquired as to whether there were any other heirs and devisees of the deceased Calvin T. Bowen, Sr., and that a son of the deceased informed her that there are no other heirs.

(Affidavit of GAL filed Sept. 24, 2025). After a hearing held on October 8, 2025, an Order of Foreclosure was entered on October 10, 2025 with a sale scheduled in November 2025.

On October 30, 2025, Appellant, appearing for the first time, filed an Emergency Motion to Stay and Vacate the Order of Foreclosure Pursuant to Rule 60(b)(4), SCRCP. Although she described herself as an "interested relative and family descendant" of Calvin and Alma Bowen, Appellant did not state any facts proving her familial relationship to them. The Master-In-Equity suspended the sale of the Property until the motion was decided. On November 5, 2025, the Master-In-Equity denied the motion and noticed the sale for January 5, 2026 ("Order"). (Order on Rule 60(b) Motion, filed Nov. 5, 2025). On November 10, 2025, Appellant appealed the Master-In-Equity's Order. Under Rule 241(b)(4), SCACR, Appellant's notice of appeal did not automatically stay the order on appeal. Rather, to obtain a stay, Appellant was required to execute a written undertaking with two sureties pursuant to S.C. Code Ann. § 18-9-170. Appellant did not seek such an undertaking. The property at issue was sold on January 5, 2026.

STATEMENT OF FACTS

In 1978, Calvin T. Bowen and Alma T. Bowen acquired property located at 1131 Brookgreen Court in Camden ("Property") by warranty deed. (Deed, Exh C to Pl. Opp. Mot. Stay (filed Oct. 31, 2025). On or about August 21, 2012, Alma T. Bowen and Calvin T. Bowen Sr. made, executed and delivered unto Reverse Mortgage USA, Inc. an Adjustable Rate Note (Home Equity Conversion) ("First Note") in the maximum amount of $102,750.00 with an interest rate of 5.060% per annum. (Note, Exh. A to Compl. filed April 21, 2025). Reverse Mortgage USA, Inc. subsequently endorsed the First Note in blank. (Allonge to Note, Exh. A to Compl. filed April 21, 2025). Respondent is the holder of the First Note. (Compl. ¶ 3, filed April 21, 2025).

To better secure the payment of the First Note, Alma T. Bowen and Calvin T. Bowen Sr. made, executed, and delivered to Reverse Mortgage USA, Inc. a mortgage ("First Mortgage"), dated August 21, 2012, placing a lien on the Property. (First Mortgage, Exh. A to Compl., filed April 21, 2025). The First Mortgage was recorded in the Office of the Register of Deeds for Kershaw County on September 6, 2012, in Book 2981 at Page 220. *Id*. Thereafter, by assignment recorded on November 26, 2012 in Book 3014 at Page 274, the First Mortgage was assigned to Reverse Mortgage Solutions, Inc. who subsequently assigned it to the Secretary of Housing and Urban Development ("HUD") by assignment recorded on July 6, 2018, Book 3883 at Page 207. *Id*. By assignment recorded on February 14, 2025 in Book 5302 at Page 151, HUD then assigned the First Mortgage to Artimus V, LLC. *Id*. By assignment recorded on February 14, 2025 in Book 5302 at Page 152, Artimus V, LLC assigned the First Mortgage to Plaintiff GITSIT Solutions, LLC, not in its individual capacity but solely in its capacity as separate Trustee of GITSIT Mortgage Loan Trust BBPLCP1. *Id.*

The First Note and First Mortgage are commonly known as a reverse mortgage transaction. "A reverse mortgage is a loan or line of credit available to a person over the age of 62 who has equity in real estate, typically the person's home." *Summers v. Fin. Freedom Acquisition LLC*, 807 F.3d 351, 354 (1st Cir. 2015). "The loan provides the borrower with cash ... and is secured by the borrower's equity in the real estate." *Id.* "There are no monthly payments; instead, the loan is due and payable in full when the borrower dies, sells the home, or no longer uses the home as her principal residence." *Id.; see also* 15 U.S.C. § 1602(cc) (defining the term "reverse mortgage transaction" as "a nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling ... securing one or more advances" and in which "the payment of any principal, interest, and shared appreciation or equity is due and payable ... only after—

(A) the transfer of the dwelling; (B) the consumer ceases to occupy the dwelling as a principal dwelling; or (C) the death of the consumer.").

