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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.: 2026-001814
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.

REPLY TO RESPONDENTS' RETURN TO
PETITION FOR A WRIT OF CERTIORARI

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REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

In further support of their petition for a writ of certiorari, Petitioners would make the following brief points in reply to Respondents' return.

I. RESPONDENTS MISSTATE THE PROCEDURAL POSTURE OF THE CASE

In their return, Respondents repeatedly contend that this case involved "cross-motions for summary judgment." This is a mischaracterization of both the sequence and the substance of the proceedings. Petitioners filed their Motion for Summary Judgment on May 5, 2023. (R. p. 212) The hearing on Petitioner's Motion for Summary Judgment was held on August 8, 2023. (R. p. 440) Respondents did not file their Motion for Summary Judgment until August 14, 2023, over three months after the filing of Petitioners' motion. (R. p. 372) Thus, Respondents filed their motion only after the hearing on Petitioners' motion had already occurred; the two motions were not presented together for simultaneous consideration. The Master granted Petitioners' Motion on August 23, 2023. Respondents' Motion for Summary Judgment was never heard, or adjudicated on the merits. Instead, after granting Petitioners' Motion, the Master denied Respondents' Motion as moot. The Master never determined whether, or not, Respondents were entitled to judgment as a matter of law and never entered a merits ruling addressing Respondents' Motion. This procedural posture is fundamentally different from true cross-motions in which both parties place competing legal questions before the trial court and obtain rulings on both motions.

Accordingly, this case did not present the classic circumstance addressed in *Quicken Loans, Inc. v. Wilson*, 425 S.C. 574, 579, 823 S.E.2d 697, 700 (Ct. App. 2019) and similar cases in which competing summary judgment motions are simultaneously submitted and adjudicated by the trial court as questions of law. The Master made only one merits determination based upon the one motion that was properly before him: that Petitioners were entitled to summary judgment.

There was never a hearing on Respondents' Motion for Summary Judgment and Respondents never obtained a merits ruling on their Motion for Summary Judgment. Treating these proceedings as cross-motions would collapse the distinction between a motion that was actually litigated and decided and a motion that was rendered unnecessary by the court's earlier ruling.

This distinction matters. A denial as moot is categorially different from a denial on the merits: it means that the court did not reach the movant's entitlement to judgment as a matter of law because the prior ruling made consideration of the motion unnecessary. Even if the Court of Appeals disagreed with the Master's ruling in favor of Petitioners, the absence of a merits ruling on Respondents' Motion means there was no trial-court determination that Respondents were entitled to judgment as a matter of law. That procedural gap has substantive consequences for appellate review. An appellate court reviews the ruling actually made below; it does not ordinarily supply the first merits determination on an unadjudicated motion, particularly where the trial court never considered the motion's legal and factual basis. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421-22, 526 S.E.2d 716, 724 (2000) (acknowledging the "long-established preservation requirement that the losing party generally must present both his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments."). The Court of Appeals therefore exceeded the proper scope of appellate review when it entered Judgment for Respondents rather than remanding the matter for further proceedings.

II. RESPONDENTS' RELIANCE ON "CROSS-MOTION" AUTHORITY MISSES THE POINT.

Respondents cite *Quicken Loans, Inc. v. Wilson* for the proposition that parties filing cross-motions for summary judgment concede that the case may be decided as a matter of law. Even assuming that proposition is generally correct, it does not answer the question presented in the

Petition. The cross-motion principle presupposes that both motions were presented to the trial court as competing requests for judgment and that the trial court considered and made a determination on the merits of both motions. That is simply not the case as a simple review of the procedural history demonstrates. Petitioners argue that Certiorari is warranted because the Master never ruled that Respondents were entitled to judgment as a matter of law; rather, he denied Respondents' later-filed motion as moot. South Carolina law is clear that 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). That rule reflects the interlocutory nature of a summary-judgment denial: a denial, including a denial based on mootness, does not establish that the opposing party is entitled to judgment and ordinarily leaves the underlying claims for resolution in the normal course. Because respondents' motion was never adjudicated on the merits, the Court of Appeals had no underlying merits ruling to reverse or modify in Respondents' favor. It therefore moved beyond appellate review of an existing ruling and supplied its own affirmative grant of relief.

