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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Mikell R. Scarborough, Master-in-Equity for Charleston County

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Appellate Case No. 2026-000961

Nationstar HECM Acquisition Trust, 2015-2, Wilmington Savings Fund Society, FSB, not individually, but solely as Trustee..Respondents,

v.

Grange Simons Lucas, III, Individually and as personal representative for the estate of Mary King Lucas (2014-ES-10-0682), Renee Jervey Lucas, Mary Catherine Lucas Jakeman, James A. McAlister Funeral Home, and the United States of America, acting by and through its agency the Secretary of Housing and Urban Development, Defendants, of which Grange Simons Lucas, III is the..Appellant,

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INITIAL BRIEF OF APPELLANT

June 17, 2026

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT ERR IN FAILING TO ORDER THAT A $50,000.00 AGREED UPON REDUCTION IN THE FORECLOSED REVERSE MORTGAGE BALANCE WAS NOT A BINDING AGREEMENT, EVEN THOUGH MEMORIALIZED IN WRITING BY EMAILS AND A PAYOFF STATEMENT DATED APRIL 30, 2025?

STATEMENT OF THE CASE

This action was commenced by the filing of a Summons and Complaint for foreclosure of a reverse mortgage on January 20, 2015. The original mortgagor was Appellant's mother, Mary King Lucas who died prior to the commencement of the action.

Appellant Grange Simons Lucas, III filed his Answer, individually and as personal representative of the Estate of Mary King Lucas on February 19, 2015, admitting the jurisdictional allegations of the Complaint and demanding strict proof or denying to the remaining allegations of the Complaint and further requesting that the foreclosure action be stayed pending resolution of other litigation then being prosecuted on behalf of the estate. That litigation was ultimately ended, making the request moot.

The action was referred to Honorable Mikell R. Scarborough, Master in Equity for Charleston County, with finality.

The Master in Equity issued his Order and Judgment of Foreclosure and Sale (Deficiency Waived) on August 28, 2015, determining the total debt then due as $167,328.36 and ordering that such amount bear interest thereafter at the rate of 5.06%.

The said Order and Judgment ordered that the property be advertised and sold in the customary manner.

The foreclosure sale was delayed multiple times due to Defendant Lucas' bankruptcy filings and efforts to either sell the property and payoff the mortgage or refinance the property with a reverse mortgage in his own name.

The Bankruptcy Court lifted the automatic stay as to the mortgaged property on December 20, 2024.

The property was ultimately sold at a foreclosure sale occurring on January 6, 2026.

This appeal concerns issues arising after the Order and Judgment of Foreclosure and Sale. In April of 2025, the parties negotiated a $50,000.00 balance reduction on the mortgage. Negotiations were initially verbal but confirmed in writing by emails and a written payoff statement dated April 30, 2025.

The property was sold at foreclosure sale on January 6, 2026, resulting in a surplus above the sum necessary to satisfy the mortgage.

Appellant filed a Motion/Claim for Surplus on January 16, 2026, and later an amended Motion/Verified Claim for surplus filed January 21, 2026, claiming that the $50,000.00 reduction should be deducted from the amount due under mortgages. The mortgagee claimed that the $50,000.00 reduction was a promotional program which expired in August 2025.

The Master in Equity issued an Order dated March 3, 2026, determining that the $50,000.00 reduction was a promotional program and not a binding agreement.

Appellant moved to alter or amend the Master in Equity's October 3, 2026 which motion was denied by order dated March 19, 2026.

The notice of appeal was filed and served April 17, 2026.

STANDARD OF REVIEW

This is a mortgage foreclosure action. A mortgage foreclosure is an action in equity. *Byrn v. Walker*, 275 S.C. 83, 84, 267 S.E. 2nd 601 (1980).

