

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
CASE NO.: 2024-CP-32-01094

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,

Plaintiff,

v.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants

**MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE AND REFORMATION OF
MORTGAGE**

DEFICIENCY WAIVED

Hearing Date: February 10, 2026

Appearances: Chad W. Burgess, Esquire for Plaintiff

and Defendants Timothy Allen Nunally and Mark Anthony Nunally (self-represented).

Court Reporter: Kathryn Bostrom

INTRODUCTION:

The instant action is one for foreclosure of property located in Lexington County, South Carolina. The property was formerly owned by the Nunally brothers' parents. Unfortunately, both parents are deceased. The Court recognizes and appreciates the respect the Nunally brothers held for both parents and their unfailing study and work to understand better the foreclosure process as they studied, researched and diligently attended the various status conferences, motions and trial.

The Lis Pendens, Summons and Complaint were filed March 8, 2024. On May 23, 2024, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), this matter

was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case. Any appeal from this decision shall be directly to the South Carolina Court of Appeals. A bench trial was held on February 10, 2026. Present at the hearing was Chad W. Burgess of the firm of Brock & Scott, PLLC and appearing self-represented were Defendants Timothy Allen Nunally and MarkAnthony Nunally. Present and testifying on behalf of the Plaintiff were Brian L. Boger and Louise Plasse.

Based upon the arguments, testimony, and evidence presented at trial, I find and conclude as follows:

FINDINGS OF FACT:

The following events and dates are undisputed and relevant to the case:

1. Service was made upon the Defendants as shown by the filed proofs of service.
2. The Defendants are in default as shown by the affidavit of default filed March 24, 2025, and the order denying the Defendants' motions to dismiss and to set aside default filed September 30, 2025.
3. According to a filed Affidavit, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
4. All Defendants were notified of the time, date and place of the trial.
5. For value received, Carl A. Nunally made, executed and delivered a note, dated January 30, 2004, payable to the order of NovaStar Home Mortgage, Inc. in the principal amount of \$121,500.00 with interest at the rate of 6.99% per annum. The original Note was presented at trial

and extensive testimony was taken regarding the Note with a copy being admitted into evidence. *See* Plaintiff's Exhibit 4.

6. To secure the payment of the Note, Carl A. Nunally and Frankie L. Nunally made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for NovaStar Home Mortgage, Inc., dated January 30, 2004, encumbering real property in Lexington County, ("Mortgage"), more fully described below ("Property"). The Mortgage was recorded on February 28, 2004, in the Lexington County Registry in Book 9041 at Page 4. The original Mortgage was presented at trial and extensive testimony was taken regarding the Mortgage and a copy was admitted into evidence. *See* Plaintiff's Exhibit 5.

7. Thereafter, the Mortgage was assigned to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 by assignment recorded on July 28, 2023 in Book 21067 at Page 4146. Thereafter, a Corrective Assignment of Mortgage to The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1 was recorded on October 3, 2023, in Book 21076 at Page 4337. *See* Plaintiff's Exhibits 9 and 10.

8. Carl A. Nunally, Sr. and Frankie L. Nunally did make, execute and deliver to JPMorgan Chase Bank, as Trustee for the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, its successors and assigns, a certain Loan Modification Agreement, dated September 2, 2009, amending and supplementing the Note and Mortgage described above. By virtue of the

Loan Modification Agreement, the unpaid principal balance was modified to \$104,168.2, together with interest at the rate of 1.5% per annum on the unpaid balance. *See* Plaintiff's Exhibit 8.

9. Frankie L. Nunally passed away on January 14, 2019, as evidenced by the information found in Estate File 2019-ES-32-01345 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally. Carl A. Nunally, Sr., passed away on September 4, 2021, as evidenced by the information found in Estate File 2022-ES-32-01253 in the probate records for Lexington County, South Carolina, indicating the heirs/devisees of the Property as Timothy Allen Nunally as Trustee of the CAN Irrevocable Trust.

10. The titleholders of record of the Property as of the filing of the Lis Pendens was/were Carl Alvin Nunally, Jr., Mark Anthony Nunally and Timothy Allen Nunally.

