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SC Court of Appeals

In the S. C. Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
2017CP2308016

Perry H. Gravely, Circuit Court Judge
Charles B. Simmons, Jr., Master in Equity Judge

Case No. 2024-002207

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

EXHIBIT "A"
APPELLANT'S PROPOSED
SUBSTITUTE INITIAL BRIEF

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I. THE CIRCUIT COURT AND THE S.C. COURT OF APPEALS ERRED AS A MATTER OF LAW IN CONCLUDING THAT WELLS FARGO HAD STANDING TO FORECLOSE, WHERE THE CIRCUIT COURT BASED ITS RULING ON POSSESSION OF THE ORIGINAL NOTE ENDORSED IN BLANK OR, ALTERNATIVELY, AS THE LOAN SERVICER, AND NEITHER COURT ADDRESSED THE TIMING OF ENTITLEMENT RAISED BY APPELLANT AND THE RECORD CONTAINS NO EVIDENCE THAT WELLS FARGO ESTABLISHED ENTITLEMENT TO ENFORCE THE NOTE AT THE TIME THE COMPLAINT WAS FILED.

II. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN CONCLUDING THAT NOTICE REQUIREMENTS UNDER THE NOTE AND MORTGAGE WERE SATISFIED PRIOR TO COMMENCEMENT, WHERE THE COURT RELIED ON WELLS FARGO'S FEBRUARY 16, 2017 DEFAULT LETTER AS THE BASIS FOR THAT CONCLUSION, DESPITE THE MAY 1, 2017 DEFAULT FOUND IN THE FINAL ORDER AND THE ORDER DOES NOT IDENTIFY THE SPECIFIC PROVISIONS GOVERNING NOTICE.

III. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN FAILING TO CONSTRUE THE SPECIAL WARRANTY DEED AS A WHOLE, WHERE THE COURT REJECTED JOINT TENANCY AND REFUSED TO CONSIDER AND HARMONIZE THE

HABENDUM AND GRANTING CLAUSES, SO AS TO GIVE EFFECT TO ALL PROVISIONS OF THE DEED.

IV. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN CONCLUDING, THAT WELLS FARGO COMPLIED WITH FORECLOSURE INTERVENTION UNDER THE S.C. SUPREME COURT ADMINISTRATIVE ORDER 2011-05-02-01 AND IN FINDING THAT THE APPELLANT'S NONCOMPLIANCE CLAIM WAS ABANDONED, WHERE BOTH FINDINGS REQUIRED LEGAL ANALYSIS THAT THE COURT DID NOT PERFORM.

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STATEMENT OF THE ISSUES

I. Whether the Circuit Court and the S. C. Court of Appeals erred as a matter of law in concluding that Wells Fargo had standing to foreclose, where the Circuit Court based its ruling on possession of the original note endorsed in blank or, alternatively, as the loan servicer, and neither court addressed the timing of entitlement raised by Appellant and the record contains no evidence that Wells Fargo established entitlement to enforce the note at the time the complaint was filed?

II. Whether the Circuit Court erred as a matter of law in concluding that the notice requirements under the Note and Mortgage were satisfied prior to commencement of this action, where the Court relied on Wells Fargo's February 16, 2017 default letter as the basis for that conclusion, despite the May 1, 2017 default found in the final order and the order does not identify the specific provisions governing notice?

III. Whether the Circuit Court erred as a matter of law in failing to construe the Special Warranty Deed as a whole, where the Court rejected joint tenancy and refused to consider and harmonize the habendum and granting clauses so as to give effect to all provisions of the Deed?

IV. Whether the Circuit Court erred as a matter of law in finding that Wells Fargo complied with Foreclosure Intervention requirements under the S.C. Supreme Court Administrative Order 2011-05-02-01, and in finding that the Appellant's noncompliance claim was abandoned, where both findings required legal analysis that the court did not perform?

