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**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Joseph M. Strickland, Master-in-Equity

Opinion No. 2026-UP-331 (S.C. Ct. App. filed July 1, 2026)

Wells Fargo Bank, National Association, not in its
individual or banking capacity, but solely as Trustee on
behalf of Green Tree Mortgage Trust 2005-HE1,

Respondent,

v.

James E. Turner a/k/a James Turner, Sr.,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether a loan servicer lays the foundation required by Rule 803(6), SCRE, and S.C. Code Ann. § 19-5-510 for payment entries made years before its witness joined the business that made them, through a litigation employee who describes how a later servicer received the data but not the mode of the entries' preparation.
- II. Whether a recorded satisfaction of mortgage may be cancelled against the homeowner on an earlier recorded assignment alone, without proof of how the satisfaction came to be entered, or whether the creditor must first prove that the satisfaction was entered by fraud, accident, or mistake, or without authority.

SUMMARY

This Court has never addressed what a witness must show to lay the foundation for payment entries made before he joined the business that made them. The panel here treated a witness's familiarity with a later servicer's intake of the data as the foundation for entries made years before he arrived. It treated the master's silence on whether the records could be trusted as the finding of trustworthiness the statute requires. Foreclosures tried on a successor servicer's boarded records, through a litigation employee, have become routine; other jurisdictions have rules for them; South Carolina's courts have never said what is required.

In 2007 the original lender recorded a sworn satisfaction of Petitioner's mortgage. Eleven years later, its successor's successor sued on an affidavit that the assignment to it was lost or never recorded, and asked that its lost assignment be credited but the recorded satisfaction not be. The courts below agreed, on the strength of a 1996 assignment alone, without asking how the 2007 satisfaction came to be entered. In *Young v. Pitts* and the cases that follow it, the creditor proved how the instrument came to be made before any court cancelled a recorded satisfaction; here, the Court of Appeals did not cite *Young*, or any case since, and rested instead on an 1881

decision that no court had cited since 1927 until the Court of Appeals did so here. The Court should grant this Petition, require briefing, and consider these issues.

STATEMENT OF THE CASE

Petitioner gave two mortgages, in 1996 and 1997, on two adjoining tracts: one his home, the other the site of a child-care center operated by his co-defendant. R. 8 ¶ 33, 14–15, 40–41 ¶¶ 23–24, 43–44 ¶¶ 40–41, 79–80, 115. Suit was filed July 31, 2018. R. 35. Petitioner James Turner, Sr., answered pro se. R. 30–34. He admitted that Emergent had filed the satisfaction, denied that Emergent lacked authority to do so, and pleaded the satisfaction as a defense. R. 31 ¶¶ 12–13, 32 ¶ 19. Respondent’s motion for summary judgment, heard June 10, 2021, was denied. R. 3. Trial between Respondent Wells Fargo Bank, N.A., as trustee, and Petitioner was on May 11, 2023. *Id.* The Master’s Order issued June 15, 2023. R. 1–23. The Court of Appeals issued its opinion, No. 2026-UP-331, on July 1, 2026, and denied rehearing and rehearing en banc on August 24, 2026.

The Mortgage, the Assignment, and the Three Lost-Instrument Affidavits

Turner gave Mortgage 1 to Emergent Mortgage Corp. on November 6, 1996, to secure a \$121,500 note. R. 40 ¶¶ 23–24, 272–79 (Exs. 9, 10). The mortgage was recorded on December 19, 1996; the same day, an assignment of it from Emergent to Carolina Investors, Inc. was recorded. R. 8 ¶¶ 27–28. On February 12, 1997, Green Tree Financial Servicing Corporation lent Turner \$55,250 on Note 2, secured by Mortgage 2. R. 300–306 (Exs. 20, 21). Under four successive names—Green Tree Financial Servicing Corporation, Conseco Finance Servicing Corp., Green Tree Servicing LLC, and Ditech Financial LLC—that one company serviced both loans for the next twenty-two years. R. 10, 129–30, 282–86 (Exs. 12–14).

On October 5, 2007, Emergent executed and recorded a “Lost Mortgage Satisfaction” of Mortgage 1, at Book 1364, Page 1234. R. 9 ¶ 36, 260 (Ex. 5), 470–71. Its first page recites that

“[t]he debt hereby secured is paid in full and the lien of the instrument is satisfied,” identifies the mortgage by its recording data, and describes Emergent as “the holder and owner thereof.” R. 470. Its second page is an affidavit. An Emergent officer, “being duly sworn,” stated “[t]hat said Corporation is the bona fide owner and holder of the above mortgage and that the same has not been assigned, hypothecated or otherwise disposed of, and that the same has been lost or destroyed and after diligent search cannot be found.” R. 471.

In 2009, Green Tree Servicing LLC executed a “Lost Note Affidavit” reciting that the original Note 1 “has been misplaced by Holder and the same cannot be located despite diligent search attempts,” and that the note “has been sold by Holder to Purchaser.” The purchaser’s name is blank. R. 289 (Ex. 16).