11. Based on the evidence presented, I find that payment due on the Note has not been made, and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney for collection.

12. Plaintiff seeks recovery of attorney's fees and court costs in this matter. As outlined at trial, a hearing regarding an award of attorney's fees will be held at a later date if necessary.

13. Plaintiff's witness, Louise Plasse, testified, including but not limited to (a) her qualifications (b) business record practices (c) prior trial testimony qualifications and (d) personal knowledge regarding the amount of the debt owed to the Plaintiff. Business records related to Plaintiff's calculation of the debt, Plaintiff's exhibits 11 through 15, were admitted into evidence without objection by the Defendants. *See* Transcript, pp. 59-74. Based on the testimony of Louise Plasse, and evidence presented, the amount due on the Note and Mortgage, with interest under the

terms provided in the Note, as modified, and other costs and expenses of collection, excluding attorney's fees and court costs, secured by the Note and Mortgage, is as follows:

Principal Due as of Today's Date:	02/10/2026	\$6,345.74
Deferred Principal Balance:		\$12,076.10
Accrued Interest From:	04/01/2023 to: 02/10/2026	\$271.97
Accruing at:	1.5% per annum	
Late Charges:		\$66.98
Escrow Advance Amt:		\$7,114.84
Title Search:		\$250.00
Property Inspections		\$600.00
BPO		\$250.00

14. Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09. Interest on the total debt shall accrue at the rate stated above until the judicial sale. Additional interest after the date of the judicial sale will be governed by the terms set forth below.

15. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b), SCRCF.

16. On September 30, 2025, this court issued an order on several motions filed by the Defendants including a motion to set aside default. The September 30, 2025, order contained rulings on, inter alia, subject matter jurisdiction, Plaintiff's standing to bring this foreclosure action as a real party in interest, and the Defendants' default for failure to respond to the Plaintiff's Complaint. Entry of default as to the Defendants constitutes an admission by the Defendants as to the allegations of the Complaint. *State ex rel. Medlock v. Love Shop, Ltd.* 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985). Notwithstanding, issues raised by the Defendants at trial will be addressed as set forth below.

17. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendants and such claims or liens are as follows:

A. The Defendants, Timothy Allen Nunally and Mark Anthony Nunnally, have or may claim to have some interest in the Property by virtue of a certain deed of the Estate of Carl Alvin Nunally, Sr., purporting to convey an interest in the Property to aforementioned Defendants. Said deed was recorded on September 6, 2023, in the Lexington County Records in Book 21073 at Page 1408. Any interest that this Defendant received in the Property is "subject to" Plaintiff's Mortgage and this interest should be eliminated through a properly completed foreclosure sale.

B. The Defendants, Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, have or may claim to have some interest in the Property by virtue of being heirs to or devisees of Frankie L. Nunally as shown in Estate File 2019-ES-32-01345 in the Lexington County Probate Records. Any interest that these Defendants would have received in the Property would have been "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

C. The Defendant, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, have or may claim to have some interest in the Property by virtue of being an heir to or devisee of Carl A. Nunally, Sr., as shown in Estate File 2022-ES-32-01253 in the Lexington County Probate Records. Any interest that this Defendant would have received in the Property would have been "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

D. Defendant Timothy Allen Nunally, as Personal Representative of the Estate of Carl A. Nunally, Sr., has or may claim to have some interest in the Property by virtue of being the Personal Representative as shown in the Estate File 2022-ES-32-01253. Any interest that this Defendant has in the Property would be "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

There are a number of relevant and disputed facts:

1. Defendants challenge Plaintiff's standing to bring the suit. This dispute includes Defendant's assertions regarding Race-Notice Considerations. Plaintiff asserts that it is the real party in interest withstanding to bring the instant foreclosure action based upon the testimony and evidence presented at trial. Plaintiff further asserts that its standing has been established by this Court's order entered September 30, 2025, which denied several motions filed by the Defendant.
2. Plaintiff's complaint includes a cause of action pursuant to the South Carolina Uniform Declaratory Judgments Act S.C. Code Ann. § 15-53-10, et. seq., and involves an actual, justiciable controversy between the parties as described therein. Plaintiff alleges that, due to inadvertent errors and mistakes, the Acknowledgment Section of the Mortgage was improperly executed by the Notary as the notary lists himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Plaintiff alleges that the notary intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the Note described herein. The Defendant's contest the Plaintiff's entitlement to declaratory judgment.

