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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough
Master in Equity for Charleston County

Appellate Case No. 2026-000961

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

Respondent,

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.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUE ON APPEAL

I. Whether the Master in Equity Correctly Denied Grange Simons Lucas, III, et al.'s ("***Appellant***") 71(c) Motion for Surplus and further Ordering that a $50,000.00 Payoff Reduction Offer was a Promotional Program that had Expired and not a Binding Agreement.

STATEMENT OF THE CASE

This action is to set aside an Order denying a 71(c) Motion stemming out of a foreclosure sale of the subject property due to Appellant's default on a loan secured by real property located in Charleston County, South Carolina. Respondent commenced this action after Appellant failed to make required payments under the note and mortgage. The record reflects that Respondent produced the operative loan documents and evidence of default.

The Master in Equity entered a final order of foreclosure and sale on August 28, 2015, determining the total debt and interest rate. Following several years of delay the mortgaged property was sold at a foreclosure sale on January 6, 2026. On January 16, 2026, Appellant filed a Motion for Surplus and then filed an Amended Motion for Surplus on January 21, 2026, claiming a $50,000.00 reduction based on an alleged settlement agreement related to a promotional program between April and August of 2025. Following a hearing, the Master in Equity entered an Order dated March 3, 2026, determining that the $50,000.00 reduction to the mortgage balance offered by the Respondent was in fact a limited discount promotion and not a binding agreement.

Appellant then filed a motion under SCRCP Rule 59(e) to alter or amend the Master in Equity's Order. The Master in Equity denied this motion by order dated March 19, 2026, reaffirming its earlier decision that the $50,000.00 reduction was and not a binding agreement. This appeal followed. There are two reasons why this Court should affirm the Master in Equity's rulings:

First, the Master in Equity properly ordered contrary to Appellant's 71(c) Motion given the evidence that the promotional program ran from April to August of 2025 and that the foreclosure sale did not occur until January of 2026;

Second, the Appeal would allow Appellant to continue to benefit from the delays he has caused in this foreclosure to the detriment of the Respondents

I. Statement of the Facts

Mary King Mood Lucas, ("***Mary King***") made, executed and delivered to Success Mortgage Partners, Inc. its successors and assigns, a certain note dated February 8, 2012 in writing wherein and whereby Mary King promised to pay to Success Mortgage Partners, Inc., its successors and assigns, the principal sum of $247,500.00 together with interest at the rate of 5.06% per annum on the unpaid balance ("***Note***"); said principal and interest being payable in monthly installments thereafter until the said Note is fully paid. Compl. ¶ 7. In order to secure payment of said Note, Mary King made, executed and delivered to Mortgage Electronic Registration Systems, Inc., ("***MERS***"), as nominee for Success Mortgage Partners, Inc., it successors and assigns, a certain mortgage dated February 8, 2012 ("***Reverse Mortgage***") securing the below described real property, including any and all improvements to the property, located in Charleston County, South Carolina ("***Subject Property***"):

> ALL that lot, piece or parcel of land, with the buildings and improvements therein, in St. Andrews Parish, in the County of Charleston, State of South Carolina, known and designated as Lot Three (3), Block F, on a plat bearing the legend "Plat of Section 3 Lenevar Subdivision, Charleston County, S.C." dated March 24, 1960 by A.L. Glen Reg. P.S. and L.S. and recorded in Plat Book M at Page 113, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as are shown and delineated on said map which is made a part and parcel hereof by reference thereto.
>
> SAID lot is conveyed subject to the restrictions applicable to said property, which are set forth in the Declaration of the same dated April 9, 1960 in Book D-70 at page 634 in the RMC Office aforesaid.

> BEING the same premises conveyed to Mary King Lucas, the Mortgagor herein, by deed of Grange S. Lucas, III and Mary Catherine Lucas, executed May 23, 1989 and recorded on May 24, 1989 in Book P-184, at page 350, and re-recorded June 25, 1992 in Book H-215 at page 889, and by deed of Renee J. Lucas, executed May 7, 1985 and recorded July 29, 1985 in Book W-148, at page 810.
>
> *Parcel No.* 352-12-00-104
> *Property Address:* 1412 Tara Road
> Charleston, SC 29407

Compl. ¶ 8.

