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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Charles B. Simmons, Jr., Master in Equity

Appellate Case No. 2025-002218

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

v.

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

of which Erica Lynn Davis and Austin J. Davis,Appellants.

**INITIAL BRIEF OF RESPONDENT ROBERT BARNETT,
AS TRUSTEE OF THE RH 401(k) PLAN**

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Master in Equity correctly find that Respondent is entitled to foreclose real property located in Greenville County, South Carolina, in satisfaction of a debt owed to it on account of a purchase money promissory note and security documents?

INTRODUCTION

This appeal arises out of the attempts of Appellants Erica Lynn Davis and Austin J. Davis (“Appellants”) to set aside the entry of the Master’s Order and Judgment of Foreclosure and Sale entered in Greenville County, South Carolina. Like the Master in Equity, this Court should reject Appellants’ arguments.

STATEMENT OF THE CASE

Respondent Robert Barnett, as Trustee of the RH 401(k) Plan (“Respondent”) is the holder of a purchase money Note executed by Appellant Erica Lynn Davis (“E. Davis”) and delivered to Synovus Bank (“Synovus”). The Note was secured by a certain purchase money Mortgage executed by Appellants and encumbering real property in Greenville County, South Carolina. The Note and Mortgage shall be further identified and defined herein. E. Davis defaulted on her obligations under the Note, which was assigned to Respondent.

On June 18, 2025, Respondent filed a Verified Summons and Complaint in the Greenville County Circuit Court requesting that (1) the amount due on the Note and Mortgage be ascertained and determined, (2) the Mortgage be declared a first mortgage lien and that Respondent have judgment of foreclosure for the amount due and owing thereon, (c) that the mortgaged premises be sold and that proceeds be applied according to law, and (d) for such other relief as may be just and proper. *See generally* (Compl.). Respondent waived its rights to a deficiency judgment. (Compl.). E. Davis was named as a defendant in the action by virtue of executing the Note. *See generally* (Compl.). Austin J. Davis (“A. Davis”) was named as a defendant in the action by virtue of executing the Mortgage along with E. Davis. *See generally* (Compl.). Signature Gain Express Trust, DTE 06/22/2022 (An Irrevocable Express Trust Organization) Harol Alezu

Lozano Moran, Sole Trustee (the “Express Trust”) was named as a defendant in the action as the record owner of the subject property. *See generally* (Compl.).

On July 24, 2025, the Express Trust, by and through E. Davis as alleged Trustee, filed a Verified Counterclaim for Fraud upon the Court, Negligent Misrepresentation, Abuse of Process, and Quiet Title. (Counterclaim). Also on July 24, 2025, the Express Trust, by and through E. Davis as alleged Trustee, filed a Petition to Dismiss for Lack of Standing and Demand for Evidentiary Hearing, Quiet Title, and Other Relief. (Motion to Dismiss). On July 30, 2025, Respondent filed an Affidavit of Default as to Appellants, who had not appeared individually in the action. (Affidavit of Default).

On July 30, 2025, Respondent filed an Affidavit to support the proposed Order referring the foreclosure case to the Master in Equity. (Affidavit). An Order of Reference was entered by the Clerk of Court for the Greenville County Circuit Court on July 30, 2025, pursuant to which the case was referred to the Master in Equity for Greenville County. (Order of Reference).

On August 4, 2025, the Express Trust, by alleged Trustee Erica Davis, filed an Objection to the Clerk’s entry of Order and a Rule 60(b) Petition to Vacate Order Entered without Judicial Authority in relation to the Order of Reference. (Objection to Entry of Order, Petition to Vacate). E. Davis, as Trustee/Authorized Representative, filed a Petition to Strike Respondent’s Affidavit from the record on August 4, 2025. (Petition to Strike).

On August 13, 2025, Respondent filed its Response to the Express Trust’s Counterclaim. (Plaintiff’s Response to Counterclaim). Also on August 13, 2025, Respondent filed a Notice of Motion and Motion to Strike and for Default seeking to strike the Petition to Dismiss and Counterclaim of the Express Trust pursuant to Rule 12(f) of the South Carolina Rules of Civil

Procedure because the Express Trust was not represented by counsel. (Motion to Strike). Thereafter, on August 14, 2025, Respondent moved for Summary Judgment as to the liability of E. Davis on the underlying loan documents. (Notice and Motion for Summary Judgment).