STATEMENT OF THE CASE

A. COMPLAINT AND ANSWER

On December 22, 2017, Wells Fargo filed its foreclosure complaint (R.p. __). On July 30, 2018, The Appellant filed her Sixth Amended Answer, which included Counterclaims and Defenses. (R.p. __).

B. SUMMARY JUDGMENT

On June 10, 2019, counsel for Wells Fargo moved for Summary Judgment (R. p. __) On July 12, 2019, the Appellant filed a Memorandum and Affidavit in Opposition to the Respondent's motion for summary judgment (R. p. __). On July 18, 2019, Wells Fargo filed its Reply in Support of Summary Judgment (R. p. __). On August 7, 2019, the Honorable Perry H. Gravely,

sitting for the Circuit Court granted Summary Judgment in favor of Respondent and dismissed all of Appellant's Counter Claims and Defenses. (R. p.__). On August 16, 2019 the Appellant filed a motion to Alter/Amend under South Carolina Rules of Civil Procedure, Rule 59 and the Circuit Court denied this motion on August 22, 2019.

C. FIRST APPEAL AND REMITTITUR

On September 6, 2019 Appellant filed a Notice of Appeal in the Circuit Court regarding the Circuit Court's Order of Summary Judgment. On September 16, 2019 Appellant filed the Notice of Appeal with the S. C. Supreme Court, whom forwarded the Notice to the S. C. Court of Appeals on September 17, 2019 (R.p.__). On January 22, 2021 the Appellant filed her Final Brief. On March 30, 2021. Respondent filed its Final Brief. On August 17, 2022, the S. C. Court of Appeals Affirmed the Circuit Court's Order of Summary Judgment Order (S. C. COA Decision, p.__). On March 15, 2024 the S. C. Court of Appeals issued a Remittitur.

D. FINAL HEARING AND FINAL ORDER OF FORECLORE AND SALE

On November 21, 2024 the Final Hearing was held before the Master-in-Equity for Greenville County, the Honorable Charles B. Simmons, Jr., sitting for the Circuit Court. (Tr. p.__). On December 12, 2024, the Circuit Court entered a final Order of Foreclosure and Sale with a judgment in the amount of \$213,656.01 (R.p.__).

E. POST HEARING MOTIONS AND SECOND APPEAL

On December 23, 2024, The Appellant filed post hearing motions that were denied on December 27 2024. On December 27, 2024, the Appellant filed her signed Notice of Appeal in the Circuit Court. On December 30, 2024 the S. C. Court of Appeals clocked the Appellant's Notice of Appeal as recieved.

F. BANKRUPTCY AND FORECLOSURE REMOVED FROM THE DOCKET

On January 31, 2025, the Movant filed a Chapter 13 Bankruptcy petition. On March 24, 2025, Wells Fargo filed a motion/order removing the Foreclosure action from the docket, in the Circuit Court (R.p. ___). On April 3, 2025 the Appellant's Bankruptcy Petition was dismissed. On April 6, 2025 the Appellant subsequently filed a second Chapter 13 Bankruptcy petition, this Bankruptcy Stay ended on May 6, 2025. On August 29, 2025, the Bankruptcy was dismissed.

G. POST APPEAL PROCEDURAL DEVELOPMENTS

On August 26, 2025, the Appellant returned to the Circuit Court and filed an emergency Motion for a Stay, pending Appeal. On September 15, 2025, the Circuit Court issued a general denial of Appellant's Emergency Motion (R. p. ___). On October 6, the Circuit Court issued an Order disallowing any further filings, from the Appellant, until the Foreclosure Appeal is resolved (R.p. ___). On February 20, 2026, Wells Fargo filed a motion to restore its Foreclosure action to the docket and requested that a sale date be set. On February 26, the Circuit Court issued an Order restoring the Foreclosure to the docket to proceed with a sale (R.p. ___).

STANDARD OF REVIEW

A. An action to foreclose a real estate mortgage is an action in equity. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997).

