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SC Court of Appeals

IN THE SOUTH CAROLINA COURT OF APPEALS

STATE OF SOUTH CAROLINA

Appellate Case No. 2026-001103

Trial Court 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,
Respondent,

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; and Timothy Allen Nunally,
Defendants,

of which Timothy Allen Nunally and Mark Anthony Nunally are the Appellants.

INITIAL BRIEF OF APPELLANTS

TIMOTHY ALLEN NUNALLY AND MARK ANTHONY NUNALLY

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STATEMENT OF ISSUES ON APPEAL

I. Did the Master in Equity err by granting foreclosure where Respondent failed to establish, as of commencement of the action, that it was the real party in interest or person entitled to enforce the Note and Mortgage, and where Respondent was permitted to rely on inconsistent holder-status and assignment-based standing theories?

II. Did the Master in Equity err by finding Respondent entitled to enforce the Note based on possession of a blank-endorsed instrument where Appellants preserved challenges to the allonges, endorsement sequence, entity differences, authority, timing, and proof of possession at commencement?

III. Did the Master in Equity err by treating the Mortgage as competent proof of lien, record notice, and foreclosure authority while simultaneously granting declaratory and equitable relief to cure an admitted acknowledgment defect in the same Mortgage?

IV. Did the Master in Equity err by rejecting Appellants' record-notice, race-notice, assignment, and chain-of-title defenses based only on the recording date of the Mortgage and the recording date of the Deed of Distribution, while failing to determine whether the Mortgage and assignments were validly executed, properly recordable, and legally effective against Appellants?

V. Did the Master in Equity err by relying on prior default and standing rulings and by entering a final foreclosure judgment without making adequate findings addressing Appellants' preserved Rule 16(c), SCRCP objections, trial objections, PowerPoint presentation, post-trial proposed order, and revised proposed findings?

STATEMENT OF THE CASE

This appeal arises from a mortgage foreclosure and declaratory judgment action concerning real property located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. (Final Order p. 1; Complaint p. 1.)

Respondent commenced the foreclosure action on March 8, 2024, in the Lexington County Court of Common Pleas. (Final Order p. 1; Complaint p. 1.) Respondent alleged that it was entitled to enforce a January 30, 2004 Note and Mortgage originally involving NovaStar Home Mortgage, Inc., Mortgage Electronic Registration Systems, Inc. ("MERS"), JPMorgan Chase Bank, N.A. as trustee, and the NovaStar Mortgage Funding Trust, Series 2004-1. (Final Order pp. 2-3; Plaintiff Exs. 4-5; Complaint ¶¶ 11-14.) Respondent also sought declaratory and equitable relief concerning an alleged defect in the Mortgage acknowledgment. (Complaint ¶¶ 5-9; Final Order p. 7.)

The matter was referred to the Lexington County Master-in-Equity under Rule 53, SCRCP. (Final Order pp. 1-2.) Appellants appeared self-represented and challenged Respondent's standing, real-party status, entitlement to enforce, assignment chain, mortgage competency, record notice, and proof of default and debt.

On September 30, 2025, the Master entered an order denying Appellants' motions to dismiss and to set aside default. (Final Order p. 5; Sept. 30 Order p. 19.) The September 30 order addressed, among other matters, default, subject-matter jurisdiction, standing, real-party status, and challenges to assignments and securitization-related documents.

Before trial, Appellants filed a Consolidated Rule 16(c) Notice of Disputed Trial Frame, Objection to Evidentiary Sequencing, and Motion Requiring Election of Standing Theory.

Appellants objected to Respondent framing trial as limited to default, breach, and damages, and requested that Respondent be required to elect a single standing theory before presenting evidence.

A bench trial was held on February 10, 2026, before the Honorable James O. Spence, Master-in-Equity for Lexington County. (Final Order p. 1; Tr. pp. 2-6.) Respondent presented testimony from attorney Brian L. Boger and loan-servicer witness Louise Plasse. (Final Order p. 2; Tr. pp. 13-97.) Respondent introduced the Note, Mortgage, Loan Modification, assignments, payment histories, debt figures, and default notice. Appellants cross-examined Respondent's witnesses and presented a PowerPoint-based evidentiary and legal presentation addressing standing, mortgage competency, assignments, record notice, and Respondent's proof deficiencies. (Tr. pp. 26-30, 85-97, 98-105, 196-197.)