Under the terms of the First Note, Mr. and Mrs. Bowen were required to make a second Note ("Second Note") payable to HUD to repay amounts which HUD may advance during the term of the loan in the event the lender fails to make payments to the borrower. U.S. Dep't of Housing and Urban Development, HOME EQUITY CONVERSION MORTGAGES HANDBOOK, 4235.1, § 6-6(B)[1] ("The second mortgage and second note secure any mortgage payments which might be made by HUD to the borrower in the event that the lender fails to make the payments under the loan Agreement."). To secure the Second Note, a second Mortgage on the Property was executed and filed in the Office of the Register of Deeds for Kershaw County on September 6, 2012 in Book 2981 at Page 233 ("Second Mortgage"). (Second Mortgage, Exh. B to Pl. Opp to Mot. To Stay and Vacate, filed Oct. 31, 2025).

Alma T. Bowen died intestate on September 12, 2019, leaving the Property to her husband Calvin T. Bowen, Sr. pursuant to a right of survivorship created in the deed of conveyance. Thereafter, Calvin T. Bowen, Sr. died intestate on November 19, 2021. Upon his death, the First Note became due and payable. (Exh. A to Compl., Fixed Rate Note, § 6(A)). His estate was partially probated in the Probate Court for Kershaw County bearing case no. 2022-ES-28-00022 (the "Estate"). Pursuant to the Application for Informal Appointment, Mr. Bowen's son, Calvin Theodore Bowen, Jr., identified only two heirs, himself and his brother Ronald J. Bowen. He was appointed personal representative of the Estate by order entered January 12, 2022. On September 19, 2024, the Estate was subsequently stricken from the active docket with leave to restore due to the failure of Calvin Theodore Bowen, Jr. to complete the proper filings. During this two year and a half year period, no other heirs appeared in the

[1] Available at: https://www.hud.gov/hudclips/handbooks/housing-4235-1.

Estate. As of the date of the Order of Foreclosure, Calvin Theodore Bowen, Jr. and Ronald J. Bowen were the only known living heirs to the Property.

HUD executed a Satisfaction of the Second Mortgage on February 7, 2025 which was recorded in the Office of the Register of Deeds for Kershaw County on February 14, 2025 in Book 5302 at Page 153 ("Satisfaction"). (Satisfaction, Exh. B to Pl. Opp to Mot. to Stay and Vacate, filed Oct. 31, 2025). A "satisfaction" is a written instrument signed by a mortgagee and recorded in the appropriate register of deeds indicating that the "property subject to the security instrument is released." S.C. Code Ann. § 29-3-330(A)(4). The Satisfaction expressly described the released mortgage as one in which HUD was the original mortgagee of a mortgage recorded on September 6, 2012 in Book 2981, Page 233. The mortgage recorded in Book 2981 at Page 233 was the Second Mortgage, not the First Mortgage. *Id*.; (Second Mortgage, Exh. B to Pl. Opp to Mot. To Stay and Vacate, filed Oct. 31, 2025); (First Mortgage, Exh. A to Compl., filed April 21, 2025).

STANDARD OF REVIEW

In cases sounding in equity, this Court "may determine the facts in accordance with [its] own view of the preponderance of the evidence." *Donnan v. Mariner*, 339 S.C. 621, 626, 529 S.E.2d 754, 757 (Ct. App. 2000). "Appellate courts may decide questions of law with no particular deference to the circuit court's findings." *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). This Court "may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR.

In considering a motion to grant relief from a default judgment, this Court "should consider the following factors: (1) the timing of the defendant's motion for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." *Richardson v. P.V., Inc*., 383 S.C. 610, 616, 682 S.E.2d 263, 266 (2009). "A meritorious defense is necessary in order

for a judgment to be set aside under Rule 60(b)." *McClurg v. Deaton*, 395 S.C. 85, 86–87, 716 S.E.2d 887, 888 (2011)."The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *Id*.

ARGUMENT

1. The Master-In-Equity correctly found that the affidavit of indebtedness was properly entered into evidence to establish the judgment amount.

To establish the amount of debt on the First Note and First Mortgage, Respondent entered into evidence an Affidavit of Indebtedness providing written testimony under oath concerning the amount of debt owed. (Affidavit of Indebtedness filed Oct. 6, 2025); (Complaint filed April 21, 2025). Appellant argues that the Foreclosure Order should have been set aside as void because "no sworn testimony or documentary foundation was presented to substantiate any claim of debt, thereby violating fundamental due process violations." Appellant's Motion to Stay and Vacate, p. 3; *see also* Appellant's Initial Brief, p. 5. Appellant also asserts that the Master-In-Equity conducted a hearing with no transcript or audio recording to record the proceeding. *Id*. at p. 6.