B. This Court is not bound by the trial court's legal conclusions. *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000); See also *S.C. Const. art. V, § 5* (providing this state's appellate courts have jurisdiction to correct trial court's erroneous legal findings in law and equity cases)

C. All issues presented in this appeal, are all questions of law reviewed de novo. See *Hammond v. Lindsay*, 277 S.C. 118, 284 S.E.2d 581 (1981)

D. Under South Carolina law, a judgment will be reversed where there is no evidence to support

the trial court's ruling or where the ruling was controlled by an error of law. See **Clark v. S.C. Dep't of Public Safety, 362 SC. 377, 382-83, 608 S.E. 2d 573, 576 (2005).**

STATEMENT OF FACTS PRE-LITIGATION

A. MRS. WITHERSPOON'S EXECUTION OF NOTE MORTGAGE AND DEATH

On March 28, 2012 Mrs. Ruth Ladson Witherspoon, Appellant's Mother, executed a note and mortgage in favor of NVR Finance, Inc., to purchase 6 Young Harris Drive. On March 29 2012, the Mortgage and Special Warranty Deed were recorded. The granting clause of the Deed reflects that the subject property was conveyed "to Ruth Witherspoon, her heirs and assigns forever", and the habendum clause reflects, "to have and to hold unto the grantees as joint tenants and not as tenants in common" (Special Warranty Deed, p.__) . At some point in time Wells Fargo became the servicer of the loan and acted as the agent responsible for disbursing escrow funds for taxes and insurance. On July 5, 2015, Mrs. Witherspoon passed away (Death Certs. p. __).

LITIGATION FACTS

COMPLAINT AND ANSWER STAGE:

A. Complaint Allegations

- (1) Paragraph 3 of the Complaint, alleged that Wells Fargo had the legal right to enforce the negotiable instrument and that it was the real party in interest. (Compl. p. __).
- (2) Paragraph 5 of the Complaint, alleged that the Defenants may have some interest in the subject property. (Comp., p. __).
- (3) Paragraph 8 of the Complaint, alleged that Ruth Witherspoon executed and delivered the Mortgage to Mortgage Electronic Registration Systems (MERS), Inc., as nominee for NVR Mortgage Finance, Inc., its successors and assigns. (Comp., p. __).
- (4) Paragraph 8 of the complaint further alleged that the subject property was conveyed to Ruth

Witherspoon by Deed of NVR that recorded on March 29, 2012 in Deed Book DE 2403 at Page 2222 and that the Appellant was an Heir (Compl., p. __).

(5) Paragraph 12, of the Complaint alleges a default as of May 1, 2017, (Compl. p. __).

Outside of the Complaint and in relation to Foreclosure Intervention

(6) The record reflects that on February 2, 2018, counsel for Wells Fargo filed a document entitled "Certificate of Non Owner Occupancy Due To The Death Of the Mortgagor, that certificate alleged that the loan did not qualify for Foreclosure Intervention (Cert., p. __).

B. Answer Responses

(1) In response to Paragraph 3, Sixth Amended answer denied that Wells Fargo had the right to enforce the Note and asserted that Wells Fargo failed to attach a copy of the Note to the complaint demonstrating holder status at the time of filing the Complaint. (Sixth A.A. p. __).

(2) In response Paragraph 5, the Sixth Amended answer asserted that the Appellant owned the subject property jointly with her Mother and Brother by virtue of the Special Warranty Deed recorded on March 29, 2012, in Deed Book DE 2403 at Pages 2222–2223 (Sixth A.A., p. __).

(3) In Response to Paragraph 8, the Sixth Amended Answer denied, in part that Wells Fargo was the successor in interest to NVR, Inc., and asserted that Wells Fargo neither attached the Note to the complaint nor claimed possession of it in the complaint (Sixth A.A., p. __).

(4) In further response to Paragraph 8. The Appellant did not deny the allegation that the subject property was conveyed to Ruth Witherspoon.

(5) In response to paragraph 12, the Sixth Amended answer disputes the basis of the default and referenced the escrow statements. The Sixth Amended answer also asserted that Plaintiff overpaid the property taxes and subsequently increased the payment by \$300.00 (Sixth Amended Answer, p. __ lines __, p. __, lines __).