In an equity case, the appellate court may review the evidence to determine whether or not findings of the lower court are supported by a preponderance of the evidence. As stated in *Crowder v. Crowder*, 246 S.C. 299, 301, 143 S.E. 2nd 580:

> "It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view in the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases the Appellant satisfies this court that the finding is against preponderance of the evidence. *Forester v. Forester*, 226 S.C. 311, 85 S.E. 2nd 187. Id. at 246 S.C. 301"

FACTS

All of the pertinent rulings and findings in this matter were made by the Honorable Mikell R. Scarborough, Master in Equity for Charleston County pursuant to an Order of Reference dated April 8, 2015, with authority to enter final judgment with appeal, if any, directed to the South Carolina Supreme Court or Court of Appeals.

The orders appealed from involve issues which arose subsequent to the Master's Order and Judgment of Foreclosure and Sale filed August 28, 2015.

The Appellant contends that the communications hereafter summarized establish a binding agreement to reduce the mortgage balance by $50,000.00, and not merely a promotional, time limited offer as determined by the Master's Order of March 3, 2026, and reaffirmed by the Order of March 19, 2026.

On January 21, 2022, Appellant filed a Motion for Judicial Determination of the Total Debt Due alleging that subsequent to the Master's Order and Judgment of Foreclosure and Sale the mortgagee had been compounding interest monthly in derogation of the Master's Order which provided:

> "After the date of judgment, interest at the rate of 5.06% from the total judgment debt should be added to such judgment debt to comprise the amount Plaintiff's debt secured by the mortgage." (Order dated August 28, 2015, page 4).

Prior to the court ruling on this motion, the Appellant refiled his bankruptcy case and consequently no order was issued ruling upon the motion.

The bankruptcy court granted relief from the automatic stay by Order entered December 20, 2024, allowing the foreclosure sale process to proceed.

Subsequent to the lifting of the stay, the foreclosure sale was postponed three (3) additional times to allow Appellant to either sell the property and satisfy the mortgage balance or refinance the mortgage in his own name in an amount sufficient to satisfy the mortgage.

On March 6, 2025, incident to an agreement to postpone the scheduled foreclosure sale, the Master issued a consent order finding that the current balance on the mortgage was $377,377.50.

On the day the consent order was submitted (and 2 days prior to its execution by the court) undersigned counsel sent an email to mortgagees' attorney, Martin Page stating:

> "Martin, please find attached copies of five (5) checks of $436.00 each paid by Grange Lucas toward taxes and/or insurance totaling $2,180.00. I did not see this reflected on the last payoffs you gave. **Also, is the mortgagee still compounding interest? If so, I will remind the Court that there is an outstanding motion concerning that which would need to be ruled upon before the next sale date. Thanks, Kerry" (Email dated March 4, 2025 at 11:56 a.m.) (Emphasis added)**

This email serves as the starting point for a series of discussions which resulted in a $50,000.00 reduction in the mortgage balance. The negotiations between counsel were in part verbal, but confirmed in writing by emails and a mortgagee issued payoff statement dated April 30, 2025, all of which provide sufficient writings to demonstrate that the mortgage reduction was contractual in nature and not just merely a promotional, time limited offer. The pertinent writings are reproduced below.

The undersigned counsel emailed a letter to Mr. Page on April 11, 2025, in pertinent part stating:

> "Also, I spoke to Grange about the compound interest question and if we can get a figure as to how much interest has accrued since Judge Scarborough's foreclosure order, he indicated that he would be amenable to a negotiated sum to resolve the outstanding motion."
> (Letter dated 4/11/25 at 12:15 p.m.)

Following the above referenced letter, the next pertinent writing is an email from the undersigned to Mr. Page dated April 24, 2025, at 5:21 p.m. confirming a verbal conversation and stating:

> "Martin, Mr. Lucas approves the settlement of the interest issue for a 50k reduction in the payoff to 331k. He would like that held good through June 1. His bankruptcy lawyers have advised that there needs to be a filing for court approval. Can you let me know if you have final approval of these terms. Kerry"
> (Email dated April 24, 2025 at 5:21 p.m.)

