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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Appellate Case No.: 2023-001739
Civil Action No.: 2022-CP-10-03510

Richard Young and Jason Greene……………………………………………………...Petitioners,

v.

John W. Beasley a/k/a John W. Beasley, Sr.
and Lillian Beasley in their individual capacities
and as Trustees or as Successors in trust under
the Beasley Living Trust dated August 14, 2018,
and any amendments thereto…………………………………………………… Respondents.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies pursuant to Rule 242(d)(1), SCACR, that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on July 17, 2026.

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that the Second Settlement Agreement and Release extinguished Respondents' obligations under a promissory note and recorded mortgage where those instruments are not identified in the Second Settlement Agreement, no satisfaction of the mortgage was required or filed, and Paragraph 16 expressly preserved the First Settlement Agreement except for the limited release of the Beasleys from the Confession of Judgment.

2. Whether the Court of Appeals' decision conflicts with this Court's decision in *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E.2d 214 (2007), and related authority, which establish that a mortgage is separate security for the debt and remains enforceable until the mortgage debt is actually satisfied or the mortgage is expressly released.

3. Whether the Court of Appeals exceeded the proper scope of appellate review by granting Respondents' Motion for Summary Judgment , rather than remanding for further proceedings, where the Master denied that motion as moot and did not enter a merits ruling on Respondents' entitlement to judgment as a matter of law.

STATEMENT OF THE CASE

Petitioners Richard Young and Jason Greene (collectively, "Petitioners") loaned a substantial amount of money to John W. Beasley, Jr. ("Beasley Jr.") and Beasley Construction Company, LLC ("Beasley Construction"). Beasley Jr. and Beasley Construction failed to repay the money it/they borrowed from Petitioners. Thereafter, in November 2017, Respondents John W. Beasley, Sr. ("Beasley Sr.) and Lillian Beasley ("Lillian Beasley")(collectively, the "Respondents"), together with Beasley, Jr. and Beasley Construction (collectively, the "Debtors"), entered into a Settlement Agreement ("First Settlement Agreement") through which the Debtors agreed to pay Six Hundred Forty-Seven Thousand Five Hundred and 00/100s ($647,500.00) dollars to Petitioners. Contemporaneously, the Debtors executed three separate instruments: a promissory note ("Note") in the amount of Six Hundred Forty-Seven Thousand Five Hundred and 00/100s ($647,500.00) dollars, a mortgage ("Mortgage") on certain real property owned by the

Respondents (the "Property") securing the debt evidenced by the Note and a Confession of Judgment ("Confession"). The Mortgage was immediately recorded in the office of the Register of Deeds for Charleston County; however, the Confession was held in trust to be filed unless and until the Debtors failed to pay the amount due under the Note on, or before, an agreed upon date set forth therein.

The Debtors failed to pay by the maturity date, and Petitioners filed the Confession on May 30, 2019. (R. pp. 52-58.) The Mortgage on the Property remained of record and was not satisfied, released or otherwise canceled. Later, during the course of a separate First Citizens foreclosure matter, Petitioners and Respondents executed a Second Settlement Agreement ("Second Settlement Agreement"). (R. pp. 202-211.) Under the terms of the Second Settlement Agreement, Respondents agreed to pay Fifty Thousand and 00/100s ($50,000.00) dollars, and Petitioners agreed to file a Release of Judgment Lien as to Specific Property, Release of Judgment Lien as to Certain Defendants, and Partial Satisfaction of Judgment ("Partial Release"). (R. pp. 202-211, 310-312.)