On May 15, 2018, an assistant vice president of Ditech executed an “Affidavit of Lost Assignment,” recorded May 25, 2018. R. 287–88 (Ex. 15). It states that “[t]he original assignment of the Mortgage between Carolina Investors Inc. and Wells Fargo Bank, National Association, . . . as Trustee on behalf of the Green Tree Mortgage Loan Trust 2005-HE1 has been lost and/or was not recorded,” that “Carolina Investors Inc. is no longer in business and a replacement assignment is therefore unavailable,” and gives no date for the assignment. R. 287. A month earlier, on April 16, 2018, Ditech had assigned Mortgage 2 to Respondent by a written assignment recorded April 27, 2018. R. 44 ¶ 43, 175–76, 307–09 (Ex. 22). For Mortgage 1 there was no such instrument; Ditech supplied the affidavit instead. On July 31, 2018, two months after the affidavit was recorded, Respondent sued. R. 35.

The Evidence at Trial

Other than Petitioner, Respondent called only one witness: Charles Kevorkian, employed in its servicer’s litigation department. Over repeated objections, Respondent offered his testimony to prove the contents of payment histories that he did not make and did not explain.

These histories had been kept by Green Tree/Ditech, the servicer that made the entries, and were printed from Shellpoint's system after Shellpoint acquired Ditech in 2019. Kevorkian was not in the industry when the loans were originated; he joined Green Tree in April 2014, seventeen years after the entries began, stayed through its name change to Ditech, and moved to Shellpoint in December 2019. R. 130–31, 194. He did not testify to the mode of the records' preparation, to the sources of the information in them, or to any review of these loans' records when they were transferred. R. 149. Asked where the paperwork of his employer's boarding process was for these loans, he answered, "What paperwork?" and then, "I'm not sure I understand the question." R. 197. None was produced. He testified about a process his employer applied to "each and every loan" his employer acquires, not anything done with these two. R. 195–97. Asked what he knew of what was owed during the years before he joined the servicer, he answered, "I, I wasn't there, but, throughout our boarding process, when we board loans with our company, . . . we validate the data points, what's owed," and described the process by which Shellpoint receives a prior servicer's data: a preliminary call, a "mirrored image" in a test environment, an exception screen, and release to the live platform. R. 195–97. He described nothing done with these two loans, and nothing about how the entries were made in the seventeen years before he arrived.

Respondent's evidence of the debt was two loan histories, Exhibits 25 and 26, printed from Shellpoint's system on March 31, 2021, from data that had passed from Ditech's system to Shellpoint's; the same histories had been exhibits to Respondent's summary-judgment motion. R. 319, 416, 469. The Note 1 history shows payments from November 2007 through November 2008, a returned payment in December 2008, and a last payment on January 31, 2009, coded "Moneygram." R. 342–43. Asked whether the last payment was "January 31 of '09," Kevorkian

answered, “Ye- -- yes.” R. 169. No receipt, remittance confirmation, or bank record of any of those payments is in the record, and no witness testified to one.

Both histories carry a “Back Dt” column beside the “Tran Dt” column. R. 342, 466. The Note 2 history shows entries with transaction dates in November and December 2018, four and five months after this suit was filed, that assess legal costs and reverse and defer payments against installments due in 2006, 2007, and 2008. R. 466–67. On the last of them the principal balance changes from \$50,545.14 to \$50,091.71, the unpaid principal balance in the judgment. R. 12, 467. No witness was asked about any of these entries, and no party raised them below.

Turner testified that he paid Mortgage 1 off and that the recorded satisfaction “is the document that I consider shows that I paid off my house.” R. 115. Asked whether he made the payments the ledger shows in 2008 and January 2009, he said, “I don’t recall doin’ it,” and “I don’t remember the exact date.” R. 112. He asked that “some of those people in that caused this creation” be brought before the court. R. 115. At his deposition, in the excerpt Respondent put in evidence, he had said the same: “I paid the people that I made the loan to, and it seems like to me, we need to bring the people in here that I paid, and let them speak and say where the record’s at.” R. 254–55 (Ex. 3).

Emergent, a defendant, defaulted. R. 4. No one from Emergent, Carolina Investors, Green Tree, Consecro, or Ditech testified. R. 129–243. The master’s order describes Kevorkian as “serving as records custodian and witness for the Plaintiff.” R. 3.

Respondent’s position on the satisfaction was stated in opening: it “is invalid on its face for two reasons, we don’t require witnesses for that.” R. 77. When Petitioner’s counsel objected on cross-examination that Respondent “has not produced a witness that will state that there was an Endorsement in Blank or that it was never endorsed and it was held by Carolina Investors,”

and that “[t]he only thing he has is an assignment,” the master said, “Right.” R. 96–97.

Respondent answered that it was being asked “to prove a negative” and that “[w]e have to rely on the public records”; the master ruled, “Objection overruled.” R. 97–99.