III. THE RETURN REINFORCES WHY CLARIFICATION OF LEVER IS NEEDED.

Respondents continue to argue that generalized settlement language extinguished a recorded mortgage despite the absence of any express provision requiring satisfaction of the Mortgage, any express release of the Mortgage, or any satisfaction of the debt secured by the Mortgage. Rather than identifying language expressly releasing the Mortgage, Respondents continue to attempt to force an inference from references to the underlying loan in recital provisions and from generalized release language. This is precisely the concern presented in the Petition. A rule permitting mortgage extinguishment by implication undermines the certainty on

which recorded liens depend and threatens the integrity of the public land records system: lenders, purchasers, and other parties examining the record must be able to determine from clear instruments whether a mortgage remains an enforceable encumbrance. The Court of Appeals' opinion, if left to stand, permits a recorded mortgage to be extinguished through implication rather than through an express release or actual satisfaction of the debt. Petitioners respectfully submit that such a result flies in the face of, and cannot be reconciled with, *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E.2d 214 (2007). *Lever* stands for the principle that satisfaction or release of a mortgage requires clear, express acts, not an inference drawn from generalized language or an incomplete payment. "[U]ntil 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 instituted for that purpose. . ." *Id.*, 374 S.C. at 33, 647 S.E.2d at 216 (2007) (quoting 55 Am.Jr.2d *Mortgages* § 524)(Emphasis supplied). Respondents rely extensively on Petitioners' acceptance of Fifty Thousand and 00/100s (\$50,000.00) dollars; but, the debt secured by the Note and Mortgage substantially exceeded that amount. Partial payment of Fifty Thousand and 00/100s (\$50,000.00) dollars on a materially larger secured debt cannot constitute satisfaction of the mortgage as a matter of law absent a clear and express release or agreement satisfying the secured obligation. The Return therefore does not establish a satisfaction of the mortgage debt.

IV. THE CERTIORARI STANDARDS ARE SATISFIED.

The Court of Appeals' decision implicates longstanding South Carolina mortgage-security principles and raises an important appellate-procedure question regarding whether an appellate court may effectively grant summary judgment to a party whose motion was never decided on the

merits below. The decision creates uncertainty in the law by leaving unclear whether a later-filed motion denied as moot may nevertheless be treated on appeal as though the trial court had granted it, and whether an appellate court may make that first merits determination itself. The issue has statewide impact beyond this case, because the same procedural sequence can arise in many areas of South Carolina practice, including foreclosure litigation, settlement agreements, lien enforcement, and other matters involving competing requests for dispositive relief. At a minimum, the appellate-procedure question is one requiring clarification; it is also a question of first impression insofar as it concerns the appellate consequences of granting relief on a motion never adjudicated below. Petitioners respectfully submit that these circumstances satisfy the grounds for certiorari identified in Rule 242(b), SCACR. Notably, the Respondents did not suggest in their Return that Petitioner failed to satisfy the grounds for Certiorari.

CONCLUSION

The Return underscores the questions warranting review: whether a recorded mortgage may be extinguished by implication despite the absence of an express mortgage release or satisfaction of the debt, and whether an appellate court may effectively grant summary judgment to a party whose later-filed motion was denied as moot and never adjudicated on the merits. These issues create uncertainty in South Carolina mortgage-security law and appellate procedure, with consequences extending to foreclosure litigation, settlement agreements, lien enforcement, and appellate review. Petitioners respectfully request that the Court grant the Petition for Writ of Certiorari to clarify that recorded mortgage rights cannot be extinguished by implication and that appellate courts may not supply the first merits ruling on an unadjudicated motion.

~ Signature block appears on the following page ~

Respectfully submitted,

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