The Second Settlement Agreement did not reference the "Note" or the "Mortgage" in the operative release provisions. (R. pp. 202-211.) Paragraph 2 of the Second Settlement Agreement addressed releases "as to the Judgment" and provided that the Judgment would remain in full force and effect as to the non-released Debtors, Beasley, Jr. and Beasley Construction. (R. p. 205.) Paragraph 5 contained an integration clause limited to "the subjects contained herein." (R. p. 205.) The most notable provision of the Second Settlement Agreement is Paragraph 16, which provides: "Except for the release of Debtors herein, this Settlement and Release shall not alter or amend the Prior Settlement and Release Agreement nor the Judgment, which shall remain in full force and effect and of record." (R. p. 207.) As agreed, Petitioners filed the Partial Release after receipt of the Fifty Thousand and 00/100s ($50,000.00) dollars. (R. pp. 310-312.) Petitioners did not agree to, were not obligated to and did not file a satisfaction of the Mortgage. The Second Settlement Agreement was executed in December of 2021 and the Partial Release filed in March of 2021. Young & Greene initiated this mortgage foreclosure action in August of 2022. Notably, there is nothing in the record indicating a demand to satisfy the Mortgage during that time period. The Defendants did not request that the Mortgage be satisfied because they knew there was no obligation to satisfy it when the debt remained unpaid.

Petitioners commenced this foreclosure action to collect the balance due under the Note. The Master-in-Equity granted Petitioners' Motion for Summary Judgment, denied Respondents' later-filed Motion for Summary Judgment as moot without reaching its merits, , denied reconsideration of the order granting Petitioners' Motion for Summary Judgment, and entered an Order and Judgment of Foreclosure and Sale. (R. pp. 6-13, 27-35, 14-26, 36-38, 39-51.) Respondents appealed.

The Court of Appeals reversed. It held that, "based on the language of the Second Settlement Agreement and the Release, the clear intention of the parties was to release Appellants from all indebtedness." Op. at 6. The Court of Appeals further held that the Master erred by granting Petitioners' Motion for Summary Judgment and by denying Respondents' Motion for Summary Judgment. Op. at 8. In doing so, the Court of Appeals reversed all orders, including the Judgment of Foreclosure and Sale. Op. at 8.

Petitioners filed a Petition for Rehearing or Rehearing *en banc*. The petition argued, among other things, that the Court of Appeals' opinion conflicted with *Lever*, construed isolated release language rather than the entire agreement, and exceeded the proper scope of appellate review by granting Respondents Summary Judgment on an issue not decided or considered by the Master-in-Equity. The Court of Appeals denied rehearing on July 17, 2026. This Petition follows.

Petitioners respectfully petition this Court, pursuant to Rule 242, SCACR, for a writ of certiorari to review the unpublished decision of the South Carolina Court of Appeals filed May 6, 2026, Unpublished Opinion No. 2026-UP-201. The Court of Appeals reversed the judgment of the Charleston County Master-in-Equity, vacated the foreclosure judgment entered in Petitioners' favor, and granted judgment as a matter of law to Respondents.

Petitioners acknowledge that reviewing unpublished opinions of the Court of Appeals is exceedingly rare; however, Petitioners would respectfully submit that this case is of enough import to warrant this Court's attention. First, this case warrants review because the Court of Appeals' decision conflicts with a controlling decision of this Court regarding the independent nature of a mortgage as security for a debt. The decision permits a recorded mortgage to be extinguished by implication through release language that does not reference or identify the Mortgage, does not imply that it should be satisfied, and does not reference or identify the Note or imply that it should be satisfied. Second, the Opinion grants affirmative summary judgment relief despite the absence of a preserved merits ruling by the trial court. See Rule 242(b)(1), (3), SCACR.

Moreover, while unpublished opinions are, in theory, supposed to be persuasive and not dispositive, that does not mean unpublished opinions are not applied in significant ways. In *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544 (Ct. App 2018), the Court of Appeals addressed the Circuit Court's reliance on an unpublished opinion. The Circuit Court found that an unpublished opinion was "close to the rule's exception" and treated it not as controlling precedent, but as persuasive reasoning on the issue presented. The Court of Appeals left this approach undisturbed and found no reversible error. *See also, The No-citation Rule for*

Unpublished Opinions: Do the Ends of Expediency for Overloaded Appellate Courts Justify the Means of Secrecy 50 S.C. L. Rev. 235, 240 (1998) (Arguing that if unpublished opinions are treated as binding authority, they should be citable. Even if they are treated merely as persuasive authority, they would still occupy a rank higher than other persuasive sources like treatises and law review articles.) In practice, unpublished opinions are frequently cited in briefs and arguments, considered by courts, and even cited in published opinions. Published or not, an opinion from the Court of Appeals matters and will almost certainly be referenced and applied in future cases. If the Court of Appeals' ruling is permitted to stand, it would do so in complete opposition to well established law regarding mortgages, specific liens, judgments, and general liens.