After trial, the Master directed the parties to submit proposed orders. (Post-Trial Order Process p. 1; Tr. pp. 196-197.) Appellants submitted proposed findings and revised proposed findings. Respondent submitted a revised proposed order. The Master ultimately entered an Order and Judgment of Foreclosure and Sale and Reformation of Mortgage, Deficiency Waived. The order granted Respondent judgment as to all causes of action, authorized foreclosure and sale, declared the Mortgage an equitable lien or equitable mortgage, established the debt, rejected Appellants' defenses, and barred Appellants' interests and equity of redemption. (Final Order pp. 12-17.)

The Master entered the Order and Judgment of Foreclosure and Sale and Reformation of Mortgage on April 24, 2026. (Final Order p. 1.) Appellants timely filed and served their Notice of Appeal on May 5, 2026. (Notice of Appeal pp. 1-3; Notice of Appeal Certificate of Service p. 1.)

STATEMENT OF FACTS RELEVANT TO THE ISSUES ON APPEAL

A. Respondent's pleading sought foreclosure and equitable relief concerning the same Mortgage.

Respondent's complaint sought foreclosure concerning the property located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. Respondent also sought declaratory and equitable relief based on an alleged defect in the Mortgage acknowledgment. (Complaint ¶¶ 5-9, 10-26; Final Order p. 7.)

Respondent alleged that the acknowledgment section improperly listed the notary as the party whose signature was acknowledged instead of the mortgagors, Carl A. Nunally, Sr. and Frankie L. Nunally. (Complaint ¶ 7; Mortgage p. 9; Final Order p. 7.) Respondent nevertheless sought to foreclose and to have the Mortgage declared an equitable lien or equitable mortgage. (Complaint prayer; Final Order pp. 7, 12-13.)

Respondent also pleaded multiple possible enforcement theories, alleging that it was entitled to enforce as holder, nonholder in possession with the rights of a holder, or under other statutory enforcement provisions. (Complaint ¶ 20.)

B. Appellants preserved threshold objections before trial.

Before trial, Appellants filed their Consolidated Rule 16(c), SCRCP Notice of Disputed Trial Frame, Objection to Evidentiary Sequencing, and Motion Requiring Election of Standing Theory. (Rule 16(c) Notice pp. 1-4.) Appellants objected to any trial frame that treated the case as limited to default, breach, and damages while bypassing unresolved threshold questions of standing, entitlement to enforce, mortgage competency, assignment effect, and evidentiary sequence. (Rule 16(c) Notice p. 2.)

Appellants specifically requested that Respondent be required to elect between holder-status enforcement and assignment-based enforcement. (Rule 16(c) Notice p. 3.) Appellants objected to Respondent relying on assignments when useful while also arguing that assignments were legally unnecessary. (Rule 16(c) Notice pp. 2-3.)

C. Respondent's closing attorney acknowledged the Mortgage defect.

At trial, Respondent called Brian L. Boger, the attorney/notary connected to the 2004 closing. Boger testified that he had no specific memory of the closing except because of this litigation, but he recognized the documents. (Tr. pp. 14-16.)

Boger acknowledged that the Mortgage acknowledgment contained his name where Carl and Frankie Nunally's names should have appeared. (Tr. pp. 16-18, 26-30.) He expressed his view that the defect was not fatal, but the legal effect of the defective acknowledgment was for the court to decide. (Tr. pp. 26-30.)

D. Respondent's servicer witness testified regarding the Note, allonges, assignments, and debt.

Respondent called Louise Plasse, a senior loan analyst for Onity/PHH. Plasse testified regarding servicing authority, business records, the Note, allonges, Mortgage, Loan Modification, assignments, payment histories, debt figures, and default notice. (Tr. pp. 33-80.)

Plasse testified that the Note had two allonges and a stamped indorsement ending in a blank indorsement, and Respondent relied on possession of that instrument as proof of enforcement authority. (Tr. pp. 45-49, 91-97; Pl.'s Ex. 4; Final Order p. 9.)