The Reverse Mortgage was recorded on February 14, 2012 in the Office of the Register of Deeds for Charleston County, South Carolina, in Book 233 at Page 544 and eventually assigned to Generation Mortgage Company by assignment, original plaintiff of the foreclosure action. Compl. ¶¶ 9, 11. The Reverse Mortgage was eventually assigned to Nationstar HECM Acquisition Trust 2015-2 ("***Respondent***") by assignment, and the pleadings were amended to substitute it as Plaintiff. Order to Amend Caption and Proceedings Substituting Plaintiff at 2-3.

The Note and the Reverse Mortgage evidences and secures the repayment of money advanced by MERS, its successors and assigns, to, or on behalf of, Mary King and constitutes a valid first lien on the Subject Property. Compl. ¶ 11. In and by the terms of the Note and the Reverse Mortgage securing the same, it is provided, among other things, that upon failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Reverse Mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure. Compl. ¶ 17. In and by the terms of the said Note it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys' fees if the said Note be placed in the hands of an attorney for collection after default. Compl. ¶ 18. Any notice required by the terms of the Reverse Mortgage or by State or Federal law was given to the applicable defendant(s) prior to the commencement of Generation Mortgage Company's foreclosure action. Compl. ¶ 26.

Mary King's death on December 11, 2013, was an event of default under the Note and Reverse Mortgage, thereby giving Generation Mortgage Company the right to declare the entire balance of principal and interest due there under payable at once. Compl. ¶ 24.

II. Procedural History

A. Appellant made a Rule 70(c) Motion for Surplus to Set Aside the Judgment which the Master in Equity Denied, and Appellant now Appeals that Decision.

On January 20, 2015, Generation Mortgage Company filed its *Lis Pendens*, Summons, and Complaint for Foreclosure. *See generally* Compl. According to its affidavit of service, Generation Mortgage Company served Appellant on January 20. 2015; January 23, 2015; and February 25, 2015. *See* August 2015 Affs. of Service. Only Grange Simons Lucas, III ("Lucas"), Personal Representative of Mary King's estate, filed an answer. *See* February 2015 Answer. On April 9, 2015 Generation Mortgage Company filed an Affidavit of Default as to those other parties. *See* Aff. of Default. The Court of Common Pleas referred the matter the Master in Equity by Order of Reference filed on April 9, 2015. *See* Order of Reference.

A Final Hearing on Foreclosure was held on August 12, 2015 where Master in Equity Mikell R. Scarborough authorized a foreclosure sale to occur at a convenient sales day following that hearing via an Order. *See* August 2015 Sale Order. The first sale date was scheduled November 3, 2015. *See* Aff. of Pub filed March 2016. Lucas filed for Chapter 13 bankruptcy on November 2, 2015. On November 14, 2016, the United States Bankruptcy Court, District of South Carolina dismissed Lucas's case. Appellant was provided with a Notice of Sale on February 21, 2017; April 10, 2017; and July 14, 2017. *See* 2017 Affs. Of Service. Appellant motioned to stay the foreclosure sale on April 30, 2018 which was granted by Order May 3, 2018. *See* May 2018 Order.

Lucas filed for Bankruptcy five more times over the following five years, all of which were dismissed, save the last one filed on September 2, 2022, which instituted a 12-month re-finance plan of the Subject Property. *See* Respondent's Reply to Defendant's Motion / Verified Claim for Surplus. On March 11, 2024, Respondent filed a Motion for Relief from Stay due to Appellant's failure to maintain homeowner's insurance. *See Id.* A Settlement Order was entered on April 30, 2024 requiring Appellant to reimburse Respondent for the homeowner's insurance, but Appellant failed to comply, leading to Respondent filing an Affidavit of Default on December 20, 2024 that resulted in the court lifting the stay. *See Id.*

The 11th foreclosure sale date on March 4, 2025 was cancelled due to Appellant listing the Subject Property for sale. On March 6, 2025 the Master entered a Consent Order establishing the total debt as $377,377.50, giving Appellant 30 days to obtain a contract. *See* March 2025 Consent Order. The Consent Order did not show the $50,000.00 discount. Appellant obtained a contract for sale for $450,000.00, leading to the cancellation of the 12th scheduled foreclosure scale. The 12th scheduled sale was cancelled so that Appellant could obtain a reverse mortgage to payoff the loan. The Subject Property was ultimately sold to third party at a foreclosure sale on January 6, 2026 for $404,074.03. At the time of the foreclosure sale the contractual amount due to the Respondent was $403,469.35. *See* Affidavit of Plaintiff ¶ 6.