As for Appellant's argument concerning sworn testimony, the Master-In-Equity rejected this argument, stating that no one appeared or answered the Complaint, thus the allegations in the Complaint asserting the existence of the debt are conclusive. *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014) (stating that defendant in default admits liability but not the amount of liability). Further, the Master-In-Equity found that Respondent's Affidavit of Indebtedness was properly considered, relying on statutory authority under S.C. Code Ann. § 14-11-110. This statute allows the Master-In-Equity to "take in writing the testimony of any witness" upon ten days notice to any opposing party. Notice of written testimony was given well in advance of this ten-day notice requirement. (Notice of Hearing filed Sept. 10, 2025). Moreover, under Rule 55(b)(1), SCRCP, a default judgment amount which "can by computation be made certain"

may be established by affidavit. In foreclosure actions, the amount of debt can be made certain by computation. (Affidavit of Indebtedness, filed Oct. 6, 2025). Having failed to present a meritorious defense, the Master-In-Equity properly denied Appellant's Rule 60(b)(4) motion based upon her due process argument. *Richardson v. P.V., Inc*., 383 S.C. 610, 616, 682 S.E.2d 263, 266 (2009).

Furthermore, the Affidavit of Indebtedness ("Affidavit") established the amount of debt. (Affidavit of Indebtedness, filed Oct. 6, 2025). The Affidavit was executed by a representative of the Plaintiff. This Affidavit relied on Plaintiff's business records "made at or near the time of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge" and "kept in the course of Plaintiff's regularly conducted business activities." *Id*. at 3. Thus, the business records were properly authenticated and met the business record exception to the hearsay rule. Rule 803(6), SCRE. Attached to the Affidavit was a detailed accounting of the principal balance, interest accrued, escrow costs, and other fees. *Id*. at Exh. A. The debt concerned the note and mortgage at issue in the foreclosure action. *Id*. at 1, 4, 5, 8. The Complaint identified the note and mortgage at issue as the First Note and First Mortgage which were adopted by reference in the Complaint. Appellant argues that the Affidavit misrepresented the facts by failing to include the Satisfaction of the Second Mortgage, but the Satisfaction was not relevant to the First Mortgage. Plaintiff's foreclosure action solely concerned the First Note and Mortgage. The Special Referee did not err in finding that there was no misrepresentation in the Affidavit.

As for Appellant's argument that the Master-In-Equity conducted a hearing with no transcript or audio recording of the proceeding, this argument was not raised to the Master-In-Equity and therefore, is unpreserved for appellate review. "To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial

court." *Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 54–55 (Ct. App. 2006). "Without an initial ruling by the trial court, a reviewing court simply is not able to evaluate whether the trial court committed error." *Id.* Appellant did not argue below regarding any issue with the lack of a transcript or audio recording of the hearing. Appellant's Motion to Stay and Vacate, IV(D). In any event, Rule 71(a), SCRCP, simply requires a record of a foreclosure hearing. A record of the hearing at issue was filed in this case. (Record of Hearing, filed October 10, 2025). This record is all that is required.

2. The Master-In-Equity had subject matter jurisdiction over the foreclosure action.

It is well established that the court of common pleas in the county where the mortgaged property is located has subject matter jurisdiction to hear and decide a foreclosure action. *Meaders Bros. v. Skelton*, 234 S.C. 134, 107 S.E.2d 1 (1959). Under Rule 53(b), SCRCP, foreclosure actions may be referred to the Master-In-Equity for the County in which the mortgaged property is located and conducted according to Rule 71, SCRCP. The Master-In-Equity clearly had subject matter jurisdiction over this foreclosure action.

Appellant argues that the Master-In-Equity lacked subject matter jurisdiction over this case because no personal representative of Mr. Bowen's estate was appointed by the Probate Court at the time the order of foreclosure was entered and that "only a personal representative may bind an estate in civil litigation," citing to *In re Estate of Cretzmeyer*, 365 S.C. 12, 615 S.E.2d 116 (2005). Appellant's Brief, p. 6-7. *Cretzmeyer* concerned the issue of whether an appeal of a probate court order was timely noticed. *Id*. Nothing in this case supports Appellant's proposition that only a personal representative of an estate can bind the estate in litigation.

What is more, under S.C. Code Ann. § 29-3-610, it is not necessary to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding. Property that is sold without a personal representative named as a party to the foreclosure action is a valid sale. *Id*. The Probate Code does not prevent foreclosure on mortgaged property of an estate. S.C. Code Ann. § 62-

3-812. And the Probate Code does not require a secured creditor to assert his claim against the personal representative of the deceased debtor. S.C. Code Ann. § 62-3-104. Appellant's argument lacks merit.

