

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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SC Court of Appeals

**U.S. BANK TRUST NATIONAL ASSOCIATION,
AS TRUSTEE OF TIKI SERIES IV TRUST,
Respondent,**

v.

**ANGELA T. FRANKS a/k/a ANGELA THOMANSINA FRANKS
and CMS ROOFING, LLC,
Defendants,**

**of which ANGELA T. FRANKS, a/k/a ANGELA THOMANSINA FRANKS is the
Appellant.**

Appellate Case No. 2024-000917

Appeal From Richland County
Master-in-Equity: Joseph M. Strickland

FINAL BRIEF OF APPELLANT

Filed: May 13, 2026

Angela T. Franks (pro se)
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(803) 466-3005

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Statutes and Rules

Rule 208(b), SCACR.	—
Rule 209(b), SCACR.	—
Rule 210(c), SCACR.	—
Rule 267, SCACR (binding/cover requirements for paper filings).	—
S.C. Code Ann. § 36-3-309 (enforcement of lost, destroyed, or stolen instrument).	—

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Master-in-Equity committed reversible error by entering foreclosure where the case was contested, yet Respondent failed to present admissible evidence establishing its right to enforce the note, default, and the amount due.
2. Whether the May 15, 2024 Order's recital that "testimony was taken" is unsupported and materially undermined where Appellant timely requested a transcript and was advised no court reporter/recording existed, impairing meaningful appellate review.
3. Whether Respondent's preservation/waiver arguments fail where the challenged findings were necessarily decided by entry of foreclosure and where the record lacks evidentiary support.
4. Whether dismissal with prejudice is warranted for failure of proof and record deficiencies, or, at minimum, vacatur and remand for a properly recorded evidentiary hearing; and whether Appellant's damages claims should be remanded for adjudication.

STATEMENT OF THE CASE

This is an appeal from an Order of Foreclosure and Sale entered by the Richland County Master-in-Equity on May 15, 2024 following a hearing held May 14, 2024. Appellant is a pro se defendant who filed responsive pleadings and contested Respondent's right to foreclose, the absence of a produced promissory note, and the amount claimed due. The Order states that "testimony was taken," yet Appellant disputes that any witness was sworn or testified. Appellant timely requested a transcript and was advised no court reporter/recording existed. Respondent nevertheless obtained foreclosure relief. Appellant seeks reversal and dismissal with prejudice, or at minimum vacatur and remand for a properly recorded evidentiary hearing, and remand for adjudication of damages/counterclaims. (R. 99–110; R. 68–72; R. 180–181)

STATEMENT OF FACTS

1. Contested posture. Appellant filed an Answer and participated in the proceedings. No motion for default judgment was pursued and no order of default appears in the record. (R. 68–72)
2. Hearing and order. The foreclosure hearing occurred May 14, 2024. The Master’s Order (entered May 15, 2024) recites that “testimony was taken” and that findings were made from “the testimony and evidence.” Appellant disputes that any witness was sworn or testified; the proceeding consisted of counsel’s positions and document references. (R. 99–110)
3. No transcript. Appellant requested the transcript for the May 14, 2024 hearing and was informed that there was no court reporter/tape and therefore no transcript could be produced. Appellant also objected to any counsel-prepared narrative record that omitted or misstated what occurred. (R. 180–181)
4. Proof of debt/enforcement. Respondent relied on affidavits (including a lost note affidavit and debt/default affidavits) rather than live testimony from a qualified witness subject to cross-examination. Appellant consistently objected to the absence of a note, the lack of a qualified witness, and the unliquidated/unsupported amount claimed due.

STANDARD OF REVIEW

A foreclosure action is in equity. The appellate court may review the record to determine whether the judgment is supported by the preponderance of the evidence and whether the trial court committed an error of law. A judgment unsupported by evidence in the record constitutes reversible error.

ARGUMENT

I. Because the Case Was Contested, Respondent Bore the Burden of Proof and Could Not Prevail on Affidavits and Counsel Argument

Where a borrower answers and contests foreclosure, the lender bears the burden to prove (1) entitlement to enforce the note, (2) default, and (3) the amount due by competent, admissible evidence. See *BB&T of South Carolina v. Fleming*, 360 S.C. 341, 601 S.E.2d 540 (2004). This matter was contested; it was not a default. Accordingly, Respondent could not obtain foreclosure based merely on pleadings, unsworn submissions, and counsel's argument.