Response to Foreclosure Intervention Certificate

(6) The Appellant's Sixth Amended asserts that the Appellant, made contact with Rogers Townsend and Thomas (Wells Fargo's Counsel, whom filed the complaint) and spoke to Diedra and was informed that their office does not provide foreclosure intervention and only sends out the notice to comply with the state requirement and she stated "contact your lender" (Sixth A.A., p.__). The Sixth Amended answer further asserts that Wells Fargo's Certificate was fraud upon the court and that the Plaintiff fraudulently claimed that the subject property was non owner occupied to avoid providing foreclosure intervention. (Sixth A.A., p.__, p__).

SUMMARY JUDGMENT STAGE:

C. Motion for Summary Judgment

Wells Fargo moved for summary judgment attaching a copy of the note to the motion and the motion states that Wells Fargo was in possession of the original Note endorsed in blank and therefore had the right to enforce it under S.C. Code Ann. § 36-3-301. Wells Fargo also argued against the Appellant's counterclaims and defenses. The motion did not include a supporting affidavit or documentation authenticating the note.

(MSJ p. __, __).

D. Memo In Opposition to Motion for Summary Judgment

The Appellant's Memorandum in Opposition to Wells Fargo's motion for summary judgment, asserted that lack of standing remained a disputed material fact, emphasizing that the complaint contained neither an allegation nor any attachment demonstrating that Wells Fargo possessed the original note at the time the complaint was filed (Memo. in Opp. p. __). The Note was not authenticated,

E. Circuit Court Summary Judgment Order:

(1) The Circuit Court granted summary judgment for Wells Fargo and the order reflected that Appellant's affirmative defense of lack of standing failed as a matter of law, citing S.C. Code Ann. § 36-3-301 and Further dismissed all of the Appellant's counter claims and defenses with prejudice. (S.J. Order p. __).

(2) The court found no genuine issue of material fact as to standing based on either possession of the original Note endorsed in blank or Wells Fargo's status as loan servicer (S.J. Order p. __). The order did not address Appellant's argument that Wells Fargo failed to show possession of the Note at the time the Complaint was filed.

(3) In its motion for summary judgment, Wells Fargo asserted that payment of the property taxes was governed by contract (MSJ, p. __). The Appellant's Memorandum in Opposition to Wells Fargo's motion for summary judgment, stated, that her relationship with Wells Fargo depended on payments for taxes and insurance being properly made to the proper entities from the escrow account (Memo in Opp., p. __).

(4) Wells Fargo's motion for summary judgment did not provide evidence of a default or a default letter.

(5) The Motion for summary judgment reflects, during the course of this litigation, Defendant has indicated to counsel for Wells Fargo that she did not wish to participate in the foreclosure intervention process. (See Certificate of Compliance with Administrative Order No. 2011-05-02-01 filed on July 16, 2019.) (Reply in Supp. of S.J., p. __).

(See Appellant's Memorandum in opposition to Wells Fargo's Certificate of compliance, filed on July 18, 2019, which reflects the Appellant's attempts to participate in foreclosure intervention (Memo in Opp. to Cert of Comp., p. __).

FIRST APPEAL STAGE (FOR CONTEXT)

F. South Carolina Court of Appeals Ruling

The Appellant appealed the Circuit Court's Order of Summary Judgment in favor of Wells Fargo. The South Carolina Court of Appeals addressed standing under S.C. Code Ann. § 36-3-301 based on possession of the original Note endorsed in blank. However, the Court of Appeals did not reach the timing issue because it was not raised on appeal (COA Decision p. __).

FINAL HEARING STAGE

G. Final Hearing

(1) At the final hearing, the Transcript reflects that Wells Fargo's witness testified that Wells Fargo possessed the original Note endorsed in blank (Tr. p. __). The Transcript does not reflect any testimony establishing that Wells Fargo possessed the original Note at the time the Complaint was filed.