ISSUES:

1. Is the Plaintiff the real party in interest withstanding to bring this foreclosure?
2. Is the Plaintiff entitled to the relief sought in its declaratory judgment action?

CONCLUSIONS OF LAW AND DISCUSSION:

Plaintiff's standing to bring the foreclosure action

The Plaintiff's arguments related to standing are well taken. The Plaintiff's standing to

bring the foreclosure was addressed in this Court's September 30, 2025, order discussed above. The evidence presented at trial is consistent with the September 30, 2025, order. For finality, the findings regarding standing are incorporated below.

SCRCP Rule 17(a) provides that, "[e]very action shall be prosecuted in the name of the real party in interest" and further sets forth that, "[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest". In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing in the context of a mortgage foreclosure and noted, "[t]he requirement of Standing is not an inflexible one." *Id.* at 220 (quoting *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note." *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note."). *Id.* at 220.

Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action. In *Draper*, the Court of Appeals also acknowledged that a mortgage servicer has standing to initiate a foreclosure action. "Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view." *Id.* at 223.

I find and conclude that the Note was properly endorsed. The Note is endorsed on its face and there are two allonges affixed to the document. Despite the Defendants' assertions to the contrary, on its face, the Note was endorsed from Novastar Home Mortgage, Inc. to Novastar Mortgage, Inc. The Note is further endorsed from Novastar Mortgage, Inc. to JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. Each of the Novastar endorsements note the same trust which is consistent with the Plaintiff in this action. Finally, the Note is endorsed in blank by JPMorgan Case Bank N.A. f/k/a JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1. On its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

I find and conclude that the chain of assignments of the Mortgage to the Plaintiff is valid. While cogent evidence of the transfer of the Mortgage to the Plaintiff, the assignments are unnecessary to assert Plaintiff's right to enforce the Note and Mortgage. As noted in *BAC Home Loan servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549, "[t]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee". Quoting *Singleton v. Singleton*, 60 S.C. 216, 235, 38 S.E. 462, 469 (1901). Because it is the transfer of the Note that carries with it the transfer of the Mortgage, the recordation of the assignment simply puts the world on notice of the assignment, and the timing of its recording has no impact on Plaintiff's standing to bring the instant foreclosure action.

Further, the Defendants lack standing to challenge the transfer of the Note and Mortgage because they were not parties to said transfer. *In Re McFadden*, 471 BR 136 (2012); *see also Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012) (“Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity”); *see also Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). (“Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.”). The Defendants were not parties to the subject Note and Mortgage as they were named to foreclose any ownership interest they may have in the property.

A brief discussion of the race-notice considerations raised by the Defendants is warranted here. The common law holds that an unrecorded mortgage is valid against the **world entire**. *South Carolina Nat. Bank v. Guest*, 232 S.C. 367, 102 S.E.2d 215 (1958). South Carolina has adopted the common law in full except to the point modified by South Carolina Code Annotated § 30-7-10.¹ However, this modification only protects *bona fide* purchasers for value **without notice**. In all applications other than in regard to *bona fide* purchasers for value without notice, the common law rule remains effective. *See United States v. Anders Contracting Co.*, 111 F.Supp. 700 (D.S.C. 1953) stating that (“[u]nder the South Carolina law, **the common law rule that a ...mortgage over real estate is good against the world, though unrecorded, remains in effect except as changed by the Recording Act.**” (all emphasis added).

