

RECEIVED

Sep 17 2026

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

The Honorable Shannon M. Phillips, Circuit Court Judge

Case No. 2021-CP-42-04184

(Appellate Case No. 2024-000371)

Jamie T. Nesbitt.....Appellant,

v.

Cenlar FSB, Amerihome Mortgage Company, LLC, Lakeview Loan Servicing,
LLC.....Respondents.

RESPONDENTS' RETURN

Madeline O. Baruch (#105996)
maddie.baruch@troutman.com
TROUTMAN PEPPER LOCKE LLP
301 S. College Street, Suite 3400
Charlotte, NC 28202
Telephone: (704) 998-4030

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	1
I. THE OPINION DID NOT OVERLOOK RESPONDENTS’ AFFIDAVIT, BUT RATHER CORRECTLY APPLIED IT.	1
II. THE “EVIDENCE” APPELLANT CLAIMS TO HAVE PRODUCED FAILS TO CREATE A GENUINE ISSUE OF MATERIAL FACT AND THE COURT NEVERTHELESS CONSIDERED IT IN THE OPINION.....	3
III. THE COURT CORRECTLY HELD BASED ON THE LAW AND UNDISPUTED FACTS THAT § 29-3-310 DOES NOT APPLY BECAUSE APPELLANT FAILED TO PAY THE MORTGAGE IN FULL.	4
IV. THE PETITION DOES NOT IDENTIFY A SINGLE POINT OF FACT OR LAW THAT THE COURT OVERLOOKED IN CONNECTION WITH APPELLANT’S BREACH OF FIDUCIARY DUTY AND NEGLIGENCE CLAIMS.	6
CONCLUSION.....	6

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Dykeman v. Wells Fargo Home Mortgage, Inc.</i> 381 S.C. 333, 673 S.E.2d 804 (2009)	5
<i>Kennedy v. S.C. Retirement Sys.</i> , 349 S.C. 531, 564 S.E.2d 322 (2001)	1
<i>Lee v. Hill</i> , 92 S.C. 114, 75 S.E. 273 (1912)	5
<i>Salinas v. Ellis</i> , 26 S.C. 337, 2 S.E. 121 (1887)	4
Statutes	
S.C. Code Ann. § 29-3-310.....	4, 5
Other Authorities	
Rule 221(a).....	4

Respondents Cenlar FSB (“Cenlar”), AmeriHome Mortgage Company (“AmeriHome”), and Lakeview Loan Services, LLC (“Lakeview”) (collectively “Respondents”) hereby submit this return in opposition to the petition for rehearing (the “Petition”) as filed by Appellant Jamie Nesbitt (“Appellant”). For the reasons set forth herein, the Court should deny Appellant’s Petition, dismiss the appeal, and grant Respondents such further and additional relief as the Court deems just and proper.

INTRODUCTION

Appellant’s Petition does not identify a single point of fact or law this Court overlooked or misapprehended in its opinion affirming the trial court’s summary judgment ruling (the “Opinion”). Rather, the Petition improperly reorganizes arguments Appellant already lost, assigns them new labels, and asks this Court to reach a different result on the same record. However, rehearing exists to correct genuine oversight, ***not to afford a losing party a second opportunity to relitigate settled ground under new headings***. *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (“[t]he purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time”). Because the Petition does not and *cannot* identify any oversights by the Court, it should be denied.

ARGUMENT

I. THE OPINION DID NOT OVERLOOK RESPONDENTS’ AFFIDAVIT, BUT RATHER CORRECTLY APPLIED IT.

Appellant incorrectly argues that because \$1,471.31 (the escrow surplus) exceeds \$1,363.46 (the tax disbursement), “[t]he escrow account was never short” and “Respondents advanced nothing.” Appellant misstates the mechanism by which the payoff figure was actually calculated. However, the Court got it right.

As set forth clearly in Respondents' Final Brief, on November 9, 2020, the amount required to pay off the Mortgage was \$178,774.37. R. p. 275, lines 9-12; R. pp. 221-224; R. p. 099, line 28-p. 100, line 18; R. p. 132, lines 14-25; R. p. 134, line 20-p. 135, line 3. This payoff amount was contingent on a positive escrow account balance of \$1,471.31. R. p. 275, lines 17-19; R. p. 216-219; R. p. 099, line 28-p. 100, line 18. Stated otherwise, the November 9 payoff statement's total of \$178,774.37 was reached by *crediting* the full escrow surplus of \$1,471.31 against the principal, interest, and MIP premium due. That credit was expressly conditioned on the escrow balance remaining available at the time of payoff, which is precisely why the statement warned, in the language the Opinion quoted, that the payoff amount "MAY CHANGE if ... advances occur on or after the Effective Date." Opinion p.3.