The Transcript reflects the following:

(2) The Note was entered into evidence and paragraph 6B provides, "This Notes does not authorize acceleration when not authorized by HUD regulations".(Note, p.__); (Tr. p.__).

(3) The Mortgage was entered into evidence and paragraph 9(d) provides, "This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary." (Mortgage, p.__); Tr. p.__).

(4) The Transcript reflects that the Circuit Court ruled from the bench that the subject property was granted to Ruth Witherspoon, after acknowledging the granting clause and further reflects that the Court refused to hear the Habendum clause. Transcript. (Tr., p.__).

(5) The Note was entered into evidence and paragraph 6B states, "This Notes does not authorize acceleration when not authorized by HUD regulations".(Note, p.__); (Tr. p.__). The Mortgage was entered into evidence and paragraph 9(d) states, "This Security Instrument does not authorize

acceleration or foreclosure if not permitted by regulations of the Secretary." (Mortgage, p.__); Tr. p.__).

(6) The Transcript reflects that the witness testified regarding a February 16, 2017 letter and identified it as a default letter providing an opportunity to cure before initiating foreclosure (Tr. p.__). The Transcript further reflects that Wells Fargo introduced into evidence a payment history showing that payments were received after the February 16, 2017 letter and that the witness testified that the loan was due for May 1, 2017 (Tr., p.__). The record does not contain any evidence that Wells Fargo complied with the HUD regulations incorporated into the Note and Mortgage as a condition precedent to acceleration in relation to the May 1, 2017 alleged default.

(7) The Transcript reflects that Wells Fargo's counsel requested that the court take judicial notice that an heir does not qualify for the Foreclosure Intervention program and further that Appellant had abandoned her claim of non-compliance (Tr., p.__). Wells Fargo's attorney handed the court an administrative document dated June 7, 2011, which was neither provided to Appellant for review nor entered into the evidentiary record (Tr., p.__). The transcript does not reflect that Wells Fargo presented any evidence at the final hearing that it complied with the Foreclosure Intervention communication requirement or that Appellant had abandoned her claim of Wells Fargo's non compliance with the requirements.

CIRCUIT COURT'S FINAL RULINGS STAGE:

H. Final Rulings

(1) The Final Order stated, "Plaintiff is the holder of the Note and assignee of the Mortgage and has standing to proceed" (Final Order p. __). The court also found that Wells Fargo possessed the original Note endorsed in blank, based on testimony at the final hearing (Final Order p. __).

- (2) The Final Order reflects that the loan is due for May 1, 2017. (Final Order, p. __). The Final Order also held that Demand letter satisfied the notice requirements of the Note and Mortgage and had been given to the Defendant/Appellant prior to commencement of this action. (Final Order p. __). The Final Order does not identify the notice requirements of the note and mortgage.
- (3) The Final Order reflects that the Circuit Court rejected joint tenancy and held that the subject property was conveyed to "Ruth Witherspoon, her successors and assigns" and found that the lien survived Ruth Witherspoon's death. (Final Order, p. __, lines __; p. __, lines __).
- (4) The Final Order found that Wells Fargo had complied with the Foreclosure Intervention requirements and that the Appellant had abandoned her claim of Wells Fargo's non compliance with fore-closure intervention. (Final Order, p. __). The final order reflects findings of compliance and abandon-ment, without identifying the unerlying legal analysis supporing these conclusions.

ARGUMENTS

I. Issue One - Standing

THE CIRCUIT COURT AND THE S.C. COURT OF APPEALS ERRED AS A MATTER OF LAW IN CONCLUDING THAT WELLS FARGO HAD STANDING TO FORECLOSE, WHERE THE CIRCUIT COURT BASED ITS RULING ON POSSESSION OF THE ORIGINAL NOTE ENDORSED IN BLANK OR, ALTERNATIVELY, AS THE LOAN SERVICER, AND NEITHER COURT ADDRESSSED THE TIMING OF ENTITLEMENT RAISED BY APPELLANT, AND THE RECORD CONTAINS NO EVIDENCE THAT WELLS FARGO ESTABLISHED ENTITLEMENT TO ENFORCE THE NOTE AT THE TIME THE COMPLAINT WAS FILED.