On January 16, 2026, Appellant filed a Rule 71(c) Motion for Surplus and then filed an Amended Motion for Surplus on January 29, 2026, claiming a $50,000.00 reduction based on an alleged binding agreement related to a promotional program for the foreclosure sale. *See* referenced motion. On March 3, 2026, the Master in Equity issued an Order denying Appellant's Motion and determining that the $50,000.00 was in fact a promotional program and not a binding agreement. *See* March 3, 2026 Order. On March 5, Appellant filed a Motion to Alter and/or Amend the March 3, Order, but this Motion was denied by Order on March 19, 2026. *See* Order Denying Motion to Reconsider. The Master entered an Order of Sale and Disbursement on March 19, 2026, finalizing the sale. *See* March 19, 2026 Order.

On April 17, 2026, Appellant filed and served a Notice of Appeal of the March 19, 2026 Order denying Appellant's Rule 71(c) Amended Motion for surplus. *See* Notice of Appeal. Appellant appeals the March 3, 2026 Order denying Appellant's Amended Motion for Surplus, The March 19, 2026 Order denying Appellant's Motion to Alter or Amend, and that same Order's Order of Sale and Disbursement. *See Id.*

ARGUMENTS

I. Standard of Review

A. Appellant Has the Burden of Convincing the Court of Appeals that the Masters in Equity Committed Error in his Findings.

An action for the foreclosure of a real estate mortgage is in equity. *Collier v. Green*, 244 S.C. 367, 370, 137 S.E.2d 277, 279 (1964). All regular and special judges may hear and determine actions for foreclosure suits and all other equity matters concerning real estate. S.C. Code Ann. § 14-5-350. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. SC R. CIV. P. 53. In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Eldridge v. Eldridge*, 398 S.C. 113, 118, 728 S.E.2d 24, 26 (2012). However, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings. *Id.*

II. The Master in Equity Correctly Determined that the $50,000.00 Reduction to the Mortgage Balance was a Promotional Incentive Program and not a Negotiated Agreement.

The Master in Equity correctly ordered against Appellant's Amended Motion for Surplus by finding that the $50,000.00 Reduction to the Mortgage Balance was a expired promotional program. "A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009). "Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *Id*. at 374-75, 684 S.E.2d at 205. "Once the debt and default have been established, the mortgagor has the burden of establishing a defense to a foreclosure such as lack of consideration, payment or accord and satisfaction." *Id*.

The Note and the Reverse Mortgage are direct evidence of the terms and existence of the agreement entered into by Mary King. *See* Exhibits 2 and 3 to Master's Order of Judgment of Foreclosure & Sale. Further bolstering its Motion, Nationstar Mortgage, LLC submitted an Affidavit of Plaintiff. *See* March 2026 Affidavit of Plaintiff. Nationstar Mortgage, LLC's Affidavit of Plaintiff clearly establishes the breach of the Note and the Reverse Mortgage and the amount and measures of damages sustained by Nationstar Mortgage, LLC resulting from the breach upon Mary King's death. With the copies of the Note, the Reverse Mortgage, and Nationstar Mortgage, LLC 's Affidavit of Plaintiff, the essential elements and facts of its cause of action for foreclosure were established. *See U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009). Appellant's Initial Brief does not focus on appeal of the foreclosure order itself but rather the March 3, 2026 Order ruling contrary to Appellant's 71(c) Amended Motion for Surplus and the subsequent March 19, 2026 Order of Sale and Disbursement and Order denying Appellant's Motion to Alter or Amend that March 19 Order.