¹ South Carolina Code Annotated § 14-1-50 states:

all, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

The recordation statutes have **modified** the common law rule, but have not done away with it. The relevant enactment is found at South Carolina Code Annotated § 30-7-10. This provision states in relevant portion:

All ... mortgages or instruments in writing in the nature of a mortgage of any real property ... **are valid so as to affect the rights of subsequent ... purchasers for valuable consideration without notice**, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated... . (Emphasis added)

Thus, it is clear from this provision that the race-notice statute does not abrogate the common law rule entirely. It modifies it only to the degree of protecting subsequent purchasers for valuable consideration without notice. *Goodrich Silvertown, Inc. v. Rogers*, 189 S.C. 101, 200 S.E. 91 (1938).

It is critical to note that the Defendants' parents executed the mortgage to the Plaintiff that was recorded February 28, 2004, well before the Defendant's Deed of Distribution.

Here, the evidence establishes that the Defendants took title to the subject property from the estates of their parents, the mortgagors herein, Carl Alvin Nunally, Sr. and Frankie Nunally. Carl Alvin Nunally, Sr. passed away September 4, 2021. A Deed of Distribution into the Defendants was signed by Timothy Nunally as Personal Representative of the Estate of Carl Alvin Nunally, Sr. on May 30, 2023, and recorded in the Lexington County Registry on September 6, 2023, in Book 21073 at Page 1408. At the time the Defendants received their respective interests in the Subject Property, the Mortgage was present in the Lexington County land records, having been recorded in the Lexington County Registry on February 28, 2004, in Book 9041 at Page 4. Therefore, the Defendants had record notice of the subject Mortgage prior to receiving their interests in the Subject Property.

Defendant Timothy Allen Nunally testified that, as Personal Representative of the Estate of Carl Alvin Nunally, Sr., he made a number of payments on the subject Mortgage following his father's passing. Indeed, no defendant has denied actual knowledge of the Mortgage, but rather the Defendants rely on their belief that the Mortgage should not have been recorded to argue that the Mortgage should not constitute record notice of the Plaintiff's lien. The Defendants' position is untenable and would not erase their actual knowledge of the Mortgage as a means of avoiding foreclosure. I find and conclude that the Defendants had both actual and record/inquiry notice of the Mortgage and, therefore, their race-notice considerations do not affect the enforceability of the Mortgage.

Finally, I find and conclude that the Defendants are protected from potential double-liability from any party other than the Plaintiff attempting to enforce the Note and Mortgage because, based on the testimony and evidence presented, no such party exists. Based on the foregoing, all issues related to standing and enforceability of the Note and Mortgage are hereby resolved in favor of the Plaintiff.

Plaintiff's request for declaratory relief

Attorney Brian L. Boger testified at trial regarding his role as the attorney who supervised the closing of the loan as well as his serving as a witness and notary regarding the signatures of Carl A. Nunally, Sr. and Frankie L. Nunally on the Mortgage. Mr. Boger testified that, due to inadvertent error and mistake, the Acknowledgment Section of the Mortgage was improperly executed as he inadvertently listed himself as the party whose signature was being acknowledged instead of the Mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. Mr. Boger testified that he intended to properly execute the Acknowledgment Section, and that the clear intent of the parties to the Mortgage was to execute and record a valid Mortgage to secure repayment of the

Note described herein. Mr. Boger's testimony was unrefuted and unequivocal. Therefore, I find and conclude that the Plaintiff is entitled to an order declaring that the Mortgage is an equitable lien or equitable mortgage on the subject property as of the date of its execution and that the Mortgage represents a valid and subsisting first lien on the subject property.

FURTHER CONCLUSIONS OF LAW:

1. The Plaintiff is entitled to judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertising.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is \$26,975.09.
4. Defendants have fifteen (15) days from the date of the filing of this Order to file with Clerk of Court and serve on Court and Plaintiff a written request for an additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs.
5. Interest should continue to accrue on the Total Debt. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff is hereby granted judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be sold at public auction after statutory advertising.
3. The Total Debt secured by Note and Mortgage, excluding attorney's fees and court costs is ordered and established at \$26,975.09. An additional hearing on the amount and measure of the Plaintiff's attorney's fees and court costs will be scheduled if necessary.