ARGUMENT

I. The Court of Appeals' decision conflicts with the South Carolina Supreme Court's mortgage-security precedent.

The central legal premise of the Court of Appeals' opinion is that Petitioners' acceptance of the sum of Fifty Thousand and 00/100s ($50,000.00) dollars and release of Respondents from the Confession extinguished Respondents' remaining liability under the Note and Mortgage. This premise conflicts with *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E.2d 214 (2007), and the numerous authorities upon which *Lever* rests.

In *Lever*, this Court held that a mortgage securing a debt remains enforceable notwithstanding the creditor's earlier recovery of a judgment on the same obligation. The Court quoted the longstanding rule that "until the mortgage debt is actually satisfied, the recovery of a judgment on the obligation secured by a mortgage, without the foreclosure of the mortgage, although merging the debt in the judgment, has no effect upon the mortgage or its lien, does not merge it, and does not preclude its foreclosure in a subsequent suit." *Lever,* 374 S.C. at 33-34, 647

S.E.2d at 216. *Lever* further recognized that a creditor may pursue a general judgment lien and a specific mortgage lien until the debt is satisfied. *Id.* at 35-36, 647 S.E.2d at 217-18.

In this case, the Court of Appeals did not hold that the debt as evidenced by the Note was actually paid. Nor could it have reached such a determination. Respondents paid Fifty Thousand and 00/100s ($50,000.00) dollars against a debt that, at the time the Confession was filed, totaled Six Hundred Twenty-Two Thousand Five Hundred and 00/100s ($622,500.00) dollars in principal, together with Eight Thousand Eight Hundred Twenty-Five and 50/100s ($8,825.50) dollars in attorney's fees and costs. (R. p. 204.) In return, Petitioners caused the Partial Release to be filed. The Second Settlement Agreement did not require Petitioners to file a satisfaction of the Mortgage, did not identify the Mortgage as an instrument being released, and did not mention the Note or Mortgage in the release obligation. The only recorded document filed by Petitioners was the Partial Release which, by its terms, released the Property from the general lien of the Confession and served to partially satisfy the judgment amount as is required by South Carolina law. In other words, the only requirement was to release the Confession as a general lien on the Property and accurately credit the payments made against the amount set forth in the Confession. Had the parties intended a complete satisfaction of the Mortgage, which is a specific lien, Respondents would have demanded that the Mortgage be satisfied, and the Second Settlement Agreement would so state. Therefore, no such agreement was reached between the parties, and there was no requirement that the Mortgage be satisfied.

Moreover, this Court's decision in *Lever* specifically permits a creditor to forgo one collection mechanism while preserving another, which is precisely what occurred in this matter. Petitioners agreed to release Respondents from the general lien of the Confession and collection processes associated therewith such as execution and supplemental proceedings. Nothing in the

Second Settlement Agreement required Petitioners to surrender the specific lien of the Mortgage. By holding otherwise, the Court of Appeals rendered the Mortgage unenforceable by implication, contrary to *Lever's* rule that a mortgage lien survives until satisfaction of the mortgage debt or an express release.

Therefore, Petitioners would respectfully submit that this Court should grant certiorari to reaffirm that a duly recorded mortgage is not extinguished by generalized release language directed to a judgment unless the agreement clearly and expressly releases the mortgage or satisfies the underlying debt which all the Parties to this matter agree was not fully extinguished.