3. Appellant's "chain of title" argument is unpreserved for appellate review and in any event, lacks merit.

In her Motion before the Master-In-Equity, Appellant argued that the Plaintiff misrepresented the debt to the Court by failing to disclose the Satisfaction of the Second Mortgage. Appellant's Motion to Vacate and Stay, IV(A) and (C). The Master-In-Equity found that "the satisfaction of the second mortgage did not equate to a satisfaction of the underlying original note debt nor was it filed as a result of payment in full of the underlying debt and therefore the foreclosure of the note and first mortgage following the death of the second borrower was appropriate." Order, p. 2. In other words, the subject of the foreclosure action was the First Note and First Mortgage, not the Second Note and Second Mortgage; therefore, the Satisfaction of the Second Mortgage was irrelevant. On appeal, Appellant raised a different argument – that Respondent failed to "establish a consistent chain of title" because certain assignments of the First Mortgage were recorded on the same day that the Satisfaction of the Second Mortgage was recorded. Appellant's Brief, p. 7. Because Appellant did not raise this argument to the Master-In-Equity, it is unpreserved for appellate review. *Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 54–55 (Ct. App. 2006).

Even if Appellant had raised this argument to the Master-In-Equity, Appellant fails to articulate how the recording date of the Assignments of the First Mortgage and the Satisfaction of the Second Mortgage gives rise to any reversable error. Appellant's confusion concerning the First Note and First Mortgage and the Second Note and Second Mortgage does not create an error of fact or law on the part of the Master-In-Equity.

4. Appellant lacked standing to move to vacate the Order of Foreclosure under Rule 60, SCRCP.

Pursuant to Rule 60(b), Appellant filed a motion to vacate the default Order of Foreclosure entered in this case. Rule 60(b) allows the lower court to "relieve a party or his legal representative from a final judgment …." A "party" is defined as "one by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment." BLACK'S LAW DICTIONARY, p. 1297 (10th ed. 2014). A person seeking relief under Rule 60(b) must establish that she is a party to the judgment from which she seeks relief. *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 342, 745 S.E.2d 90, 92 (2013).

Appellant's Rule 60(b) Motion stated she was "an interested relative and family descendant of the late Calvin Theodore Bowen, Sr. and Alma T. Bowen." Appellant's Motion to Vacate and Stay, p. 1. Appellant did not elaborate beyond this conclusory statement. Appellant is not a named defendant or intervenor in the foreclosure action at issue. Appellant did not serve and file an Answer to the Complaint or otherwise timely move to dismiss. Rule 12(b), SCRCP. The Order of Foreclosure did not identify Appellant as being subject to the Order. Therefore, Appellant lacked the obvious basis from which to establish oneself as a party to the Order of Foreclosure. The Master-In-Equity rightly rejected Appellant's Rule 60(b) Motion because Appellant failed to present facts demonstrating that she was a party to the judgment from which she seeks relief.

Appellant states in her Appellate Brief that she is an heir of Calvin T. Bowen Sr. and Alma T. Bowen; however, the facts of this case do not prove her claim. Calvin and Alma Bowen acquired the Property by warranty deed, not through the laws of intestacy, so there is no situation here where multiple heirs hold property as tenants in common. Alma Bowen passed away in 2019. Her 50% share of the Property passed through a right of survivorship to her husband Calvin Bowen, Sr. Calvin Bowen Sr. passed away in 2021 without a will. Under the law of intestacy, the Property passed to the surviving

children of Calvin Bowen, Sr., his two sons. S.C. Code Ann. § 62-2-103. Thus, the heirs to Calvin Bowen Sr.'s estate are his two sons. Appellant must do more than merely assert an unsubstantiated claim of heir to Calvin Bowen Sr.'s estate in order to survive a challenge to her alleged party status. Appellant failed to meet her burden of establishing that she is a party to the judgment from which she seeks relief. *Narruhn v. Alea London Ltd*., 404 S.C. 337, 342, 745 S.E.2d 90, 92 (2013).

5. Appellant lacks standing to bring this appeal.

"Only a party aggrieved by an order, judgment, or sentence may appeal." *First Union Nat. Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998) *citing to* Rule 201(b), SCACR. "An aggrieved party is one who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly on his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." *Id*. Appellant claims she is "an interested relative and family descendant of the deceased borrowers." *See* Motion to Stay and Vacate (filed Oct. 30, 2025). However, to be an aggrieved person, Appellant must show that the Order operated to substantially impair or extinguish a right or interest that she has in the property at issue. A relative or family descendant of the Borrowers may not have any right or legal interest in the subject property, especially where, as is the case here, Calvin T. Bowen, Sr. died intestate and is survived by his two sons. *See* Order of Foreclosure, ¶¶ 10-11 (filed Oct. 10, 2025). Under S.C. Code Ann. § 62-2-103, the Property passed to the surviving children of Calvin T. Bowen, Sr.

CONCLUSION

For these reasons, Respondent respectfully requests that this Court affirm the Special Referee's Order Denying Appellant's Rule 60(b) Motion.

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