On December 3, 2020, \$1,363.46 was disbursed from the escrow account to pay Appellant's scheduled property taxes, which became due and payable between September 13, 2020, and January 15, 2021. R. p. 275, lines 22-23; R. pp. 216-219. Once \$1,363.46 of that credited surplus was disbursed on December 3, 2020 to pay Appellant's property taxes, only \$107.85 of the original \$1,471.31 credit remained available. R. p. 275, lines 17-23; R. pp. 215-219; R. p. 099, lines 8-11; R. p. 100, lines 23-29; R. p. 164:14-21.

As the Court correctly concluded in the Opinion, "Respondents provided evidence that because the property tax payment was made, the payoff amount increased before the payoff attempt. Therefore, Nesbitt's attempted payment of \$178,774.37 did not constitute the full amount of the loan and the balance was rejected" and that "[t]here is no genuine issue of material fact that Nesbitt failed to tender the full amount owed after the property tax was disbursed from the escrow account associated with the loan." Opinion, pp.3-4. Accordingly, the Opinion correctly applied Respondents' affidavit in reaching its conclusion and the Petition should be denied.

II. THE “EVIDENCE” APPELLANT CLAIMS TO HAVE PRODUCED FAILS TO CREATE A GENUINE ISSUE OF MATERIAL FACT AND THE COURT NEVERTHELESS CONSIDERED IT IN THE OPINION.

Appellant next asserts that this Court overlooked “evidence” that Timothy Ray, her closing attorney, separately paid \$1,362.46 toward the 2020 property taxes from his trust account, that this check was deposited by Spartanburg County. Appellant contends that such evidence was not considered by the Court when it opined that Appellant “failed to come forth with evidence to dispute that the taxes were paid from escrow.” Petition, ¶ 2.

As an initial matter, Appellant misstates the Court’s Opinion. The Opinion plainly states that Appellant “also provided evidence that she paid property taxes on December 7, 2020,” but that explains that she “admitted she did not notify Respondents that she intended to pay the property taxes until after she attempted the payoff.” Opinion, p.3. The Court continues by opining that “Respondents provided evidence that because the property tax payment was made, the payoff amount increased before the payoff attempt. Therefore, Nesbitt’s attempted payment of \$178,774.37 did not constitute the full amount of the loan balance and was rejected. Nesbitt has failed to come forth with evidence to dispute this.” Opinion p. 3. Thus, it is evident that the Court considered Appellant’s December 7, 2020 tax payment and properly concluded that it did not create a genuine issue of fact as to whether Appellant’s \$178,774.37 attempted payment satisfied the outstanding balance of the loan balance, *which it did not*. At most, it shows that Appellant and Respondents both paid the property taxes, which still would have reduced the funds in her escrow account, and increased the outstanding payoff balance, resulting in the short payoff. Accordingly, the Petition should be denied.

III. THE COURT CORRECTLY HELD BASED ON THE LAW AND UNDISPUTED FACTS THAT § 29-3-310 DOES NOT APPLY BECAUSE APPELLANT FAILED TO PAY THE MORTGAGE IN FULL.

In the Petition, Appellant argues *for the first time* that § 29-3-310 contains a disjunctive, three-branch trigger— “full payment,” “satisfaction,” or “legal tender” —and this Court’s holding that the statute “does not apply unless the mortgage has been paid in full” fails to consider the “legal tender” branch. Petition p. 7.¹ Appellant’s argument is meritless.

The Petition concedes that there is no South Carolina decision to support that Respondent’s attempted payoff for less than the outstanding balance constitutes a valid legal tender under § 29-3-310. Petition, p.8. However, the well-settled South Carolina law is clear that even “legal tender” requires the mortgage to be paid *in full*.

As an initial matter, the statute’s plain language is unambiguous. The phrase “debts, damages, costs, and charges” makes clear that any tender must encompass *all* amounts secured by the mortgage. See S.C. Code Ann. § 29-3-310. Further, the statute treats legal tender as having the same force and effect as actual payment or satisfaction. *Salinas v. Ellis*, 26 S.C. 337, 2 S.E. 121, 124 (1887) (holding that “*the tender is to have the same force as ‘payment or satisfaction’*” in connection with § 29-3-310) (emphasis added).