The Rulings

Petitioner objected at each stage, and the master overruled him each time. When Petitioner objected, on *Deep Keel*, that Kevorkian could not lay the foundation for records made before he “makes it on the scene in April of 2014,” R. 136–37, Respondent answered that “the rule does not require an employee of the entity that prepared the record to lay the foundation.” R. 143. The master ruled, “Objection overruled.” R. 148. When Exhibit 19 was admitted, Petitioner added to his standing objection that Kevorkian “is a litigation specialist, and that means that he prepares cases to go to court, to work with lawyers, and to prosecute those actions. . . . By the time it reaches his table, he’s in a, in a mode where he’s going into litigation.” The master ruled, “Objection overruled.” R. 172. Respondent then asked whether the records were made at or near the time, from information transmitted by a person with knowledge, kept in the regular course, and regularly made; Kevorkian answered yes to each. R. 149. The histories themselves were admitted on redirect, over objection. Asked whether they were “true and accurate copies of those documents that were filed” with the summary-judgment motion, Kevorkian had answered, “They appear to be, yes, sir.” R. 241–42.

The order finds “as a fact that the Plaintiff laid a proper foundation for Mr. Kevorkian to testify as records custodian for the Plaintiff and for the entry of the customer file of the Defendant pursuant to the South Carolina Business Records Act.” R. 4 ¶ 7. It concludes that the file “and payment history were properly admitted under Rule 803 (6) SCRE and S. C. Code of Laws Section 19 – 5 – 510,” and that Kevorkian’s “testimony as to the debt was properly admitted as the witness testified that he had reviewed the payment history previously entered into

evidence in Plaintiff's Motion for Summary Judgment. See, e.g., *Deep Keel*." R. 18 ¶¶ 1–2; *see* R. 11 ¶ 48. On the satisfaction, it finds that because Emergent "had already assigned Mortgage 1," it "had no legal authority to satisfy Mortgage 1," and "[t]hat the Defendant failed to provide any evidence that the Lost Mortgage Satisfaction was a valid legal document." R. 9 ¶¶ 36–37. It rescinds the satisfaction of record. R. 18 ¶ 9. The judgment is \$525,635.03, of which \$353,170.67 is the debt secured by Mortgage 1, with interest at 11.49% from 2008. R. 11–12. Mortgage 1 is the first lien on both tracts; Mortgage 2 encumbers only the one-acre tract. R. 7 ¶ 26, 8 ¶ 30, 9–10 ¶ 40, 10 ¶ 42.

The Court of Appeals Opinion

The Court of Appeals affirmed in an unpublished opinion. It framed Turner's issues as whether "the master erred in allowing Wells Fargo's litigation support employee to testify concerning the information contained in the loan documents" and whether "the master erred in setting aside the lost mortgage satisfaction." (Opinion, p. 2). It held Kevorkian "qualified" for three reasons: "(1) he was the authorized representative of Shellpoint Mortgage Services (Shellpoint) for the loan documents; (2) he was familiar with Shellpoint's, Green Tree Financial Servicing Corporation's (Green Tree's), and Ditech Financial LLC's (Ditech's) procedures and documents, which were all maintained throughout the life of the loans; and (3) the witness conveyed information from a person 'with knowledge' at the time the records were created." (Opinion, p. 2). For the third reason it cited *Deep Keel*'s holding that a witness who "studied the manner in which [the banks] maintained the records before he purchased the note" was qualified. *Id.* It held the foundation laid "because he testified the documents were made at or near the time of the events occurring within them, were transmitted by a person with knowledge of the information, were kept during the course of regularly-conducted business activities, and the witness was qualified to testify regarding the documents and the master did not find him

untrustworthy.” *Id.* On the satisfaction, it held that because “Emergent assigned its Mortgage 1 interest to Carolina Investors in 1996,” Emergent “did not have the authority to satisfy Mortgage 1 in 2007,” citing *Williams & Co. v. Paysinger*, 15 S.C. 171, 173 (1881) (“An entry of satisfaction by a mortgagee after he has parted with his interest in the security, will not discharge the mortgage in favor of one who has acquired an interest in the land before the discharge was made.” (quoting 2 Jones on Mort. 957)). (Opinion, p. 4). Neither party had cited *Williams*. Petitioner sought rehearing on both questions. (Pet. for Reh’g §§ B, F.) The Court of Appeals denied rehearing and rehearing en banc on August 24, 2026.

I. IN ADMITTING A PREDECESSOR’S PAYMENT RECORDS ON A SUCCESSOR’S RECITAL OF THE RULE, WITHOUT TESTIMONY TO THE MODE OF THEIR PREPARATION OR A FINDING THAT THEY WERE TRUSTWORTHY, THE OPINION CONFLICTS WITH § 19-5-510, RULE 803(6), AND THIS COURT’S DECISIONS.