Affidavits are not trial evidence and cannot substitute for testimony subject to cross-examination in a contested hearing. *Risher v. Risher*, 313 S.C. 364, 438 S.E.2d 533 (1993). Likewise, statements of counsel are not evidence. *State v. Thompson*, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007). Because Respondent did not present a qualified witness to authenticate records and establish enforcement rights, default, and amount due, the foreclosure judgment lacks evidentiary support and must be vacated.

II. The Order's Recital That "Testimony Was Taken" Is Unsupported by Any Verbatim Record and Impairs Meaningful Appellate Review

The May 15, 2024 Order recites that "testimony was taken" and that findings were made from "the testimony and evidence." (R. 99) Appellant disputes that any witness was sworn or testified; the hearing consisted of counsel's unsworn proffers and document references. Appellant timely requested a transcript and was advised there was no court reporter/recording and therefore no transcript could be produced. (R. 180–181).

Where a judgment rests on purported "testimony," but the record contains no transcript or equivalent record of what testimony was presented—and the appellant timely requested a transcript and was told none exists—meaningful appellate review is impaired. At minimum, the proper remedy is vacatur and remand for a properly recorded evidentiary hearing so the trial court's factual basis can be tested and reviewed on appeal.

III. A Foreclosure Judgment Unsupported by Evidence Is Reversible Error

A foreclosure judgment must be supported by evidence in the record establishing the right to foreclose and the amount due. *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 689 S.E.2d 244 (Ct. App. 2010). When essential findings are unsupported by evidence, the judgment cannot stand. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). Here, Respondent's proof was not established through admissible testimony from a qualified witness. The foreclosure judgment should be vacated.

IV. Respondent's Preservation/Waiver Argument Fails

Respondent argues Appellant waived review by failing to file a Rule 59(e) motion. That argument fails. By granting foreclosure, the Master necessarily decided standing/enforcement, default, and amount due. Where issues are necessarily decided, a Rule 59(e) motion is not required to preserve review. *In re Estate of Timmerman*, 331 S.C. 455, 502 S.E.2d 920 (1998). Moreover, in equity the appellate court reviews whether the record supports the judgment. *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011). A party cannot 'waive' the absence of proof supporting a judgment.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Appellant respectfully requests that the Court: (1) reverse and dismiss the foreclosure action with prejudice; (2) award damages in the amount of \$2,000,000; and (3) grant such other and further relief as the Court deems just and proper.

At minimum, Appellant requests that the Court vacate the foreclosure judgment and remand for a properly recorded evidentiary hearing requiring Respondent to prove its case through admissible evidence and sworn testimony, and remand for adjudication of Appellant's counterclaims and damages (including the \$2,000,000 demand) to be proven below.

Respectfully submitted,

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ADDENDUM A: ORAL ARGUMENT OUTLINE

1. This is a contested foreclosure (Answer filed; no default).
2. Respondent bore burden of proof through competent evidence (Fleming).
3. Order recites “testimony,” but no transcript exists; Appellant disputes any witness testimony.
4. Affidavits are not trial evidence; counsel argument is not evidence (Risher; Thompson).
5. Judgment unsupported by record evidence is reversible (Coffey; Townes).
6. Waiver does not bar review of necessarily decided issues and sufficiency of proof (Timmerman; Lewis).
7. Requested relief: dismissal with prejudice and damages; at minimum vacate and remand for properly recorded evidentiary hearing and damages adjudication.

ADDENDUM B: MOTION TO VACATE AND REMAND FOR EVIDENTIARY HEARING

Appellant respectfully moves this Court to vacate the foreclosure judgment and remand this matter to the Master-in-Equity for a full evidentiary hearing.

The May 15, 2024 Order recites that “testimony was taken” at the May 14, 2024 hearing. (R. 99). Appellant disputes that any witness was sworn or testified. Appellant timely requested a transcript and was advised that no court reporter/recording existed and therefore no transcript could be produced. (R. 180–181).

Because the judgment rests on a recital of “testimony” that cannot be verified by any verbatim record, meaningful appellate review is impaired. At minimum, vacatur and remand are required for a properly recorded evidentiary hearing at which Respondent must prove standing/right to enforce, default, and amount due through admissible evidence and sworn testimony.

WHEREFORE, Appellant respectfully requests that this Court vacate the foreclosure judgment and remand this matter for a properly recorded evidentiary hearing and further proceedings consistent with the Court’s ruling.