On August 18, 2025, E. Davis, as Trustee/Authorized Representative, filed a Response in Opposition to Respondent's Motion to Strike in which the Express Trust argued that the alleged standing issue needed to be decided. (Response to Motion to Strike). Also on August 18, 2025, E. Davis, as Trustee/Authorized Representative, filed a Jurisdictional Memorandum on Standing and Subject-Matter Jurisdiction in which the Express Trust argued that the court did not have subject-matter jurisdiction. (Memorandum on Standing).

On August 19, 2025, Respondent filed a notice that the following matters would be considered at a hearing scheduled for September 17, 2025:

- Respondent's Motion to Strike and for Default Judgment,
- Respondent's Response to the counterclaim of the Express Trust,
- Respondent's Motion for Summary Judgment; and
- The Objections, Responses, and Petitions filed by the Express Trust.

(Notice of Hearing). On August 25, 2025, the Express Trust filed a petition to strike the scheduled hearing and filed an Objection to the hearing for lack of prior standing determination. (Petition to Strike Scheduled Hearing, Objection to Hearing).

A hearing was held on September 17, 2025, after which hearing the Master's Order and Judgment of Foreclosure and Sale was entered on September 24, 2025. Also on September 24, 2026, A. Davis filed a Memorandum on Law in which he challenged the evidence before the court. (Memorandum on Authentication). The Express Trust, by Respondents referring to themselves as "Authorized Representative[s]," filed an Emergency Motion for a hearing on standing and

temporary restraining order on the same day and a Motion to compel production of additional evidence. (Emergency Motion, Motion to Compel). Finally, the Express Trust, “by Trustee Erica A. Davis and Authorized Representative, Austin J. Davis,” filed a Notice of Appeal on October 21, 2025. (Notice of Appeal). This appeal follows.

Because neither the Express Trust nor Appellants of record filed a bond with the Court of Appeals to stay the execution of the foreclosure pursuant to S.C. Code Ann. § 18-9-170 and Rule 241, SCACR, the subject property was sold at foreclosure sale on November 3, 2025. (Order on Sale). Respondent was the successful bidder and is now the record owner of the subject property. (Order on Sale, Master’s Deed). Respondents did on January 7, 2026, file a Motion to stay the enforcement of the judgment and writ of assistance pending the appeal. It was not ruled on by the Master in Equity or Circuit Court for Greenville County.

STATEMENT OF THE FACTS

On December 13, 2019, E. Davis executed and delivered to Synovus a Note whereby she promised to pay Synovus the principal sum of One Hundred Ninety-Seven Thousand Eighty and 00/100 Dollars (\$197,080.00), together with interest at a rate of 4.375% (the “Note”). (Compl.). To secure the Note, on December 13, 2019, Appellants executed and delivered to Synovus a Mortgage covering real property located in Greenville County, South Carolina (the “Mortgage”). (Compl.). The Mortgage was recorded on December 16, 2019, in the Office of the Register of Deeds for Greenville County in Book MO 5511 at Page 4109. (Compl.). The Mortgage encumbers the real property located at 131 Roundtree Drive, Greenville, South Carolina (the “Subject Property”). (Compl.).

As evidenced by that certain Deed by a Corporation or Partnership dated December 13, 2019 (the “Original Deed”), Appellants purchased the Subject Property from NVR, Inc. on December 13, 2019 for a purchase price of \$197,080.00. (2019 Deed). The 2019 Deed was recorded in the Office of the Register of Deeds for Greenville County in Book DE 2583 at Page 1063. (2019 Deed). According to the records of Greenville County, South Carolina, A. Davis conveyed his interest in the subject property to E. Davis pursuant to that Title to Real Estate dated February 26, 2020, and recorded on February 26, 2020, in the Office of the Register of Deeds for Greenville County in Book DE 2855 at Page 2616. (Compl.). Thereafter, E. Davis purported to convey the subject property to the Express Trust by virtue of that Quitclaim Deed dated February 22, 2023, and recorded on June 3, 2023, in the Office of the Register of Deeds for Greenville County in Book DE 2690 at Page 553. (Compl.).