Standard of review. The admission of evidence under Rule 803(6) is reviewed for abuse of discretion, which “occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. English*, 443 S.C. 49, 55, 902 S.E.2d 385 (2024); accord *Fields v. Reg’l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). When a discretionary ruling “hinges on” the interpretation of a statute, the interpretation “is a question of law, which this Court reviews de novo.” *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008) (citing *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)). What S.C. Code Ann. § 19-5-510 and Rule 803(6), SCRE, require of a successor’s witness is a question of law.

Overview. The statute and the rule admit a business record on a witness’ testimony to “the mode of its preparation” and on the court’s opinion that its “sources of information, method and time of preparation” justify admission. The witness here described how his employer receives data. No one described how these records were made, and the court made no finding on

their sources, method, or time of preparation. This Court has never said what a successor's witness must show. The Court of Appeals answered: a recital of the rule suffices.

A. The Statute and the Rule Require Testimony to the Mode of Preparation and a Finding by the Court, and Neither Excuses a Successor's Witness.

This Court has stated the requirement as five elements. A business record is admissible if it is "(1) prepared near the time of the event recorded; (2) prepared by someone with or from information transmitted by a person with knowledge; (3) prepared in the regular course of business; (4) identified by a qualified witness who can testify regarding the mode of preparation of the record; and (5) found to be trustworthy by the court." *Ex parte Dep't of Health & Envtl. Control*, 350 S.C. 243, 249–50, 565 S.E.2d 293, 297 (2002); *State v. Blackwell*, 420 S.C. 127, 158–60, 801 S.E.2d 713 (2017). The elements come from the statute and the rule. The statute admits a record "if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission." S.C. Code Ann. § 19-5-510. The rule admits a record "made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the [record], all as shown by the testimony of the custodian or other qualified witness." Rule 803(6), SCRE.

The statute and the rule say what must be shown; neither says how a successor's witness may show it, and this Court has never said. The first three elements describe the record: when it was made, from whose knowledge, in what course of business. The fourth describes the witness, one who "can testify regarding the mode of preparation," and the fifth describes the court's finding. When the witness works for the business that made the record, the fourth and fifth

elements take care of themselves: he has seen the records made, and the court can judge his account. When he works for a successor, they do not. He can describe how his employer received the data; the statute requires testimony to “the mode of its preparation” by the business that prepared it, and a finding by the court that “the sources of information, method and time of preparation” justify admission. Neither the statute nor the rule excuses a successor’s witness from the first or the court from the second.

This Court has treated the fourth element as a requirement, not a recital. In *English*, it vacated the Court of Appeals’ holding that two hospital test reports were admissible under Rule 803(6). The vacatur rested on preservation: the defendant there had objected on generic hearsay grounds and never argued the elements of Rule 803(6), 443 S.C. at 59, unlike Petitioner, who recited them to the master before the foundation was laid, R. 147. But the Court explained why it would not affirm the holding: “Our ruling on this point may seem overly particular; however, one of the foundations for the admissibility of business records under Rule 803(6) is that the person testifying about the reports . . . must be a ‘custodian’ of the records or ‘other qualified person.’ The record does not reflect whether either witness was a custodian or other qualified person.” 443 S.C. at 59. The witnesses had been a nurse who “reviewed them and signed off on them” and a physician who “personally verified the test results” without saying what verification entailed. *Id.* at 54. If a physician’s “verification” of his own hospital’s records does not show qualification without more, nor does a successor’s employee’s account of a boarding process.

The Court of Appeals has said the same in its leading decision. Qualifying a witness and laying a foundation are two steps: “establishing that a witness is qualified to testify about a business record does not automatically lead to admission of that record. The qualified witness must then lay the foundation to meet the requirements of Rule 803(6) and section 19-5-510.”

Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 73, 773 S.E.2d 607, 615 (Ct. App. 2015). The witness in *Deep Keel* qualified because he “studied the manner in which Community First and CresCom Bank maintained the records before he purchased the note.” *Id.*¹ Even so, his testimony to the balance due was excluded, because the records he had studied were never offered and “[t]here are numerous elements to the foundation for a business record to which Bynum did not testify.” *Id.* at 73–74.

Deep Keel’s footnote 11 is the only South Carolina appellate reference to records made by another business, and it addresses who may lay the foundation, not what the foundation for another entity’s records consists of. The footnote reads: “*See also Midfirst Bank, SSB v. C.W. Haynes & Co.*, 893 F.Supp. 1304, 1310 (D.S.C.1994), *aff’d sub nom. C.W. Haynes & Co. v. Midfirst Bank, SSB*, 87 F.3d 1308 (4th Cir.1996) (‘Business records of an entity are admissible even though another entity made the records, and the rule does not require an employee of the entity that prepared the record to lay the foundation.’).” 413 S.C. at 73 n.11. The sentence it hangs on is *Deep Keel*’s restatement of *Twelfth RMA*’s qualified-witness rule; the next paragraph says the foundation must still be laid.² This Court has not cited the footnote.