Mr. Page on behalf of the mortgagee replied three (3) minutes later on April 24, 2025 at 5:24 p.m.:

> "Kerry,
> I am just waiting on final approval regarding the number. They are currently generating a new payoff for me and I will provide it as soon as I get it.
> Thanks, Martin." (Email dated 4/24/25 at 5:24 p.m.)

The undersigned followed up on April 29th via email to Mr. Page asking:

> "Any update? KK." (Email dated 4/29/25 at 12:45 p.m.)

Mr. Page responded the next day, stating:

> "Kerry,
> Payoff quote attached.
> Thanks, Martin." (Email dated 4/30/25 at 3:28 p.m.)

Attached to that email was a payoff statement dated April 30, 2025, showing a $50,000.00 reduction identified as a "discounted payoff promotion."

The payoff statement quoted a final payoff of $334,187.35 with a "good through date" of May 15, 2025. After the foreclosure sale which resulted in a surplus the mortgagee refused to honor the $50,000.00 reduction.

ARGUMENT

I. DID THE LOWER COURT ERR IN FAILING TO ORDER THAT A $50,000.00 AGREED UPON REDUCTION IN THE FORECLOSED REVERSE MORTGAGE BALANCE WAS NOT A BINDING AGREEMENT, EVEN THOUGH MEMORIALIZED IN WRITING BY EMAILS AND A PAYOFF STATEMENT DATED APRIL 30, 2025?

The payoff stated a "good through date of May 15, 2025.

It is important to recognize that, in the context of the payoff statement that "good through date" did not indicate that the $50,000.00 reduction expired on May 15, 2025, but only that interest calculation was good through May 15, 2025. It was found under the heading "Payoff Instructions" and further stated that the per diem interest was $66.42.

Further down in the text beneath the heading "Payoff Instructions" is found the following:

> "Funds received after May 15, 2025 must include the per diem because interest is due from the date the payoff is received. If your mailing address has changed, please let us know in writing: otherwise, any funds in excess of the payoff amount will be returned to the Borrower at the mailing address listed above."

Thus, the context of the letter does not indicate that the "good through date" was the expiration of the $50,000.00 reduction, but is simply a routine notice that additional interest at the per diem rate must be added after the "good through date" of May 15, 2025.

There was no written communication or even a suggestion that the reduction of the mortgage payoff was time limited. No time limit is stated in the payoff statement of April 30, 2025 other than the per diem interest to be added after May 15, 2025.

Although the mortgagee now claims that the $50,000.00 reduction was time limited, expiring in August 2025, such was never communicated to Appellant or his counsel in any manner as shown by the following email exchange on February 12, 2026, with Mr. Page:

> "Kerry, from the notes in my client's system it looks like the promotion was from April to September. Thanks, Martin
> (Email dated 2/12/26 at 12:46 p.m.)

To which the undersigned responded later on the same day

> "Martin, did we receive anything that stated a time limit that I might have overlooked? Kerry." (Email dated 2/12/26 at 3:22 p.m.)

Mr. Page subsequently responded at 3:51 p.m., the same day

> "Kerry, I don't think so on time frame." (Email dated 2/12/26 at 3:51 p.m.)

Thus, there was no contemporaneous communication at the time of the negotiation of the agreement that indicated the discount was time limited to either August or September of 2025.