II. The Court of Appeals' contract construction disregards the agreement as a whole and creates uncertainty in settlement and title practice.

The Court of Appeals stated that it construed the entire agreement, but the result reached depends entirely on isolating a broad release phrase while subordinating the provisions that define what was being released. "In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways." *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008). The Second Settlement Agreement repeatedly identifies the subject of the release as the Confession and the release of particular judgment debtors and property from the general lien of the Confession. Paragraph 2 provides that the releases "shall not release any other judgment debtor," that the "principal balance of the judgment" would be reduced by the settlement sum, and that the Confession would remain in full force and effect as to non-released debtors. The filed Partial Release likewise releases the Property from the lien of the Confession and personally releases Respondents from the Confession. As noted hereinabove, there is no requirement that Petitioners release or satisfy the Mortgage; the only requirement concerns the

Confession. In fact, the Second Settlement Agreement contains no mention at all of a release or satisfaction of the Mortgage.

Importantly, Paragraph 16 of the Second Settlement Agreement provides that, except for the release of Respondents, the Second Settlement Agreement "shall not alter or amend" the First Settlement Agreement or the Confession. (R. p. 207.) The First Settlement Agreement is the agreement under which the Note and Mortgage were executed. (R. pp. 188-201.) Because the Second Settlement Agreement <u>did not alter or amend</u> the terms of the First Settlement Agreement except for the stated release of the Confession, the Note and Mortgage survived unless expressly released. Certainly, there is no language in the Second Settlement Agreement or Partial Release that satisfied the debt evidenced by the Note. The Court of Appeals' contrary reading effectively amends the Second Settlement Agreement to add an obligation to satisfy the Mortgage that the parties did not negotiate, anticipate or include. As Petitioners argued before the Court of Appeals, it would have been a simple matter to include such a requirement.

This Court has held that contracts must be read as a whole and that intent is gathered from the entire agreement rather than a single clause. See *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). The Court of Appeals' opinion departs from the principle set forth in *McGill* by focusing exclusively on Paragraph 9 of the Second Settlement Agreement while completely disregarding the rest of the agreement. The release language relied on by the Court of Appeals must be read in the context of the subject matter identified by the agreement: release of the Respondents from the Confession and release of the Property from the general lien of said Confession. Nothing in the document contains a requirement that the Mortgage be satisfied.

If debtors can impliedly satisfy a recorded mortgage by a simple release of a judgment, parties and title examiners will be forced to litigate intent from general release language rather than rely on instruments filed of record. This is a novel and important question for South Carolina foreclosure practice, settlement practice, and real-property title certainty.

Accordingly, the issue is worthy of certiorari because settlement agreements routinely contain broad release language, mutual peace clauses, integration clauses, and references to prior dealings. If such language can impliedly extinguish a recorded mortgage without naming it, the reliability of settlement drafting and property records will be diminished. This Court should grant review to uphold its ruling in *Lever* and require clarity before a mortgage lien is deemed satisfied or released.[1]

III. At minimum, any ambiguity required remand rather than judgment for Respondents.

Even assuming the Court of Appeals reasonably disagreed with the Master's interpretation, the proper result was not to enter a judgment for Respondents that satisfied the Mortgage by decree. If the Second Settlement Agreement and Partial Release are susceptible to both Petitioners' interpretation and Respondents' interpretation, then the Second Settlement Agreement is ambiguous. Under South Carolina law, when contract language is ambiguous, the parties' intent becomes a question of fact and summary judgment is improper. See *Williams v. Gov't Employees Ins. Co.*, 409 S.C. 586, 594, 762 S.E.2d 705, 710 (2014); *Lyles v. BMI, Inc.*, 292 S.C. 153, 157, 355 S.E.2d 282, 285 (Ct. App. 1987).