¹*Twelfth RMA Partners, L.P. v. Nat’l Safe Corp.*, 335 S.C. 635, 642, 518 S.E.2d 44, 48 (Ct. App. 1999), is itself a successor’s case, but the only objection it addressed was that the assignee’s witness “was not the custodian ‘at or near the time’ the records were made”; it did not consider what she knew of the predecessor’s mode of preparation, and it was decided under the any-evidence standard for actions at law. *Id.* at 639, 642.

²*Midfirst* was decided under the federal rule, which places the trustworthiness question on the opponent rather than on the court, and on a record whose opponent “does not even challenge the reliability and trustworthiness of the transaction journal.” 893 F. Supp. at 1311. The federal cases it collected all condition admission on “the other requirements of Rule 803(6)” being met. *Id.* at 1310–11.

B. This Court Has Never Said What a Successor’s Witness Must Show, and Other Courts Require More Than This Record Contains.

No decision of this Court addresses the foundation for records a predecessor made. Other courts, under comparable rules, have required the successor’s witness to show how the predecessor’s records were verified or why they can be trusted. *See Bayview Loan Servicing LLC v. Wicker*, 206 A.3d 474, 485 (Pa. 2019) (under the Uniform Business Records as Evidence Act, a successor’s witness must “provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness”; declining to “endorse an automatic incorporation doctrine”); *Wallace v. Nationstar Mortg. LLC*, No. 2D23-926 (Fla. Dist. Ct. App. Jan. 17, 2024) (testimony to a general onboarding process insufficient where the witness “could not point to any records demonstrating that Nationstar independently verified the information”); *Hunter v. Aurora Loan Servs., LLC*, 137 So. 3d 570, 573 (Fla. Dist. Ct. App. 2014) (successor’s witness who “lacked particular knowledge of MortgageIT’s record-keeping procedures” could not lay the foundation); *United States v. Adefehinti*, 510 F.3d 319, 326 (D.C. Cir. 2007) (records of another firm are the successor’s own “if all the other requirements are satisfied”). Nor has the Court of Appeals said what is required; its only published statement is the footnote, in a decision holding that qualification “does not automatically lead to admission.” Foreclosures tried on a successor servicer’s boarded records, through a litigation employee, have become routine. South Carolina’s courts have never said what they require.

C. The Record Contains No Testimony to the Mode of the Records’ Preparation and No Finding by the Court.

What the record contains is four leading questions to the elements that describe the record and four answers: “That’s correct, yes.” “That’s correct, yes.” “Yes, sir.” “It is, yes.” R. 149. Kevorkian was not asked, and did not say, how the entries before 2014 were made, by whom, from what, or whether anyone at his employer had examined these two loans’ records when they

arrived. R. 195–97. Asked where the paperwork of his employer’s boarding process was for these loans, he answered, “What paperwork?” and then that he did not understand the question. R. 197. Asked what he knew of the debt in the years before he joined the servicer, he answered, “I, I wasn’t there, but, throughout our boarding process, . . . we validate the data points, what’s owed,” and described Shellpoint’s intake of a prior servicer’s data. R. 195–97. That is how the successor received the records. It is not how they were made. The two histories themselves came in on redirect, ninety pages after the foundation colloquy, on a different ground: that they were “true and accurate copies of those documents that were filed” with the summary-judgment motion. R. 240–42. That a document was attached to a motion says nothing about its sources of information or its method or time of preparation.

The master’s stated reason for admitting the testimony was that Kevorkian “had reviewed the payment history previously entered into evidence in Plaintiff’s Motion for Summary Judgment.” R. 18 ¶ 2. The order finds that “a proper foundation” was laid, R. 4 ¶ 7; it does not mention the sources of the information, the method, or the time of preparation. *Compare* R. 4 ¶ 7, and R. 18 ¶¶ 1–2, *with* S.C. Code Ann. § 19-5-510. The Court of Appeals held the foundation laid because Kevorkian “testified” to the rule’s four clauses “and the witness was qualified to testify regarding the documents and the master did not find him untrustworthy.” (Opinion, p. 2).

D. The Court of Appeals Supplied the Missing Elements by Relabeling Them, and Inverted the Statute’s Condition.

The order and the opinion diverge from each of the five elements this Court stated in *DHEC* and *Blackwell*, and from each other.³

³The master’s stated ground was that the witness “had reviewed the payment history previously entered into evidence in Plaintiff’s Motion for Summary Judgment.” R. 18 ¶ 2. The panel did not adopt that ground; it substituted three of its own for qualification and a fourth for foundation,

Elements (1) through (3), that the record was made at or near the time, from information transmitted by a person with knowledge, in the regular course of business, were established by four answers of yes. R. 149. A witness can attest to those facts only if he knows how the record was made. Kevorkian did not: he entered the industry in 2001 and the servicing chain in 2014, and the entries at issue begin in 1997. R. 130, 194. His answers were recitals of the rule’s text. And the exhibits illustrate what the recital omits. The Note 2 history carries entries posted in December 2018, after suit was filed, coded “Reversal:Defer Payment” and “Deferral/Rate Mod Partial Pmts,” against installments due in 2006, 2007, and 2008; on the last of them the principal balance changes from \$50,545.14 to \$50,091.71, the figure in the judgment. R. 12, 466–67. Petitioner does not present those entries as a separate issue; no one below was asked about them. They show what a recital of the rule leaves unproved: entries not made at or near the time of anything, with no one identified who transmitted the information for them.