Appellants cross-examined Plasse regarding the endorsement sequence, the distinction between NovaStar Home Mortgage, Inc. and NovaStar Mortgage, Inc., the allonges, and the basis for her knowledge. (Tr. pp. 85-94.) Plasse acknowledged she could not speak specifically to the facts of the 2004 closing or original document generation. (Tr. pp. 90-91.)

E. The Master treated possession of the blank-endorsed Note as central to enforcement.

During trial, the Master compared a blank-endorsed note to possession of cash or a twenty-dollar bill. (Tr. pp. 95-97.) Appellants continued to challenge whether Respondent had proven the allonge chain, endorsement sequence, authority, timing, and possession necessary to enforce the Note when the action commenced. (Tr. pp. 85-97.)

F. The recording and assignment evidence raised record-notice and chain issues.

The final order states that the Mortgage was recorded on February 28, 2004, but the Mortgage, trial testimony, and assignments indicate a February 20, 2004 recording date. (Final Order pp. 3, 11; Mortgage p. 1; Tr. pp. 16, 50-51, 58-60; Assignments pp. 1-2.)

Respondent introduced an original assignment and corrective assignment recorded in 2023. (Final Order p. 3; Tr. pp. 58-60; Assignments pp. 1-2.) The corrective assignment changed recording information from the original assignment. (Tr. pp. 58-60; Assignments pp. 1-2.)

G. Appellants presented a PowerPoint-based evidentiary and legal presentation.

After Respondent rested, Appellants requested to present a PowerPoint. The Master explained that legal argument could be presented by PowerPoint, but evidence had to be admitted through proper testimony and the rules of evidence. (Tr. pp. 98-105.)

The Master reviewed the PowerPoint slide by slide, swore Mark Anthony Nunnally, and stated that Appellants would authenticate evidence through testimony. (Tr. pp. 98-105.) The Master later recognized that some portions of the presentation were legal argument rather than evidence and stated that Appellants could make those legal arguments in their proposed order. (Tr. pp. 103-105, 196-197.)

H. The Master directed proposed orders, and Appellants submitted proposed findings.

After trial, the Master directed the parties to submit proposed Word orders. (Post-Trial Order Process p. 1.) The proposed-order template instructed the parties to identify disputed facts using the structure: Plaintiff argues, Defendants argue, Court finds, because. The template identified disputed issues including whether there was a valid mortgage, whether Respondent had standing to foreclose, whether Appellants had valid defenses, and whether Appellants had a race-notice defense based on the Deed of Distribution. (Court-Issued Proposed-Order Template p. 1.)

Appellants submitted proposed findings addressing standing, entitlement to enforce, mortgage competency, record notice, assignments, chain of title, and the requested denial of equitable relief. (Filed Apr. 14 Packet pp. 1-17.) The final order adopted Respondent's theory while rejecting Appellants' preserved defenses. (Final Order pp. 8-13; Filed Apr. 14 Packet pp. 1-17.)

I. The final order granted foreclosure and equitable mortgage relief.

The final order found Respondent was the holder and person entitled to enforce the Note. (Final Order p. 9.) The final order also found the assignments valid but unnecessary, held Appellants lacked standing to challenge the assignments, rejected Appellants' record-notice and race-notice defenses, declared the Mortgage an equitable lien or equitable mortgage, established the debt, authorized foreclosure and sale, and barred Appellants' interests and equity of redemption. (Final Order pp. 9-13, 16-17.)

Appellants seek reversal or, at minimum, vacatur and remand for findings applying the correct legal standards to the preserved threshold issues.

STANDARD OF REVIEW

A mortgage foreclosure action is an action in equity. See Matrix Fin. Servs. Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011). In an equitable action heard by a master-in-equity who enters final judgment, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. The appellate court is not required to disregard the findings of the master, but it may review the evidence and reach its own conclusions where the record warrants.

Because this case was tried without a jury, Rule 52(a), SCRCP required the court to find the facts specially and state separately its conclusions of law. Appellants contend the final order did not adequately resolve the preserved threshold issues concerning Respondent's standing theory, entitlement to enforce, mortgage competency, record notice, assignments, chain of title, and Appellants' proposed findings. Accordingly, this Court should review whether the Master applied the correct legal standards, whether the findings are sufficient for appellate review, and whether the judgment is supported by the record under the applicable equitable standard.