A. Governing Law:

- (1) In South Carolina, standing to sue is a fundamental requirement that must exist at the time the action is instituted. See *Blandon v. Coleman*, 285 S.C. 413 472, 475, 330 S.E.2d 298, 299 (1985). See also *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct.App.1994).
- (2) In a foreclosure action, the Plaintiff must establish that it is a person entitled to enforce the

Note pursuant to S. C. Code § 36-3-301. See *Bank of America, N.A. v. Draper*, 405 S.C. 214, 217, 747 S.E.2d 444, 446 (Ct. App. 2013).

(3) "Standing must be proven "with the manner and degree of evidence required at the successive stage of the litigation." in *Town of Arcadia Lakes v. S.C. Dep't of Health & Evtl. Control*, 404 S. C. 515, 529, 745 S.E.2d 385, 392 (Ct. Ap. 2013). See also, *Hollingsworth v. Perry*, 570 U. S. 693 (2013), (holding that Standing must be met at every stage of the litigation).

B. Argument

(1) Taking the record as it existed, the record does not establish that Wells Fargo was entitled to enforce the Note at the time the complaint filed, either as the alleged holder or as a servicer acting on behalf of a party entitled to enforce the note.

(2) The Final Order reflects that the Circuit Court conflated two distinct inquiries (Holder status and standing) and consequently made one broad ruling that Wells Fargo had standing. The Court determined that Wells Fargo was entitled to enforce the note, based on witness testimony at the final hearing, that Wells Fargo was in possession of the original note endorsed in blank. (Final Order, p.__). However, the blank endorsements are undated and do not establish that Wells Fargo had enforcement rights at the time the complaint was filed. (Note, p.__)

(3) For context, in the first appeal, the S. C. Court of Appeals deferred to the Circuit Court's standing ruling, affirmed, and stated that the ruling was supported by evidence. However, the Court, did not identify any specific evidence establishing that Wells Fargo was entitled to enforce the note at the time the action was instituted. (COA Dec., p.__).

(4) Testimony at the final hearing whereby the witness authenticated the note, with undated endorsements cannot serve as evidence of standing at the time the complaint was filed. Therefore, a standing defect exists in the record at the time the complaint was filed and the Court

should not have entered judgment without proof that Wells Fargo had the right to enforce the note at the time the complaint was filed. Here, the Court equated holder status with standing and applied the wrong legal standard resulting in an error of law and this Court should reverse the Order and Judgment of Foreclosure and Sale.

II. Issue Two - Notice:

THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN CONCLUDING THAT NOTICE REQUIREMENTS UNDER THE NOTE AND MORTGAGE WERE SATISFIED PRIOR TO COMMENCEMENT OF THIS ACTION, WHERE THE COURT RELIED ON WELLS FARGO'S FEBRUARY 16, 2017 DEFAULT LETTER AS THE BASIS FOR THAT CONCLUSION, DESPITE THE MAY 1, 2017 DEFAULT FOUND IN THE FINAL ORDER, AND THE ORDER DOES NOT IDENTIFY THE SPECIFIC PROVISIONS GOVERNING NOTICE.

A. Governing Law

(1) Under South Carolina law, the right to accelerate a note under a mortgage is subject to the terms of the contract and may be affected by the status of the alleged default prior to the exercise of the option to accelerate. See *Allendale Furniture Co. v. Carolina Commercial Bank*, 284 S.C. 766, 325, S.E.2d 530 (1985).

(2) A judgment predicated upon an erroneous view of the law cannot stand and must be reversed. *Deutsche Bank Nat'l Trust Co. v. Estate of Owens Houck*, 434 S. C. 67, 862 S. E.2d 437 (Ct. App. 2021).