Element (4), a witness “who can testify regarding the mode of preparation of the record,” was not addressed. No question was put to Kevorkian about how Green Tree, Conseco, or Ditech made or kept the entries before he arrived, and he volunteered nothing. R. 149, 195–97. The panel supplied the element by finding him “familiar with Shellpoint’s, Green Tree Financial Servicing Corporation’s (Green Tree’s), and Ditech Financial LLC’s (Ditech’s) procedures and documents, which were all maintained throughout the life of the loans.” (Opinion, p. 2). Kevorkian joined that company in April 2014. R. 130–31. The entries at issue begin in 1997. Familiarity with a company’s procedures from 2014 is not testimony to how it made records in the seventeen years before, and the finding that he was familiar with procedures “maintained

none of which appears in the order. (Opinion, p. 2). The finding to which the panel deferred is one the master never made.

throughout the life of the loans” has no support for the years before he arrived. The witness *Deep Keel* found qualified had “studied the manner in which [the banks] maintained the records.” 413 S.C. at 73. This one studied nothing.

Element (5), a record “found to be trustworthy by the court,” was not found. The order contains no finding on the sources, method, or time of the records’ preparation, R. 4 ¶ 7, 18 ¶¶ 1–2; the opinion contains its negative.

The panel’s formulation inverts the statute’s condition. The statute admits the record “if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.” § 19-5-510. The panel held the record admissible because “the master did not find him untrustworthy.” (Opinion, p. 2). A condition of admission became a condition of exclusion, and the burden the statute places on the proponent moved to the opponent. “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Grungo-Smith v. Grungo*, 444 S.C. 556, 566–67, 910 S.E.2d 455, 461 (2024) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)); *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (same).

E. The Answer Decides the Foreclosure.

The two histories, and the litigation affidavits computed from them (Exs. 19, 24), were the only evidence of the amount of the debt. No receipt, remittance, or bank record was offered; no one who made an entry testified; the 2009 default notices (Ex. 23) show a default, not a balance; and the amounts in the judgment are the amounts on the histories’ last pages. R. 11–12, 129–243, 293–99, 310–18, 319, 416. The affidavits are the histories restated under oath by a litigation employee; they add a signature, not a source. Reversal on an evidentiary ruling requires error and prejudice, *Fields*, 363 S.C. at 26, 609 S.E.2d at 509, and the prejudice here is the one *Deep Keel* found dispositive on the same facts: “Without Bynum’s hearsay testimony concerning

the unpaid balance, Deep Keel could not prove the amount remaining due on the debt, and the master had no basis for calculating the amount of the deficiency.” 413 S.C. at 74, 773 S.E.2d at 615. If the foundation was not laid, Respondent proved no amount due on either note. The order waives a deficiency judgment, R. 1, so the amount adjudged governs what the sale must satisfy, what Mr. Turner must pay before the sale to avoid it, R. 20 ¶ 21, and whether any surplus remains; a remand to recompute it, the remedy Deep Keel ordered, 413 S.C. at 74, is the least the error requires.

Conclusion to Part I

The statute and the rule require testimony to the mode of a record’s preparation and a finding by the court that its sources, method, and time of preparation justify admission. This record has neither; it has a successor’s employee reciting the rule and a court that never found what the statute requires it to find. The Court of Appeals affirmed by supplying the elements and reversing the statute’s condition, in conflict with *English*, *DHEC*, *Blackwell*, and *Grungo-Smith*. What a successor’s witness must show to lay the foundation for a predecessor’s records is a question this Court has never answered and foreclosure courts face daily. The Court of Appeals decided the foundation question under § 19-5-510 and *Ex parte DHEC* (Opinion, pp. 2–3), and the petition for rehearing pressed both (§ B); the question is presented as it was decided. Review is proper under Rule 242(b)(1) and (b)(3), SCACR.

II. IN REQUIRING THE HOMEOWNER TO PROVE HIS RECORDED SATISFACTION “VALID,” THE OPINION CONFLICTS WITH THE PRECEDENT OF THIS COURT AND THE COURT OF APPEALS, UNDER WHICH THE CREDITOR MUST PROVE THE SATISFACTION INVALID.

Standard of review. “A mortgage foreclosure is an action in equity. . . . Our scope of review of a case heard by a master who enters a final judgment is to determine facts in accordance with our own view of the preponderance of the evidence.” *Hayne Fed. Credit Union*

v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). Which rule governs a recorded satisfaction is a question of law. *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

Overview. South Carolina decisions addressed in Part A cancel a recorded satisfaction only when the creditor proves, and the court finds, how the satisfaction came to be made. Here the courts found an assignment, inferred the rest, and put the burden on the homeowner. The statutes, like the cases, place the burden on the creditor. The Court of Appeals rested instead on an 1881 decision that predates the recording and satisfaction statutes; whether it survives them is a question only this Court can answer. The question recurs, and the answer decides this case.