The Court of Appeals' opinion repeatedly uses the language of intent. It concluded the "clear intention of the parties" was to release Respondents from all indebtedness. Op. at 6. Despite the language used by the Court of Appeals, the record contains competing arguments about what the release language meant, what instruments were included and what Petitioners gave up in

[1] It is of note that the law in *Lever* is longstanding. Lever cites South Carolina Supreme Court precedent dating back to 1851, and even includes a Court of Common Pleas case from 1793. This is not isolated authority – the 2007 *Lever* opinion cites multiple Supreme Court and Court of Appeals cases from the 1800s through 1990, all cited with approval in the opinion.

exchange for Fifty Thousand and 00/100s ($50,000.00) dollars. If that intent could not be resolved from the language of Second Settlement Agreement, then it should have been resolved by the factfinder, i.e. the Master-in-Equity, after remand.

South Carolina appellate courts have long followed this approach in contract summary-judgment cases. When a contract provision is reasonably susceptible of more than one interpretation, summary judgment should be reversed and the case remanded for trial. *See Wallace v. Day*, 390 S.C. 69, 76, 700 S.E.2d 446, 450 (Ct. App. 2010) (finding a contract provision ambiguous and remanding the action for a full trial on the merits). "Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties." *Southern Atlantic Financial Services, Inc. v. Middleton*, 349 S.C. 77, 81, 562 S.E.2d 482, 484-85 (Ct. App. 2002) (citing *South Carolina Dep't of Natural Resources v. Town of McClellanville,* 345 S.C. 617, 550 S.E.2d 299 (2001)). "The determination of the parties' intent is then a question of fact." *Id. See also Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 687 S.E.2d 714 (Ct. App. 2009) (finding that a contract provision was susceptible of more than one interpretation, and therefore reversing the grant of summary judgment and remanding the matter to the trial court). Accordingly, even if the Court of Appeals correctly rejected the Master's interpretation, it still erred by deciding Respondents' entitlement to summary judgment as a matter of law rather than remanding for further proceedings to evaluate the evidence and determine the parties' intent.

IV. The Court of Appeals exceeded the proper scope of appellate review by effectively granting Respondents' summary judgment motion.

The procedural posture independently warrants Certiorari. Respondents filed their own Motion for Summary Judgment after the hearing on Petitioners' Motion. The Master did not grant Respondents' Motion or even reach its merits. Instead, the Master denied Respondents' Motion as moot after granting Petitioners' Motion and entering the Order and Judgement of Foreclosure and Sale. The Court of Appeals nevertheless held not only that the Master erred in granting Petitioners' Motion, but also that the Master erred in denying Respondents' Motion for Summary Judgment.

This result conflicts with South Carolina preservation and appellate-review principles. An order denying summary judgment is generally not reviewable on appeal, even after final judgment. See *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 167, 580 S.E.2d 440, 443 (2003); *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010). In addition, when an issue is raised but not ruled on, a party must obtain a ruling through Rule 59(e) to preserve the issue for appellate review. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

The Court of Appeals' authority to affirm on any ground appearing in the record does not authorize reversal on any ground appearing in the record. In *I'On*, this Court explicitly recognized that distinction.

> [D]ifferent preservation rules apply to an *appellant* – the losing party in the lower court. An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.

338 S.C. at 421-22, 526 S.E.2d at 724 (emphasis in original). Here, the Court of Appeals did not affirm a judgment on an alternate ground; it reversed Petitioners' judgment and granted the functional equivalent of summary judgment to Respondents on a motion that the Master never addressed on the merits.

This Court should grant Certiorari to clarify that where the appellate court disagrees with a trial court's grant of summary judgment but the opposing party's cross-motion was not decided on the merits, the appellate court ordinarily should reverse and remand rather than render judgment in favor of the opposing party.

CONCLUSION

For the reasons set forth herein, Petitioners Richard Young and Jason Greene respectfully request that this Court grant the Petition for a Writ of Certiorari, review the decision of the Court of Appeals, reverse or vacate that decision, reinstate the judgment entered by the Master-in-Equity, or, at minimum, remand this matter for further proceedings consistent with this Court's opinion.

Respectfully submitted,

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