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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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APPELLANT'S INITIAL REPLY BRIEF

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I. THE RECORD INDICATES AN AGREEMENT BETWEEN THE PARTIES TO REDUCE THE MORTGAGE PRINCIPAL BY $50,000.00.

In it's brief the Respondent does not cite any emails or other communication that would dispute or disprove the email chain that Appellant contends formed a binding agreement between the parties.

Rather, Respondent admits that it did offer a "promotional program" to Appellant which it claimed, after the fact, expired in August of 2025.

Respondent's counsel, has acknowledged that an expiration date was never contemporaneously communicated to Appellant or Appellant's counsel until an email from Respondent's counsel of 2/12/2026 when the following exchange took place (nearly ten months after the agreement was formed):

> "Kerry, from the notes in my client's system it looks like the promotion was from April to September. Thanks, Martin"

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."

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

> "Kerry, I don't think so on time frame."

The evidence is compelling that the emails from April 2025 (subsequent to the last consent order) and culminating with the email from Appellant's counsel to Respondent's of April 24, 2025, evidenced an agreement between the parties:

> "Martin, Mr. Lucas approves the settlement of the interest for a $50,000.00 reduction in the payoff to $331k. He would like that held good through June 1st…."

To which Respondent's counsel replied four (4) minutes later:

> "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."

The payoff quote was provided the following day.

Respondent now takes the position that Appellant did not have the right to rely upon the payoff quote, stating that the same "expired in May of 2025."

This argument obviously conflates the notice in the payoff quote stating a "good through date" of May 15, 2025 in reference to its interest calculation, with the supposed expiration of the discount promotion, which the Respondent now argues was valid through August 2025. Respondent's position is therefore unreconcilable. Respondent cannot in the same filing contend that the payoff was binding on the one hand only through May 15, 2015, and on the other argue that "the promotion" was binding through August of 2025.

In either case, the alleged time limitation of the offer appears nowhere in the payoff statement nor in the email chains between counsel until some months later and after the foreclosure sale.

The record demonstrates that, had the payoff reduction been time limited, not only did Respondent have ample opportunity to timely communicate the same but it should be inferred that it had the duty to do so. Failing such, it never became a term of the agreement.

II. THE AGREEMENT DOES NOT VIOLATE RULE 43(K) S.C.R.C.P.

Rule 43(k) S.C.R.C.P. reads in pertinent part:

> "Agreements of counsel. No agreement between counsel affecting the proceedings in an action 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..."

The agreement concerning the reduced payoff was not an agreement "...affecting the proceedings...".

The proceedings had previously been concluded by the 2015 Order of Foreclosure and Sale and subsequent motions and orders all of which preceded the agreement. The only arguable proceeding occurring thereafter was the January 6, 2026 foreclosure sale. However. If that was a "proceeding" rather than simply an administrative act, the principal reduction agreement had no effect upon it, as the sale process did not depend in any way on the existence or non-existence of a binding agreement for payoff reduction.

Should the Court determine that Rule 43(k) applies, it would still not prevent the $50,000.00 principal reduction agreement from binding the parties.

There are three (3) ways that Rule 43(k) may be satisfied:

1) reduction to the form of a consent order or written stipulation signed by counsel and entered into the record;

2) being made in open court and noted upon the record;

3) reduction to writing and signed by the parties and their counsel.

The electronic signatures of counsel are noted in the record.

The signature of PHH Mortgage, the servicer, was in compliance with the Uniform Electronic Transaction Act, Section 26-6-90(B), S.C. Code 1976, as amended which reads as follows:

> "The effect of an electronic record or electronic signature attributed to a person pursuant to subsection (A) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption including the parties' agreement, if any, and is otherwise provided by law."

The payoff statement contains the distinctive logo of PHH Mortgage at the top and at the bottom of the same is found its address, telephone number, email address and is electronically signed "PHH Mortgage Services: HTTBS:Reverse MortgageQuestions.com."

> "A person is defined under the Act as "an individual, corporation, business, trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or other legal or commercial entity." Section 26-6-20(13).

The second page of the payoff statement headed "Transaction Detail", also contains the corporate logo of PHH Mortgage.

In the context and surrounding circumstances at the time of the document's creation, these are a sufficient corporate signature.

Further, Section 26-6-90 S.C. Code, makes no distinction between an electronic record and electronic signature. The payoff statement is the exact type of electronic documentation that is routinely sent and received as a binding agreement and was incorporated by reference into the email chain between counsel.

Since the party to be charged, being the Respondent, and his counsel both signed, through electronic signatures, the requirements of Rule 43(k) have been complied with.

III. THIS APPEAL HAS NOT DELAYED THE FORECLOSURE.

The motion and subsequent appeal have not delayed the case as the motion was not filed until after the January 6, 2026 foreclosure sale which was the last event which completed in the underlying case. There is no arguable benefit to Appellant to "continue to delay this foreclosure process to the detriment of Respondent." The foreclosure has been completed and the Master in Equity has disbursed the sales proceeds. The issue before this court is solely whether the Respondent must disgorge $50,000.00 of the proceeds in compliance with the settlement agreement, and whether the Master in Equity erred by failing to order the same.

CONCLUSION

The Master in Equity's orders of March 3, 2026 and March 19, 2026 should be reversed and Respondent ordered to disgorge $50,000.00 to be added to the surplus created by the foreclosure sale of January 6, 2026. Appellant urges that judgement in such amount be entered in his favor and against the Respondent or in the alternative, the case be remanded to the Charleston County Master in Equity for further proceedings consistent with the court's action.

August 25, 2026

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