A. The Decisions Cancel a Recorded Satisfaction Only When the Creditor Proves, and the Court Finds, That It Was Entered by Fraud, Accident, Mistake, or Without Authority.

No decision of this Court allocates, in terms, the burden of proving a recorded satisfaction invalid. What the decisions show, for more than ninety years, is the creditor proving it and the court finding it. *Young v. Pitts*, 155 S.C. 414, 420, 152 S.E. 640, 642 (1930) (circuit decree affirmed as “entirely satisfactory to this Court,” 155 S.C. at 425, 152 S.E. at 643); *Maxwell v. Epton*, 177 S.C. 184, 189–90, 192, 181 S.E. 16, 19 (1935); *accord Allendale County Bank v. Cadle*, 348 S.C. 367, 374, 559 S.E.2d 342 (Ct. App. 2001); *MI Co. v. McLean*, 325 S.C. 616, 621, 482 S.E.2d 597, 600 (Ct. App. 1997). As against the mortgagor, “the mortgagee has the right to show the mistake and hold his mortgage.” *Young*, 155 S.C. at 419, 152 S.E. at 641. The rule reaches a satisfaction entered “without the authority of the owner” as well as one entered by mistake. *Maxwell*, 177 S.C. at 191, 181 S.E. at 19 (quoting 41 C.J. 591). In each case the ground is a fact about how the instrument came to be made, and in each case the creditor proved it and the court found it: in *Young*, by “the testimony of Young, Wash M. Pitts, J. D. Bell and from all the surrounding facts and circumstances,” 155 S.C. at 416, 152 S.E. at 640; in

Maxwell, by the holder’s testimony to his own mistake, 177 S.C. at 190, 181 S.E. at 19; in *Cadle*, by the bank president’s, 348 S.C. at 374; in *MI Co.*, by the corporation’s testimony that it never released the property and the undisputed forgery of its president’s signature, 325 S.C. at 621, 482 S.E.2d at 600; in *First Palmetto Savings Bank v. Patel*, by the creditor’s admission “that it did not have the authority,” 344 S.C. 179, 182 n.3, 543 S.E.2d 241 (Ct. App. 2001). Only then did any court ask whether reinstating the mortgage would injure someone who had relied on the record. *Id.* at 183–84. None asked the homeowner to prove anything.

B. The Courts Below Put the Burden on the Homeowner.

The master made two findings on the satisfaction. First, that because Emergent “had already assigned Mortgage 1,” it “was not the owner/holder of the subject mortgage and thus had no legal authority to satisfy Mortgage 1.” R. 9 ¶ 36. Second, “[t]hat the Defendant failed to provide any evidence that the Lost Mortgage Satisfaction was a valid legal document.” R. 9 ¶ 37. The first is a syllogism from the 1996 assignment; the second puts the burden on the homeowner. Neither is a finding of how the satisfaction came to be made. The Court of Appeals repeated the syllogism and affirmed: assignment in 1996, “[t]herefore, Emergent did not have the authority to satisfy Mortgage 1 in 2007.” (Opinion, p. 4). It did not cite *Young*, *Maxwell*, *Cadle*, *MI Co.*, or *Patel*, the case Petitioner’s brief had put before it.

That was the theory from the start. Wells Fargo told the master the satisfaction “is invalid on its face for two reasons, we don’t require witnesses for that.” R. 77. When Petitioner’s counsel objected that “[t]he only thing he has is an assignment,” the master said “Right,” and overruled the objection. R. 96–99. Wells Fargo’s evidence, if credited, shows that Emergent sold Note 1 to Green Tree in 1997, that Green Tree was paid for fifteen months after the satisfaction, and that Emergent, a defendant, defaulted. R. 4, 272–73, 280–81, 342–43. That may be the answer to how a stranger’s sworn satisfaction came to be recorded. No court has given it. The

question is not why Emergent acted. It is whether Emergent lacked authority when it acted, found as a fact on evidence about the instrument rather than deduced from the index. The satisfaction's own recitals, an affidavit that the mortgage "has not Been assigned" in an instrument that identifies the mortgage by the assignment's book and page, R. 470–71, are evidence that something was wrong; they are not a finding of what. *Young*'s inquiry was never made.