SUMMARY OF THE ARGUMENT

The foreclosure judgment should be reversed or vacated because Respondent did not establish the threshold right to foreclose in the manner required by law and the Master failed to adequately address Appellants' preserved objections.

First, Appellants preserved the objection that Respondent should be required to elect a standing theory. Respondent relied on holder-status/blank-endorsement theory while also relying on assignments, corrective assignments, servicing authority, and trust-related documents. The final order accepted both theories by finding the assignments valid but unnecessary. (Final Order p. 9.) That ruling bypassed the very inconsistency Appellants preserved before trial.

Second, the Master treated possession of a blank-endorsed Note as dispositive without resolving Appellants' preserved challenges to the allonges, entity sequence, authority, and proof of possession at commencement. Possession may matter, but it does not erase the requirement that Respondent prove it was the proper party entitled to enforce when the action began.

Third, Respondent admitted a defect in the Mortgage acknowledgment and sought declaratory/equitable relief to cure or validate the Mortgage. Yet the final order treated the same Mortgage as competent foreclosure proof, valid record notice, and a first lien. (Final Order pp. 12-13.) The Master erred by allowing Respondent to use equity as a repair tool while simultaneously treating the instrument as fully effective for every threshold purpose.

Fourth, the Master rejected Appellants' record-notice and race-notice defenses by focusing on the recording date of the Mortgage versus the Deed of Distribution. (Final Order pp. 10-12.) That analysis did not resolve Appellants' argument that the Mortgage and assignments had to be validly executed, properly recordable, and legally connected to Respondent before they could defeat Appellants' defenses.

Finally, the final order did not adequately address Appellants' preserved Rule 16(c) objections, trial objections, PowerPoint presentation, proposed order, revised proposed findings, and the court's own post-trial order process. At minimum, the matter should be remanded for proper findings under the correct legal standards.

ARGUMENT

I. THE MASTER ERRED BY GRANTING FORECLOSURE WHERE RESPONDENT FAILED TO ESTABLISH STANDING, REAL-PARTY STATUS, OR ENTITLEMENT TO ENFORCE AT COMMENCEMENT AND WAS PERMITTED TO RELY ON INCONSISTENT STANDING THEORIES.

Appellants preserved before trial that Respondent's enforcement theory was unclear and internally inconsistent. In its pleading, Respondent alleged entitlement to enforce under multiple possible theories, including holder status, nonholder-in-possession status, and statutory enforcement provisions. (Complaint ¶ 20.) Before trial, Appellants filed a Rule 16(c), SCRCP Notice objecting to Respondent's disputed trial frame and requesting that Respondent be required to elect the legal theory under which it claimed standing, real-party status, and entitlement to enforce. (Rule 16(c) Notice pp. 2-3.)

The problem remained at trial and in the final order. Respondent introduced the Note and allonges, relied on possession of a blank-endorsed instrument, and also introduced the original assignment and corrective assignment as part of its proof. (Tr. pp. 45-49, 58-60; Pl.'s Exs. 4, 9-10.) The final order found Respondent was entitled to enforce the Note as holder or person entitled to enforce, but also found the assignments valid while stating that the assignments were unnecessary because transfer of the Note carried the Mortgage. (Final Order pp. 8-9.)

That ruling did not resolve Appellants' preserved objection; it confirmed it. Rule 17(a), SCRCP requires every action to be prosecuted in the name of the real party in interest. In a foreclosure case, Respondent had to establish the legal basis for its right to enforce the debt and foreclose the Mortgage. See Bank of America, N.A. v. Draper, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013).

Under S.C. Code Ann. § 36-3-301, Respondent also had to prove that it was a person entitled to enforce the Note. If Respondent proceeded as holder, the Master had to determine whether Respondent proved possession of a properly endorsed instrument at commencement. If Respondent proceeded through transfer or assignment, the Master had to determine whether the transfer or assignment evidence established Respondent's right to enforce at commencement.