Indeed, South Carolina courts have long held that a valid legal tender of a mortgage debt requires an offer to pay the creditor the *entire* amount of the debt. Specifically, the Supreme Court of South Carolina held that “as long as there is one dollar due on that debt, the creditor is entitled

¹ Respondents acknowledge that the general concept of “tender” was not new to this case: Appellant’s Initial Brief characterized the December 7, 2020 wire as constituting “legal tender of the full and final amount due on the mortgage.” Initial Brief at 3. But characterizing a payment as a “tender” in the factual narrative of a brief is not the same as briefing the specific statutory argument Appellant now raises—that the “legal tender” branch of § 29-3-310 operates independently of, and may be satisfied without regard to, whether the amount tendered equals the full amount actually owed. Petition p. 7. That statutory-construction argument was not presented to the trial court, was not raised in either of Appellant’s appellate briefs, and therefore is not a point the Court “overlooked or misapprehended” within the meaning of Rule 221(a), SCACR. Rather, it is a new legal theory raised for the first time on rehearing and therefore should not be considered.

to foreclose the mortgage to collect it.” *Lee v. Hill*, 92 S.C. 114, 75 S.E. 273, 274 (1912) (“There is an obligation upon the debtor to tender the right amount of the debt to make what is known as a legal tender—***that is, to offer to pay the creditor the debt, and the whole of it***, then and there—and if he does not make that legal tender, the creditor is not bound by that offer.”) (emphasis added). More recently in *Dykeman v. Wells Fargo Home Mortgage, Inc.* 381 S.C. 333, 673 S.E.2d 804 (2009), the Court ruled that *full* payment of debts, including any applicable damages, costs, and charges, was the first element required to trigger the relief under § 29-3-310. Therefore, the plain language of the statute, consistent with the Court’s rulings, supports that a valid legal tender under South Carolina law requires an unconditional offer of the full amount actually due.

As this Court properly held, Appellant’s “attempted payment of \$178,774.37 did not constitute the full amount of the loan balance” and “section 29-3-310 of the South Carolina Code (2007) [] does not apply unless the mortgage has been paid in full.” Opinion p. 2. Regardless of whether it be a full payment, satisfaction, or legal tender, the mortgage must still be paid in full. A tender of an amount less than what is actually owed is not “legal tender” sufficient to trigger the mortgagee’s statutory duty to satisfy the mortgage under any branch of § 29-3-310; it is simply an insufficient payment, which is what the trial court and this Court both correctly found it to be.

Appellant now asks the Court to reconsider whether the wired figured would be considered a valid “legal tender” for the sole reason that it matched the amount stated in the November 9 Payoff Statement. Petition, pp. 7-8. However, to reach such a conclusion would be contrary to the law, and inconsistent with the factual record, which consistently has shown that Appellant’s December 7 payment failed to satisfy the entire outstating balance due on the loan.

Accordingly, the Court correctly ruled, after considering all the evidence, that there is no genuine issue of fact as to Appellant’s § 29-3-310 claim; therefore, the Petition should be denied.

IV. THE PETITION DOES NOT IDENTIFY A SINGLE POINT OF FACT OR LAW THAT THE COURT OVERLOOKED IN CONNECTION WITH APPELLANT’S BREACH OF FIDUCIARY DUTY AND NEGLIGENCE CLAIMS.

Finally, Appellant argues that the rulings on breach of fiduciary duty and negligence rest entirely on the escrow-shortage premise and therefore must fall with it. Appellant is incorrect.

As to Appellant’s fiduciary duty claim, the Court held, “Respondents did not owe Nesbitt a fiduciary duty to satisfy the mortgage because Nesbitt failed to set forth any evidence showing Respondents undertook a special duty to advise her.” Opinion p.3. The Petition does not and *cannot* identify any overlooked points that would support the existence of a fiduciary relationship between Respondents and Appellant. Therefore, without evidence to establish a fiduciary duty, the Court correctly held that summary judgment was appropriate. Opinion p.4.

Regarding Appellant’s negligence claim, the Court opined, based on extensive and well-settled South Carolina law, that Respondents did not owe Appellant a duty of care to accept the insufficient payoff amount. Opinion p.4. The Court further held that “[i]t does not matter who ultimately paid the property taxes ... Respondents acted in accordance with the loan and disbursed the tax payment.” Opinion p.5. Notwithstanding, the Petition asks the Court reconsider whether Respondents’ “December 3 disbursement was an act taken in accordance with the loan documents,” despite failing to identify *any* points that the Court overlooked or misapprehended when issuing the Opinion. This is precisely the type of argument that SCACR 221(a) invalidates. Accordingly, the Petition should be denied.

CONCLUSION

For the reasons set forth herein, the Court should deny Appellant’s Petition, dismiss the appeal, and grant Respondents such further and additional relief as the Court deems just and proper.

This is the 17th day of September, 2026.

s/ Madeline O. Baruch

Madeline O. Baruch (#105996)
maddie.baruch@troutman.com
Troutman Pepper Locke LLP
301 S. College Street, Suite 3400
Charlotte, NC 28202
Telephone: (704) 998-4030

*Counsel for Defendants Cenlar FSB, AmeriHome
Mortgage Company, LLC, and Lakeview Loan
Servicing, LLC*