4. Interest shall accrue continue to accrue on the Total Debt, including any attorney's fees and court costs awarded to the Plaintiff. Costs incurred after the entry of this Order up to the date of judicial sale may be added to the Total Debt
5. That the Defendant(s) liable for the Total Debt shall, prior to the judicial sale pay to the Plaintiff, or the Plaintiff's attorney, the Total Debt including accrued interest, costs, and disbursements.
6. That on default of payment, the Property shall be sold at public auction at the Lexington County Judicial Center, City of Lexington, County and State aforesaid, on some convenient sales day on the following terms:
 - A. The selling officer shall require a deposit of 5% of the bid (in cash or its equivalent) to be applied to the purchase price upon compliance, but in case of non-compliance within thirty (30) days, the deposit shall be forfeited and applied to the Plaintiff's costs of sale and the balance then applied to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 1.5%.
 - C. The sale shall be subject to taxes and assessments, easements and restrictions of record, and any senior encumbrances.
 - D. The Purchaser shall pay for the deed and the cost of recording.
7. If the Plaintiff is the successful bidder for less than the total debt at the time of sale, the Plaintiff shall pay only the amount of the Court's costs and expenses.
8. No personal or deficiency judgment being demanded, the bidding shall be final on the sale date, and the successful bidder may comply immediately.
9. Notice of the time, date, and place of the sale and the terms thereof will be advertised according to law.

10. The selling officer will execute to the purchaser(s) a deed of the Property. If any successful bidder, other than the Plaintiff or its assignee, fails to comply with the terms of sale within thirty (30) days, the Property may be re-advertised for sale according to the same terms set forth herein until full compliance.
11. If an agent for the Plaintiff does not appear at the sale, the Property shall be withdrawn from sale and sold at the next available sales date upon the same terms.
12. The selling officer shall apply the proceeds of the sale as follows:
 - FIRST: To the payment of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of the Court; and
 - NEXT: To the payment of the Total Debt, interest, and costs as defined above; and
 - NEXT: Any surplus will be held pending further Order pursuant to Rule 71(c), SCRCP.
13. That it is further ORDERED that each named Defendant, and all persons claiming under him, them or it, be forever barred and foreclosed of all rights, title, interest, lien, and equity of redemption in the Property, or any part thereof.
14. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, the Sheriff of Lexington County is hereby ordered and directed to eject and remove from the premises the named Defendants holding record title to the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

15. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, and the property remains occupied by a person or persons holding or claiming to hold the property under lease from the record title holders, or who otherwise may have rights or protections under Federal or State statutes protecting such lessees, the Sheriff of Lexington County shall only be ordered and directed to eject and remove from the premises those occupants under the terms stated above, after a hearing as directed by this court and under such order or writ as may be issued by this court as deemed equitable under the circumstances.
16. That it is further ORDERED that after the Order Confirming Sale and Disbursements has been filed, the undersigned Master In Equity shall direct the Register of Deeds to release the lien(s) being foreclosed.
17. That it is further ORDERED that the following is a description of the Property to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF LEXINGTON, STATE OF SOUTH CAROLINA, THE SAME BEING SHOWN AND DESIGNATED AS LOT NO. 283, BLOCK W, ON A PLAT OF MURRAYWOOD II BY HEANER ENGINEERING CO., DATED OCTOBER 27, 1972, REVISED JULY 1, 1975, AND RECORDED IN THE OFFICE OF THE ROD FOR LEXINGTON COUNTY IN PLAT BOOK 139-G AT PAGE 23. ALSO BEING SHOWN ON A PLAT PREPARED FOR DANE C. FROST AND TERRI L. FROST BY BELTER & ASSOCIATES, INC., DATED JUNE 14, 1993, AND RECORDED IN PLAT BOOK 262 AT PAGE 70. REFERENCE BEING MADE TO SAID LATTER PLAT WHICH IS INCORPORATED HEREIN FOR A MORE COMPLETE AND ACCURATE DESCRIPTION; ALL MEASUREMENTS BEING A LITTLE MORE OR LESS.