The final order adopted Respondent's theories in combination without requiring a clear election or making findings sufficient to show which theory was proven. It treated blank-endorsement possession as dispositive, accepted the assignments as valid, then declared the assignments unnecessary. (Final Order pp. 8-9.) That approach bypassed the threshold question Appellants preserved: whether this Respondent proved, under one legally sufficient theory, that it was the proper party to enforce the Note and foreclose the Mortgage when the action began.

Because the final order did not adequately identify the enforcement theory proven at commencement or resolve Appellants' preserved election-of-theory objection, the foreclosure judgment should be reversed. At minimum, the judgment should be vacated and remanded for findings identifying the legal theory of enforcement and the evidence supporting that theory under Rule 17(a), SCRCP and S.C. Code Ann. § 36-3-301.

II. THE MASTER ERRED BY FINDING RESPONDENT ENTITLED TO ENFORCE THE NOTE BASED ON POSSESSION OF A BLANK-ENDORSED INSTRUMENT WITHOUT RESOLVING APPELLANTS' PRESERVED CHALLENGES TO THE ALLONGES, ENDORSEMENT SEQUENCE, ENTITY AUTHORITY, AND PROOF OF POSSESSION AT COMMENCEMENT.

Respondent's entitlement-to-enforce theory depended on the Note, allonges, and final blank indorsement. At trial, Respondent's servicer witness testified that the Note had two allonges and a stamped indorsement ending in a blank indorsement, and Respondent relied on possession of that instrument as proof of enforcement authority. (Tr. pp. 45-49, 91-97; Pl.'s Ex. 4; Final Order p. 9.)

Appellants preserved specific challenges to that proof. On cross-examination, Appellants questioned the endorsement sequence, the distinction between NovaStar Home Mortgage, Inc. and NovaStar Mortgage, Inc., the allonges, the basis for the servicer witness's knowledge, and whether Respondent proved possession and enforcement authority at the relevant time. (Tr. pp. 85-94.) The witness acknowledged she could not speak from personal knowledge about the original closing or original document generation. (Tr. pp. 90-91.)

Under South Carolina's UCC, Respondent had to prove that it was a "person entitled to enforce" the Note. S.C. Code Ann. § 36-3-301. A person may qualify as a holder only if it possesses a negotiable instrument payable to bearer or payable to an identified person in possession. S.C. Code Ann. § 36-1-201(b)(21). A blank indorsement may make an instrument payable to bearer, but §§ 36-3-201, 36-3-204, and 36-3-205 do not eliminate the need to prove the instrument, indorsement sequence, attachment of allonges, authority, timing, and possession at commencement.

The Master treated blank-endorsed possession as substantially dispositive, comparing the Note to cash or a twenty-dollar bill. (Tr. pp. 95-97.) That analogy did not resolve Appellants' preserved objections. The issue was not whether a blank indorsement may permit enforcement by a possessor in the abstract. The issue was whether this Respondent proved, through competent evidence, that it possessed a properly enforceable instrument and had the right to enforce it when this foreclosure action commenced. (Complaint p. 1; Tr. pp. 47-49, 85-97.)

The final order found Respondent was the holder and person entitled to enforce the Note, but it did not make findings resolving Appellants' challenges to the allonge chain, entity differences, endorsement sequence, witness foundation, authority, timing, and proof of possession at commencement. (Final Order p. 9.) Because the order treated possession of a blank-endorsed instrument as dispositive without resolving those preserved threshold issues, the foreclosure judgment should be reversed. At minimum, the judgment should be vacated and remanded for findings addressing Respondent's entitlement to enforce under S.C. Code Ann. § 36-3-301.

III. THE MASTER ERRED BY TREATING THE MORTGAGE AS COMPETENT FORECLOSURE PROOF WHILE SIMULTANEOUSLY GRANTING DECLARATORY AND EQUITABLE RELIEF TO CURE AN ADMITTED ACKNOWLEDGMENT DEFECT IN THAT SAME MORTGAGE.

Respondent's own complaint alleged that the Mortgage acknowledgment was defective because the acknowledgment listed the notary instead of the mortgagors as the party whose signature was acknowledged. (Complaint ¶ 7; Mortgage p. 9; Final Order p. 7.) Respondent therefore did not seek foreclosure on an ordinary, undisputed mortgage instrument. It sought foreclosure while also requesting declaratory and equitable relief to validate or repair the same Mortgage. (Complaint ¶¶ 5-9; Final Order pp. 7, 12-13.)