(3) HUD Regulation 24 C.F.R. § 203.604(a)(1) requires the mortgagee to conduct a face-to-face meeting with the mortgagor—, or in this case, with the Appellant stepping into the shoes of the mortgagor -- or make reasonable efforts to arrange such a meeting —before three full monthly installments are unpaid. Federal courts hold this language, makes 24 C.F.R. § 203.604(a)(1) compliance, a condition precedent to acceleration. (*Dan-Harry v. PNC Bank, No. 1:17o-cv-00136 D.R.I. Feb. 26, 2018*), (persuasive federal authority)

B. Argument

(1) The Court found that Wells Fargo's February 16, 2017 letter satisfied the notice requirements of the Note and Mortgage, based on the fact that notice was provided prior to commencement of the action. However, the order does not reflect that the court conducted the required legal analysis to determine whether the letter complied with the contractual and regulatory prerequisites for acceleration and foreclosure. The mere sending of a notice prior to the commencement of the action does not, by itself, establish compliance with the governing requirements.

(2) Wells Fargo's February 16, 2017 letter cannot satisfy the notice requirements contained in the Note and Mortgage, as those instruments incorporate by reference HUD regulation 24 C.F.R. 302.604 (a)(1), which prohibits acceleration based on payment default, unless the mortgagee has conducted or attempted to conduct a face-to-face meeting prior to the loan becoming three months past due. The February 16, 2017 default/demand letter does not reflect any attempt to schedule or conduct the required face-to-face meeting.

(3) Wells Fargo's February 16, 2017 letter cannot satisfy the notice requirements contained in the Note and Mortgage, where the final order identifies May 1, 2017 as the default date. Because the operative default date in the record does not correspond to the date referenced in the letter.

(4) Because the Circuit Court relied on the February 16, 2017 Default letter to serve as notice of the Note and Mortgage, rather than applying the governing contractual and regulatory provisions, in the Note or Mortgage the Court applied an incorrect legal standard constituting an error of law. This error was prejudicial because, under the correct legal standard, the Circuit Court could not have found that Wells Fargo satisfied the contractual prerequisites for acceleration, and the foreclosure judgment would not have been entered.

III. Issue Three - Deed Construction

THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN FAILING TO CONSTRUE THE SPECIAL WARRANTY DEED AS A WHOLE, WHERE THE COURT REJECTED JOINT TENANCY AND REFUSED TO CONSIDER AND HARMONIZE THE HABENDUM AND GRANTING CLAUSES, SO AS TO GIVE EFFECT TO ALL PROVISIONS OF THE DEED.

A. Governing Law

(1) *Wayburn v. Smith*, 269 S.C. 37, 328 S.E.2d 805 (1977): "...the Deed must be construed as whole, and effect given to every part thereof, if such can be done consistently with law."

(2) *Miller v. Johnson*, 180 S.C. 407, 185 S.E. 654 (1936): "A deed may designate a grantee by description rather than by name, and if the description is sufficient to identify the grantee, the deed is not void for uncertainty."

(3) *Smith v. Rucker*, 367 S. C. 100, 107, 624 S. E. 2d 827, 831 (2006); S. C. Code Ann. § 27-7-40. Under South Carolina law, the ceation of a joint tenancy requires the four unities of time, title, interest and possession. Where a joint tenancy is properly created, survivorship rights operate such that the interest of a deceased joint tenant is extinguishe at eath

(4) *Free v. Sandifer*, 135 S.E.2d 695, 243 S.C. 123 (1964): "Where the deed is silent or ambiguous as to the estate created, the deed must be construed as a whole, and the habenddum clause may be considered in determing the parties intent, including whether a joint tenancy with the right of survivorship was intended.

(5) *Harms v. Sprague* 105 III. 2d 215, 473 N.E. 2d 930 (III 1984) (*Persuasive Authority*).

"mortgage executed by one joint tenant does not sever the joint tenancy and survivorship operates such that the surviving joint tenant takes the property free of the deceased joint tenants's individual interest".