Mortgagee stated in its reply to the Motion/Verified Claim for Surplus:

> "The Plaintiff attempted to motivate Lucas to sell the subject property by offering him a $50,000.00 discounted payoff. This was a promotion that ran from April to August 2025 on older files serviced by the Plaintiff." (Reply to Motion/Verified Claim for Surplus, p. 2)

This was never communicated to the Appellant or counsel. The affidavit of Plaintiff submitted to the Court after the Master's March 3rd Order and filed March 17, 2026, failed to state that a time limit was communicated to either the Borrower or counsel. It merely stated that neither the servicer or investor agreed to a permanent reduction of $50,000.00. That affidavit should carry little weight as it is obviously conflicts with the facts by stating in paragraph 4:

> "To date since the commencement of the foreclosure action, the Plaintiff has not agreed – and has not agreed in writing – to modify, discharge, waive, rescind, alter, or otherwise vary any provision, condition, covenant, or promise in the note or the mortgage securing it. The Plaintiff has not received money sufficient to reinstate or payoff the Borrower's/Borrowers' mortgage loan amount and does not agree – and has not agreed in writing- to accept lessor, substitute, or modify performance by the Borrower under the terms of the note and/or the mortgage." (Affidavit of Plaintiff, p. 4)

The above is clearly untrue as it contradicts the written payoff statement of April 30, 2025, casting doubt on the credibility of the entire affidavit.

Although the principal was explained in a property dispute, in *Byrn v. Walker*, *Supra.* at 267 S.E. 2nd 601, 603 (S.C. 1980), the Supreme Court stated:

> "…A party has a right to rely on the representations of another where the parties do not have equal knowledge to whom the representations are made has no opportunity to examine the property…"

Appellant had no opportunity to discern the mortgagee's internal qualifications of the "promotional" mortgage balance reduction and therefore had the right to rely on mortgagee's statements and those of its counsel, without time limitation.

The Appellant has provided his own affidavit (Affidavit of Grange Simons Lucas, III) that in the numerous telephone calls between himself and the mortgage servicer (PHH Mortgage) he was never informed by a representative that the $50,000.00 reduction was only valid until August 31, 2025, nor was ever so informed in any other conversation. This is consistent with counsel's email acknowledging that no time limits were contemporaneously discussed.

Due to the vagueness and self-contradictory terminology in the affidavit of Plaintiff, it is submitted that Appellant's affidavit is more credible especially in light of the email chain between counsel. It seems conclusive that the alleged time limit on the mortgage reduction was never communicated to either the Appellant or Appellant's counsel, and therefore not a term of the agreement.

The fact that the $50,000.00 reduction was described in the mortgage payoff statement as "promotional" does not alter the fact that it was contractual in nature.

As stated in *Regions Bank v. Schmauch*, 354 S.C. 648, 660-661, 582 S.E. 2nd 432 (Ct. App. 2003):

> "A contract is an obligation which arises from actual agreement of the parties, manifested by words, oral or written, or by conduct. (Citation omitted). A contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act. Id. at 354 S.C. 660-661.

Here, all of those elements, initially negotiated orally but confirmed in writing, are present.

The mortgagee agreed to reduce the mortgage balance by $50,0000.00. In exchange Appellant agreed to forego pursuing a ruling on the claim that the interest rate had been improperly compounded. Each party therefore received valuable consideration. Not only did the parties communicate through their counsel, acting on behalf of and with authority of their clients, but also confirmed by the mortgagee by issuing the payoff statement dated April 30, 2025, with the intention that it be relied upon by Appellant.

The Consent Order of March 6, 2025, establishing the debt then due as $377,377.50 in no way negates the agreement as that order was entered prior to the making of the agreement. Further, the context of the communications between counsel indicates that the consent order was not intended to foreclose the outstanding interest issue.

Should the Court affirm the Master in Equity's finding that there was no binding agreement for a $50,000.00 reduction, it should remand the case to the Master in Equity for determination as to whether the interest was compounded improperly, thereby restoring the parties to their pre-negotiation position.

CONCLUSION

Appellant respectfully submits that the Master in Equity's orders of March 3, 2026 and March 19, 2026, should be reversed and the Respondent be ordered to disgorge $50,000.00 to be added to the surplus resulting from the foreclosure sale of January 6, 2026, and that judgment be entered against Respondent in such amount. In the alternative this Court should remand to the Charleston County Master in Equity for further proceedings consistent with this Court's action.

Respectfully Submitted,

June 17, 2026

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