On January 18, 2024, Appellants filed an action against Synovus in the Court of Common Pleas for Greenville County, South Carolina, in Case No. 2024-CP-23-00341 (the “Action Against

Synovus”). In the Action Against Synovus, Appellants sought to bar Synovus from foreclosing on the subject property by alleging causes of action for lack of standing to foreclosure, fraud in the concealment, fraud in the inducement, and intentional infliction of emotional distress. The Action Against Synovus was removed to the United States District Court for the District of South Carolina under case No. 6:24-cv-00834-TMC. The Action Against Synovus was dismissed by Order of the District Court on August 27, 2024.

E. Davis failed to make installments of principal and interest due on the Note from and after October 1, 2023, although demand was made for payment. (Compl.). E. Davis was notified of the default on October 10, 2024. (Compl.).

Synovus assigned the Note and Mortgage to Respondent pursuant to that certain Assignment of Note, Mortgage, and Other Loan Documents on or about May 12, 2025 (the “Assignment”). (Compl.). The Assignment was recorded on May 12, 2025, in the Office of the Register of Deeds for Greenville County in Book MO 5822 at Page 1225. (Compl.). Despite demand, E. Davis did not cure the default, and in accordance with the underlying loan documents, Respondent elected to declare the entire balance of principal and interest due and payable. (Compl.). Respondent filed a foreclosure action to pursue a sale of the subject property in satisfaction of the outstanding debt. *See generally* (Compl.).

This matter comes before the Court on the Master in Equity’s order granting judgment of foreclosure and sale.

STANDARD OF REVIEW

A mortgage foreclosure is an action in equity. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). Therefore, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *United States Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (citing *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008)). ““However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses.”” *Id.* (quoting *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001)). ““Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings.”” *Id.* (quoting *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 620)).

ARGUMENT

As an initial matter, Appellants are not the proper party to bring this appeal as they were in default in the underlying action. Additionally, Appellants do not meaningfully dispute the Master in Equity's findings that there is a debt due and owing from E. Davis on account of the Note and Mortgage which was to be satisfied by the foreclosure sale of the subject property. Instead, Appellants attempt to re-assert unfounded arguments as to standing which were either rejected or not ruled on by the Master in Equity. (Order). Because the equity court did not rule on this issue, it is not preserved for appellate review. *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005). Alternatively, even if the issue was preserved, the Master in Equity correctly issued its foreclosure order on summary judgment because Respondent sufficiently proved that there was a debt secured by the subject property and that it was the holder of the debt instrument. (Order).

Appellants also attempt to improperly set forth new outlandish arguments as to the nature of the debt which were not presented at the foreclosure hearing and were not ruled on by the Master in Equity. (Transcript, Order). Even if preserved, these arguments must be dismissed as the theories that have been repeatedly rejected by courts. *Webb v. EquiFirst Corp.*, Civil Action No. 7:15-cv-00413, 2016 U.S. Dist. LEXIS 43051, at *17 (W.D. Va. Mar. 31, 2016).

I. Appellants do not have standing to bring this Appeal.

The Notice of Appeal for this matter was filed by "Austin Davis and Erica Davis, Individually and as Trustees of the SIGNATURE GAIN EXPRESS TRUST." (Notice of Appeal). For the reasons explained herein, none of these parties had authority to appeal to Order. Further, the Initial Brief of Appellants was only submitted by Appellants E. Davis and A. Davis (Appellant Initial Brief).

a. Appellants were in default in the underlying action.

A party in default cannot appeal from a judgment against him or her. *Duncan v. Duncan*, 93 S.C. 487, 498, 76 S.E. 1099, 1102 (1913); *see also Odom v. Burch*, 52 S.C. 305, 307, 29 S.E. 726, 727 (1898)(“Unless provided for expressly by statute, no appeal can be taken from a judgment by default”). Instead, a defaulting party’s remedies are instead limited to a motion to set aside such default judgment. *Gillian v. Gillian*, 65 S.C. 129, 133, 43 S.E. 386, 387 (1903). “A party in default has three primary options: (1) do nothing pending the entry of judgment by default under Rule 55(b), SCRPC; (2) file an appearance under Rule 55(b)(2), SCRPC, in an attempt to protect its interests before the entry of judgment by default; or (3) request the entry of default be set aside pursuant to Rule 55(c), SCRPC.” *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 635-36, 856 S.E.2d 150, 151 (2021).