THIS BEING THE SAME PROPERTY CONVEYED TO CARL A. NUNALLY AND FRANKIE L. NUNALLY BY DEED OF DANE C. FROST AND TERRI L. FROST DATED AUGUST 8, 1994, AND RECORDED MARCH 12, 1999, IN BOOK 5145 AT PAGE 97 IN THE OFFICE OF THE REGISTER OF DEEDS FOR LEXINGTON COUNTY, SOUTH

CAROLINA. THEREAFTER, FRANKIE L. NUNALLY PASSED AWAY ON JANUARY 14, 2019, LEAVING THE SUBJECT PROPERTY TO HER HEIRS CARL ALVIN NUNALLY, SR., CARL ALVIN NUNALLY, JR., MARK ANTHONY NUNALLY, AND TIMOTHY ALLEN NUNALLY, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2019-ES-32-01345 IN SAID RECORDS. SUBSEQUENTLY, CARL A. NUNALLY PASSED AWAY ON SEPTEMBER 4, 2021, LEAVING THE SUBJECT PROPERTY TO HIS DEVISEE, TIMOTHY ALLEN NUNALLY, AS TRUSTEE OF THE CAN IRREVOCABLE TRUST, AS IS MORE FULLY PRESERVED IN PROBATE FILE NO. 2022-ES-32-01253. SEE ALSO THE DEED OF DISTRIBUTION DATED MAY 30, 2023, AND RECORDED SEPTEMBER 6, 2023, IN BOOK 21073 AT PAGE 1408 AND RE-RECORDED SEPTEMBER 27, 2023, IN BOOK 21075 AT PAGE 5539 IN SAID RECORDS.

CURRENT ADDRESS OF PROPERTY: 1759 Willow Creek Drive, Columbia, SC 29212

TMS:002734-01-003

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024-CP-32-01094

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally
 DEFENDANT(S)

PLAINTIFF(S)

Submitted by:
 Brock & Scott, PLLC
 Westpark Center
 3800 Fernandina Road, Suite 110
 Columbia, SC 29210

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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.

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)
		N/A
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p> <p>All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W, on a plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975, and recorded in the Office of the ROD for Lexington County in Plat Book 139-G at Page 23. Also being shown on a plat prepared for Dane C. Frost and Terri L. Frost by Belter & Associates, Inc., dated June 14, 1993, and recorded in Plat Book 262 at Page 70. Reference being made to said latter plat which is incorporated herein for a more complete and accurate description; all measurements being a little more or less.</p> <p>This being the same property conveyed to Carl A. Nunally and Frankie L. Nunally by deed of Dane C. Frost and Terri L. Frost dated August 8, 1994, and recorded March 12, 1999, in Book 5145 at Page 97 in the Office of the Register of Deeds for Lexington County, South Carolina. Thereafter, Frankie L. Nunally passed away on January 14, 2019, leaving the subject property to her heirs Carl Alvin Nunally, Sr., Carl Alvin Nunally, Jr., Mark Anthony Nunally, and Timothy Allen Nunally, as is more fully preserved in Probate File No. 2019-ES-32-01345 in said Records. Subsequently, Carl A. Nunally passed away on September 4, 2021, leaving the subject property to his devisees, Timothy Allen Nunally, as Trustee of the CAN Irrevocable Trust, as is more fully preserved in Probate File No. 2022-ES-32-01253. See also the Deed of Distribution dated May 30, 2023, and recorded September 6, 2023, in Book 21073 at Page 1408 and re-recorded September 27, 2023, in Book 21075 at Page 5539 in said Records.</p>		

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. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge	Judge Code	Date
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For Clerk of Court Office Use Only

This judgment was entered on the ___ day of _____, 2026 and a copy mailed first class or placed in the appropriate attorney’s box on this ___ day of _____, 2026 to attorneys of record or to parties (when appearing pro se) as follows:

Brock & Scott, PLLC
 Westpark Center
 3800 Fernandina Road, Suite 110
 Columbia, SC 29210

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 judgment 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.



Lexington Common Pleas

Case Caption: The Bank Of New York Mellon, F/K/A The Bank Of New York As ,
plaintiff, et al VS Timothy Allen Nunally Prs , defendant, et al
Case Number: 2024CP3201094
Type: Master/Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068