At trial, Respondent called Brian L. Boger, the attorney/notary connected to the 2004 closing. Boger testified that he had no specific memory of the closing except because of this litigation, but he recognized the documents. (Tr. pp. 14-16.) He admitted that his name appeared where Carl and Frankie Nunally's names should have appeared in the acknowledgment. (Tr. pp. 16-18, 26-30.) Although Boger expressed his view that the defect was not fatal, the legal effect of the defective acknowledgment was for the court to decide. (Tr. pp. 26-30.)

South Carolina law separates the prerequisites for recording from the legal effect of recording. Section 30-5-30 governs whether a mortgage or other written instrument is properly acknowledged or proved for recording. Section 30-7-10 governs the effect of recordation as to later purchasers and creditors. Because this case was tried without a jury, Rule 52(a), SCRCP required the Master to make findings and legal conclusions explaining how the admitted acknowledgment defect affected the Mortgage's competency, recordability, lien status, and foreclosure effect.

The final order did not adequately make those findings. It declared the Mortgage an equitable lien or equitable mortgage, but also treated the Mortgage as competent foreclosure proof, record notice, priority evidence, and a first lien. (Final Order pp. 10-13.) That sequencing was the error. Respondent used the Mortgage as if it were already fully effective while simultaneously asking equity to cure the defect that made equitable relief necessary.

Appellants preserved this evidentiary-sequencing objection before trial. (Rule 16(c) Notice pp. 2-4.) The final order did not adequately address it. Because the order allowed Respondent to rely on the Mortgage for foreclosure, notice, and priority before resolving the legal effect of the admitted acknowledgment defect, the judgment should be reversed. At minimum, the judgment should be vacated and remanded for findings addressing the Mortgage defect, recordability, equitable relief, and evidentiary sequence under the correct legal standards.

IV. THE MASTER ERRED BY REJECTING APPELLANTS' RECORD-NOTICE, RACE-NOTICE, ASSIGNMENT, AND CHAIN-OF-TITLE DEFENSES BASED ONLY ON THE RELATIVE RECORDING DATES OF THE MORTGAGE AND DEED OF DISTRIBUTION.

The final order rejected Appellants' record-notice and race-notice defenses by emphasizing that the Mortgage appeared in the land records before the Deed of Distribution. (Final Order pp. 10-12.) That analysis was incomplete because Appellants' defense was not limited to date order. Appellants challenged whether the Mortgage and assignments were validly executed, properly recordable, legally effective, and connected to Respondent's claimed enforcement authority. (Filed Apr. 14 Packet pp. 4, 11-12, 15-16.)

The record also shows why specific findings were required. The final order states that the Mortgage was recorded on February 28, 2004, but the Mortgage, trial testimony, and assignments indicate a February 20, 2004 recording date. (Final Order pp. 3, 11; Mortgage p. 1; Tr. pp. 16, 50-51, 58-60; Assignments pp. 1-2.) Respondent also introduced an original assignment and corrective assignment recorded in 2023, and the corrective assignment changed recording information from the original assignment. (Final Order p. 3; Tr. pp. 58-60; Assignments pp. 1-2.)

Respondent's reliance on recording-date priority did not resolve Appellants' challenge. Section 30-5-30 addresses whether an instrument is properly acknowledged or proved for recording, and § 30-7-10 addresses the effect of recordation as to later purchasers and creditors. The final order focused on the fact that the Mortgage appeared in the land records before the Deed of

Distribution, but that date comparison did not answer whether the Mortgage was validly recordable or whether the assignments and Note evidence established Respondent's right to enforce at commencement.

Respondent's reliance on note-transfer principles did not eliminate the problem. At most, Draper supports the general principle that a party seeking foreclosure must establish its right to enforce the debt and mortgage. That principle required the Master to determine whether Respondent proved a valid entitlement to enforce the Note before treating the Mortgage and assignments as dispositive of record notice and priority. The final order skipped that step by reducing the dispute to the recording date of the Mortgage versus the recording date of the Deed of Distribution.