Appellants did not appear in the underlying foreclosure action. (Affidavit of Default), (Tr. at 14: 13-14). E. Davis was the borrower under the Note in question, and both Appellants were mortgagors under the Mortgage. However, they do not have the option to appeal the Order of foreclosure or to dispute the judgment entered against them. “By suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.” *Roche v. Young Bros.*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). Further, Appellants did not file a Motion to set aside the sale or reconsider any underlying orders. Because they did not participate in the underlying action to dispute the underlying allegations, they do not have standing to appeal the judgment entered against them.

b. The Trust appeared without counsel in the underlying action, implicating it in the unauthorized practice of law.

“No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina.” S.C. Code Ann. § 40-5-310. “Section 40-5-80 does not authorize a non-attorney trustee of a valid trust to represent the trust in the court of common pleas because the action would not be the trustee's “own cause” but rather that of the trust and its beneficiaries.” *Real Estate Unlimited, L.L.C. v. Rainbow Living Tr.*, No. 2004-UP-019, 2004 S.C. App. Unpub. LEXIS 8, at *5 (Ct. App. Jan. 15, 4). A nonlawyer trustee cannot represent an entity in circuit or appellate courts. *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651 (1999).

The Express Trust filed numerous documents in the underlying case through its trustees, either E. Davis or A. Davis. *See generally* (Counterclaim, Motion to Dismiss, Objection to Entry of Order, Petition to Vacate, Emergency Motion, Motion to Compel, Notice of Appeal). All of these filings were improper as the alleged trustee cannot represent the Express Trust in legal proceedings. The Express Trust must be represented by an attorney. Therefore, the Express Trust should have been held in default, which would result in it not having grounds to appeal the Order. (Motion to Strike) (Tr. at 16: 13-16).

Even if it did have standing to appeal, the Express Trust did not submit the Initial Brief and has not appeared in this appeal through counsel or otherwise. (Appellant Initial Brief). Therefore, the Express Trust has not participated in this appeal and is not a party to whom Respondent hereby responds. The Express Trust was the record owner of the Subject Property prior to the foreclosure sale and did not move to set aside the sale.

II. The Master in Equity correctly found Respondent was entitled to an order of judgment and foreclosure on the underlying debt.

a. Respondent sufficiently proved the existence of an obligation owed by E. Davis and secured by the Subject Property.

Summary judgment shall be granted if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” To default summary judgment, a non-moving party must present evidence creating a genuine issue of material fact and may not solely rely on assertion in pleadings, motions, and arguments that the allegations are defective. *United States Bank v. Meisner*, No. 2022-UP-237, 2022 S.C. App. Unpub. LEXIS 418, at *6 (Ct. App. Aug. 10, 2022). South Carolina is a strict foreclosure state, and it’s foreclosure process is found in S.C. Code Sections 29-3-610, et seq.

Despite Appellants being in default and the Express Trust filing a Counterclaim and Motion Petition to Dismiss without counsel, Respondent filed a Motion for Summary Judgment and supporting Affidavit in the underlying action. (Motion for Summary Judgment, Affidavit). In the supporting Affidavit, Robert Barnett, as Trustee of Respondent, set forth the loan history and included copies of the loan documents to include the Note and Allonge, Mortgage, and Assignment. (Affidavit). The Affidavit also included a current accounting of the debt and attached a statement of account and payment history. (Affidavit). Neither Appellants, who did not appear in the underlying action, nor the Express Trust filed an opposing affidavit to contradict the evidence.

At the hearing on the merits, counsel for Respondent also presented the court with the original Note. (Tr. at 12: 11-14, 23-25; 13: 3-4). At the hearing, E. Davis confirmed that she had signed loan documents with Synovus, the original lender under the Note. (Tr. at 7: 21-23, 8: 23-

24). In exchange for the Note, E. Davis also confirmed at the hearing that “[t]here was a home received” (Tr. at 10: 13-14) and that a deed for the subject property was transferred to E. Davis and/or A. Davis. (Tr. at 11: 8-11). As outlined, Appellants purchased the Subject Property on the same day that the loan documents were executed. (Compl.) (2019 Deed). In response to arguments made by A. Davis at the hearing, counsel for Respondent also provided the Court and Appellants with a copy of the closing documents of the subject Note, which clearly showed that the money for the loan went to purchase the Subject Property. (Order). The Master in Equity correctly held that, from the record and evidence, there is no material fact in dispute, Appellants and the Express Trust have no defense, and Respondent is entitled to relief requested as a matter of law on the underlying debt. (Order.)

b. Underlying documents sufficient to evidence the debt and security were admitted into the record.