On March 6, 2025, the court entered a Consent Order Continuing Sale, signed by both Plaintiff's and Lucas's counsel, which stipulated the total debt as of March 4, 2025 to be $377,377.50. The total debt at the time of the January 6, 2026 sale was $404,469.35 which accounted for the agreed upon total debt in that March 6 Order and the interest and corporate advances that accrued between that date and the sale date of January 6, 2026. *See* March 2026 Plaintiff's Affidavit. No modifications following that Consent Order had been agreed upon by the parties and/or filed with the Court. Respondent did, however, offer a promotional program to Appellant that ran until August 2025 and would result in a discounted payoff total if the property was sold within that timeline. The Master found based upon the parties' evidence that this was a promotional program and not a binding contract, and since Appellant did not comply with the terms of that offer was not included during the January 6, 2026 foreclosure sale, there was no breach of any settlement agreement between the parties.

Appellant asserts the existence of such a settlement agreement entered into by the parties and unreasonably relies on a payoff statement that expired in May 2025 as evidence of that agreement. However, no agreement between counsel shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. SC R. CIV. P. 43(k). There has been no consent order or written stipulations signed by counsel or entered in the record that would serve to modify the March 6, 2025 Consent Order. Neither has any such agreement been made in open court nor signed by the parties and their counsel that would change the terms of that March 6, 2025 Order.

Instead, Appellant relies on a payoff statement from April 30, 2025 as evidence of that agreement. *See* Exhibit A to Appellant's Amended Motion for Surplus. That payoff statement had a good through date of May 15, 2025, and thus the terms within that payoff statement explicitly terminated on May 15, 2025 following Appellant's failure to pay off the Reverse Mortgage. Appellant's contention in their Initial Brief that this good through date does not apply to the promotional discount included does not establish that any terms on that payoff statement would extend past its explicit termination date. Therefore, reliance on this payoff form to assert the existence of a settlement agreement that, not signed by both parties or entered into the record, is unreasonable.

Accordingly, Appellant has failed to provide sufficient evidence that there was a settlement agreement between the parties that would show that the Master in Equity erred in ordering contrary to Appellant's Rule 71(c) Amended Motion for Surplus, reasserting the figures stated in this order in its Order of Sale and Disbursement, and subsequent denial of Appellant's Motion to Alter or Amend that Order. Thus, this Court should affirm the Master in Equity's Orders denying the Appellants' Motions for Surplus and Motion to Alter or Amend and the Master's Order of Sale and Disbursement.

III. The Appeal would Allow Appellant to Continue to Benefit from the Delays he has Caused in this Foreclosure to the Detriment of the Respondent

Allowing this appeal to continue would allow Appellant to continue to delay this foreclosure process to the detriment of the Respondent. The Summons and Complaint in this foreclosure action was filed January 2, 2015. The Master's Order of Judgment of Foreclosure & Sale was entered August 28, 2015. The first foreclosure sale date was set November 3, 2015. Since that first foreclosure sale, there has been twelve more sale dates scheduled over a decade before the property was ultimately sold January 6, 2026. In that time, Lucas has filed 6 for Bankruptcy 6 separate times, entered into and breached a Settlement Order for failure to reimburse Respondent for failure to maintain homeowners insurance, and breached a contract for sale for the Subject Property.

Appellant has continuously delayed these foreclosure proceedings and seeks to continue these proceedings through an appeal at the detriment of Respondent who has to continue paying counsel, direct resources towards continues proceedings, and who may have to account for a potential bounce back onto the Respondent's books. Therefore, this Court should affirm the Master in Equity's decision and dismiss this appeal so Appellant can no longer continue to delay proceedings at the expense of Respondent's time and resources.

CONCLUSION

Nationstar HECM Acquisition Trust, 2015-2 requests that this Court affirm the Master in Equity's March 3, 2026 Order denying Lucas's Rule 71(c) Amended Motion for Surplus, March 19, 2026 Order of Sale and Disbursement, and March 19, 2026 Order denying Lucas's Motion to Alter or Amend for two reasons:

First, the Master in Equity properly ordered contrary to Appellant's 71(c) Motion given the evidence that the promotional program ran from April to August of 2025 and that the foreclosure sale did not occur until January of 2026;

Second, the Appeal would allow Appellant to continue to benefit from the delays he has caused in this foreclosure to the detriment of the Respondents

[SIGNATURE TO FOLLOW ON NEXT PAGE]

RESPECTFULLY SUBMITTED,

Dated: August 17, 2026

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