C. The General Assembly Places the Same Burden on the Creditor.

When Emergent recorded this satisfaction in 2007, § 29-3-330 provided that a lost mortgage could be "cancelled, discharged, and released" by "the owner and holder of the instrument" on an affidavit that the maker "is at the time of the satisfaction a bona fide owner and holder of the mortgage . . . and that has not been assigned, hypothecated, or otherwise disposed of," and that "[t]he maker of any affidavit which is false is guilty of perjury." § 29-3-330(c) (2007). The next year the General Assembly supplied the remedy for a satisfaction "recorded erroneously": a sworn "document of rescission," S.C. Code Ann. § 29-3-345(A), (B) (2008), recorded by the creditor at its own risk, § 29-3-345(D), certifying "that such satisfaction was erroneous and inadvertent." § 29-3-345(F). Neither court below held the satisfaction void on its face; the Court of Appeals rested on *Williams*, an equity rule, and the master on what Mr. Turner failed to prove. (R. 9; Opinion, p. 4). Either way, the creditor must establish the ground: by its own oath under the statute, or by proving to the court, and the court finding, how the satisfaction came to be made. Wells Fargo swore to nothing, and the master found only that Mr. Turner had proved nothing. R. 9 ¶ 37.

D. Whether the 1881 *Williams* Decision Survives the Recording and Satisfaction Statutes Is a Question Only This Court Can Answer.

The Court of Appeals rested on one sentence from 1881: “An entry of satisfaction by a mortgagee after he has parted with his interest in the security, will not discharge the mortgage in favor of one who has acquired an interest in the land before the discharge was made.” *Williams & Co. v. Paysinger*, 15 S.C. 171, 173 (1881) (quoting 2 Jones on Mort. 957). (Opinion, p. 4). *Williams* had no satisfaction of record: the mortgagor gave a former holder new notes and a new mortgage “for the same sums,” the original notes “were not taken up,” and nothing was entered, sworn, or indexed. *Id.* at 172. The facts about who held the notes were proved at a reference and found, and the mortgagor lost on them: he had “paid nothing,” never saw the notes, and was “put . . . on the inquiry.” *Id.* at 174–75. *Williams* also belongs to a recording system since displaced: “There is no law requiring the assignment of a mortgage to be recorded, and if it had been put on record it would not have amounted to constructive notice.” *Id.* at 174. Today the recording statute lists “all assignments, satisfactions, releases,” S.C. Code Ann. § 30-7-10; the satisfaction statute dates from 1924 and the rescission statute from 2008. This Court has not cited *Williams* since 1927, and then for the recording rule, not the sentence the panel used. *Epps v. McCallum Realty Co.*, 139 S.C. 481, 502, 138 S.E. 297, 304 (1927). Until the decision below, no court had applied *Williams* to a sworn satisfaction of record; whether it can be, under the statutes enacted since, is a question this Court has never answered.

E. The Question Recurs, and the Answer Decides This Case.

The stake is the judgment: of \$525,635.03 adjudged due, \$353,170.67 is secured by Mortgage 1, at 11.49% since 2008, and Mortgage 1 is the first lien on both tracts. R. 7 ¶ 26, 8 ¶ 30, 11–12. The remedy is not a judgment for either side. Under *Young*, a cancellation entered

without the creditor's showing calls for a finding under the right burden; this Court should reverse and either find the fact under the correct burden or remand for that finding.

Conclusion to Part II

In the cases above, each court that cancelled a recorded satisfaction did so only on the creditor's proof of how it came to be made. None placed the burden on the homeowner. The courts below found an assignment and put the burden on the homeowner, under an 1881 decision with no satisfaction of record that no court has cited since 1927. The question was raised below: the Court of Appeals brief argued that Wells Fargo "failed to prove that lost mortgage satisfaction was signed in error" (Br. of Appellant, Issue D), and the petition for rehearing argued that Wells Fargo "bore the burden to set aside the sworn recorded Lost Mortgage Satisfaction" (§ F). Whether *Williams* governs a recorded satisfaction is a novel issue, raised sua sponte by the Court of Appeals here. Review is proper under Rule 242(b)(3) and (b)(1), SCACR.

CONCLUSION

The Court should grant the petition, obtain briefing, and decide what a successor servicer's witness must show to lay the foundation for a predecessor's payment records under § 19-5-510 and Rule 803(6), and who bears the burden of proving a recorded satisfaction of mortgage invalid.

On the first question, the Court should hold that § 19-5-510 and Rule 803(6) require testimony about how the records were prepared and a finding by the court on their sources, method, and time of preparation, and that a successor's employee who describes only his employer's intake of the data is insufficient. The Court could hold more narrowly that a recital of the rule's elements is not the foundation the statute requires, and that the absence of a finding that the witness is untrustworthy is not the finding that the sources justify admission. Under

either holding the judgment should be vacated and the amount due redetermined on competent evidence, the remedy *Deep Keel* ordered.

On the second, the Court should hold that a creditor seeking to cancel a recorded satisfaction bears the burden of proof, and that an earlier recorded assignment, standing alone, does not carry it. The Court could hold more narrowly that *Williams & Co. v. Paysinger* does not govern a sworn satisfaction of record under the statutes enacted since, and remand for a finding under *Young v. Pitts*. Under either of these holdings the order rescinding the satisfaction should be reversed and the case remanded for that finding.

Respectfully submitted,

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