The final order held that Appellants had actual, record, or inquiry notice and that Appellants lacked standing to challenge the assignments. (Final Order pp. 9-12.) But those conclusions did not resolve Appellants' preserved objections to the Mortgage's recordability, the assignment chain, the recording-date inconsistencies, or Respondent's proof connecting the Note, Mortgage, assignments, and claimed trust authority. Because the order reduced the dispute to "Mortgage recorded before Deed of Distribution," the judgment should be reversed or, at minimum, vacated and remanded for findings on validity, recordability, notice, assignment effect, and Respondent's enforcement chain.

V. THE MASTER FAILED TO MAKE ADEQUATE FINDINGS ADDRESSING APPELLANTS' PRESERVED RULE 16(c) OBJECTIONS, TRIAL OBJECTIONS, POWERPOINT PRESENTATION, POST-TRIAL PROPOSED ORDER, AND REVISED PROPOSED FINDINGS.

Appellants did not raise these issues for the first time on appeal. Before trial, Appellants filed a Rule 16(c), SCRCP Notice identifying the disputed trial frame, objecting to evidentiary sequencing, and requesting that Respondent elect a standing theory. (Rule 16(c) Notice pp. 1-4.) At trial, Appellants again raised standing, competency of proof, mortgage validity, assignments, record notice, and title issues through opening statements, cross-examination, and a PowerPoint-based presentation. (Tr. pp. 10-11, 26-30, 85-94, 98-105.)

The Master reviewed the PowerPoint slide by slide, swore Mark Anthony Nunnally, and stated that Appellants would authenticate evidence through testimony. (Tr. pp. 98-105.) The Master recognized that some portions of the presentation were legal argument rather than evidence, but expressly allowed Appellants to make those legal arguments in proposed orders. (Tr. pp. 103-105, 196-197.) The Master also identified standing and race-notice as central issues for the proposed-order process. (Tr. pp. 196-197.)

After trial, the Master entered a Post-Trial Order Process directing the parties to exchange proposed Word orders and submit revised proposed Word orders to the court. (Post-Trial Order Process p. 1.) The court-issued proposed-order template identified disputed issues including whether there was a valid mortgage, whether Respondent had standing to foreclose, whether Appellants had valid defenses, and whether Appellants had a race-notice defense. (Court-Issued Proposed-Order Template p. 1.) Appellants then submitted proposed findings addressing the very issues the court had identified, including standing, entitlement to enforce, mortgage competency, record notice, assignments, chain of title, and the requested denial of equitable relief. (Filed Apr. 14 Packet pp. 1-17.)

Because this was a non-jury trial, Rule 52(a), SCRCP required the Master to find the facts specially and state separately the conclusions of law supporting the judgment. The final order did not adequately address Appellants' Rule 16(c) objection, election-of-standing request, evidentiary-sequencing objection, PowerPoint preservation, proposed findings, or the disputed-fact framework the court directed after trial. Instead, it accepted Respondent's enforcement theory, relied on prior default and standing rulings, declared the Mortgage an equitable lien or equitable mortgage, and rejected Appellants' defenses without making findings that meaningfully resolved the preserved threshold disputes. (Final Order pp. 8-13, 16-17; Filed Apr. 14 Packet pp. 2-16.)

The issue on appeal is not whether the Master had to accept Appellants' arguments. The issue is whether the final order made findings sufficient to show that the preserved issues were actually decided under the correct legal standards. It did not. At minimum, the judgment should be vacated and remanded for findings addressing Appellants' preserved objections, trial presentation, proposed findings, and the required legal sequence for foreclosure and equitable relief.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the Order and Judgment of Foreclosure and Sale and Reformation of Mortgage. In the alternative, Appellants request that the Court vacate the judgment and remand for proper findings addressing standing, entitlement to enforce, mortgage competency, record notice, assignments, chain of title, and Appellants' preserved defenses under the correct legal standards.

Respectfully submitted,

Timothy Nunally

Timothy Allen Nunally
Appellant, Pro Se

Mark Anthony Nunnally
Appellant, Pro Se

Date: July 5th, 2026