Business records are admissible into evidence as an exception to hearsay. The business record exception of S.C. R. Evid. 803(6) excludes from hearsay “[a] memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness . . .” *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 71, 773 S.E.2d 607, 614 (Ct. App. 2015). South Carolina Code Section 19-5-510 also notes that “a record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.”

Appellants did not object to the admissibility of the underlying loan documents in the Affidavit but instead insisted that they were entitled to see original documents. Counsel for Respondent did bring the original copy of the Note to the hearing. (Tr. at 12: 11-14, 23-25; 13: 3-4). The Mortgage was recorded following the sale of the Subject Property to Appellants. (Compl.). Appellants have not disputed the authenticity of the Mortgage. The Master in Equity correctly held that the evidence before the court was sufficient to show the debt and the lien on the Subject Property. This is in line with other courts, who have routinely rejected this “show me the note” theory. *Blick v. Wells Fargo Bank, N.A.*, No. 3:11-cv-00081, 2012 U.S. Dist. LEXIS 41266, at *15 (W.D. Va. Mar. 27, 2012). Appellants did not set forth any evidence to dispute the underlying documents. As a result, summary judgment was appropriate as there is not an issue of material fact as to Respondent’s allegations.

III. Appellant’s arguments as to the nature of the debt were not preserved for appeal.

In their Initial Brief, Appellants set forth arguments that the Note was “transformed” into a security and the debt “extinguished upon its deposit as ‘eligible paper’” such that it was satisfied. (Appellant Initial Brief). Because the Master in Equity did not rule on this issue, it is not preserved for appellate review. *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005). Appellants did not raise these unfounded arguments at the hearing on the merits, and the Order does not include a ruling as to these issues. (Tr.) (Order). Additionally, neither Appellants nor the Express Trust filed a motion to alter or amend the Order to preserve the arguments. “If a party has raised an issue and the circuit court has not ruled upon it, a motion to alter or amend is required to preserve the issue for appellate review.” *S.C. Coastal Conservation League, Inc. v. Charleston Cty.*, 442 S.C. 409, 418-19, 899 S.E.2d 609, 614 (Ct. App. 2024) (quoting *Great Games, Inc. v.*

S.C. Dep't of Revenue, 339 S.C. 79, 85, 529 S.E.2d 6, 9 (2000)). As a result, the arguments under section III of Appellants' Initial Brief are not preserved for appeal.

Alternatively, even if it was preserved, the Master in Equity correctly disregarded the arguments that the debt has been "satisfied" under "federal accounting and securities law." (Appellant Initial Brief). These arguments have been repeatedly rejected by courts. *Webb v. EquiFirst Corp.*, Civil Action No. 7:15-cv-00413, 2016 U.S. Dist. LEXIS 43051, at *17 (W.D. Va. Mar. 31, 2016); *Upperman v. Deutsche Bank Nat'l Tr. Co.*, Civil Action No. 01:10-cv-149, 2010 U.S. Dist. LEXIS 38827, at *5-6 (E.D. Va. Apr. 16, 2010) ("There is no legal authority that the sale or pooling of investment interests in an underlying note can relieve borrowers of their mortgage obligations or extinguish a secured party's rights to foreclose on secured property."); *Zambrano v. HSBC Bank USA, Inc.*, Civil Action No. 01:09-cv- 996, 2010 U.S. Dist. LEXIS 51371, 2010 WL 2105164, at *2 (E.D. Va. May 25, 2010), *aff'd*, 442 Fed. App'x. 861 (4th Cir. 2011) (per curiam). Similarly, this Court should reject these arguments from Appellants.

CONCLUSION

For these reasons, the Court should affirm the Master in Equity's final judgment of foreclosure and sale in Respondent's favor.

Respectfully submitted,

/s/C. Elizabeth Weston

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