B. Argument

(1) The transcript reflects that after acknowledging the granting language, the Circuit Court ruled

that the Special Warranty deed did not create a joint tenancy. The Court erred by failing to construe the Deed as a whole. Proper construction of a Deed requires interpreting the instrument in its entirety and giving effect to all provisions, including harmonizing the habendum and granting clauses, where they can be read consistently with the law.

(2) The Court's error was prejudicial because the Court's failure to harmonize the granting and habendum clauses led it to reject joint tenancy, which in turn left the lien in place affecting the outcome of the case and deprived the Appellant of her substantive right to take the subject property free of any encumbrance. See *Smith v. Culter*, 357 S.C. 532, 593 S.E.2d 711 (Ct. App. 2004); and South Carolina Code Ann. § 27-7-40. See also *Harms v. Sprague* 105 III. 2d 215, 473 N.E. 2d 930 (III 1984) (Persuasive Authority).

IV. Issue Four - Foreclosure Intervention Compliance and Alleged Abandonment:

THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN CONCLUDING, THAT WELLS FARGO COMPLIED WITH FORECLOSURE INTERVENTION REQUIREMENTS UNDER THE S.C. SUPREME COURT ADMINISTRATIVE ORDER 2011-05-02-01 AND IN CONCLUDING THAT THE APPELLANT'S NONCOMPLIANCE CLAIM WAS ABANDONED, WHERE BOTH CONCLUSIONS REQUIRED LEGAL ANALYSIS THAT THE COURT DID NOT PERFORM.

A. Governing Rule

The interpretation of the South Carolina Supreme Court's administrative order is governed by principles of legal construction applied to court rules and statutes. See *Neely v. Thomasson*, 365 S.E. 345, 350, 618, S.E.2d, 884, 886 (2005).

B. Argument

The governing Administrative order 2011-05-02-01, defines a "mortgagor" as "every owner, mortgagor and debtor under the note and mortgage at issue. Wells Fargo requested that the court take "judicial notice," but in substance asked the court to adopt a legal interpretation excluding heirs from foreclosure intervention eligibility under the Administrative order. The

Circuit Court erred in adopting Wells Fargo's interpretation and ruled that Wells Fargo complied with the foreclosure intervention requirements, treating this issue as a factual determination, when the Administrative order requires a legal analysis.

C. The Court found that the Appellant abandoned her claim of Wells Fargo's noncompliance with the Foreclosure Intervention requirements, without identifying the basis in the record for that finding or conducting the required legal analysis under the S. C. Supreme Court Administrative Order. The Court's failure to apply the governing legal standard of the Administrative Order, constitutes a misapplication of the plain language of the Administrative Order and is an error of law and should be reversed.

D. These rulings constitute a misapplication of the S. C. Supreme Court Administrative Order 2011-05-02-01 and an error of law. These errors are not harmless. Had the Circuit Court applied the required legal analysis under the South Carolina Supreme Court Administrative Order, it could have reached a different result and the order of foreclosure would not have been entered.

. CONCLUSION

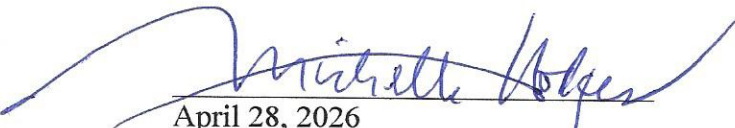
For the foregoing reasons, the Appellant respectfully requests that this Honorable Court reverse the Circuit Court's Order and Judgment of Foreclosure and Sale and remand this matter for further proceedings consistent with this Court's opinion including consideration of the remaining issues raised on appeal.

In addition, the Appellant respectfully requests that, on remand, the Circuit Court be permitted to consider any claims or issues previously dismissed as defective or unrelated to the foreclosure action, so that the full scope of appropriate relief may be addressed.

The Appellant also notes the Circuit Court's existing filing restrictions, in its October 6, 2025 Order disallowing filings by the Appellant,

and the Appellant respectfully requests that on remand, any necessary allowance be made to permit the filing and consideration of such claims.

Respectfully submitted,



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