

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. **2025-002111**
Common Pleas No. **2025-CP-29-00797**

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SC Court of Appeals

BOKF, N.A., Respondent

v.

Joshua Ovalle, Appellant

APPELLANT'S FINAL BRIEF

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JOSHUA WILLIAM OVALLE, Principal Debtor
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STATEMENT OF ISSUES ON APPEAL

1. Whether the Special Referee erred in entering judgment of foreclosure without requiring Respondent to provide a full and complete accounting of the alleged debt.
2. Whether the Special Referee erred in entering judgment of foreclosure after Appellant tendered a special deposit and setoff intended to satisfy the alleged obligation.
3. Whether the foreclosure proceeding failed to reflect the equitable nature of such actions, including consideration of Appellant's efforts to address the alleged debt.
4. Whether the Special Referee erred in treating Appellant as in default despite Appellant's prior filing and demonstrated intent to defend the action.

STATEMENT OF THE CASE

This appeal arises from a foreclosure action commenced on June 23, 2025, in the Lancaster County Court of Common Pleas. (R. pp. 23–30). Appellant appeared and responded to the action, asserting defenses concerning the alleged obligation and presenting matters in Equity. (R. pp. 95–107).

A foreclosure hearing was conducted before Special Referee William C. Tindal on September 2, 2025. (R. pp. 31–62). Appellant participated in the hearing and presented testimony and documentary evidence. (R. pp. 31–62, 63–114). Following the hearing, the Special Referee entered an Order and Judgment of Foreclosure and Sale on or about September 17, 2025, adjudging \$247,499.47 due and owing. (R. pp. 6–16).

Appellant served and filed a Notice of Appeal on October 16, 2025. (R. pp. 146–149). Thereafter, Appellant sought to preserve the subject property through supersedeas proceedings

and related filings. (R. pp. 152–165). On January 05, 2026, the Special Referee entered an Order Imposing Appeal Bond and Approving Stay. (R. pp. 17–22).

This appeal follows.

STANDARD OF REVIEW

“A mortgage foreclosure is an action in equity.” *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). Accordingly, the appellate court may determine the facts in accordance with its own view of the preponderance of the evidence. *Id.* The equitable nature of foreclosure further implicates the established maxim that “[h]e who seeks equity must do equity.” *Id.* at 249, 489 S.E.2d at 475.

The party seeking foreclosure bears the initial burden of establishing both the existence of the debt and the mortgagor's default. *U.S. Bank Trust National Ass'n v. Bell*, 385 S.C. 364, 374–75, 684 S.E.2d 199, 205 (Ct. App. 2009). Only after the debt and default have been established does the burden shift to the mortgagor to establish a defense such as lack of consideration, payment, or accord and satisfaction. *Id.* Consistent with *Bell*, South Carolina's Uniform Commercial Code provides that “[t]he drawer or maker of an instrument has a defense if the instrument is issued without consideration.” S.C. Code Ann. § 36-3-303(b).

South Carolina law also recognizes the right to an accounting where payments and credits affecting the underlying obligation are disputed. In *Johnston v. Farmers & Merchants Bank*, the Supreme Court held that the borrower was “entitled to an accounting from the date of the original note.” 228 S.C. 600, 606, 91 S.E.2d 604, 607 (1956). The Court reversed the foreclosure judgment and remanded so that a full accounting could be conducted showing the debits and credits between the parties. *Id.* at 607, 91 S.E.2d at 607.

Rule 71(a), SCRCRCP, likewise requires that in foreclosure actions “the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each.” The Rule further provides: “In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due.” Rule 71(a), SCRCRCP.

The right to enforce a negotiable instrument is governed by S.C. Code Ann. § 36-3-301, which identifies the persons entitled to enforce an instrument, including a holder and certain nonholders possessing the rights of a holder. Ownership of a mortgage and entitlement to enforce the Note are not necessarily the same inquiry. As the Court of Appeals explained in *Bank of America, N.A. v. Draper*, “the assignment of the mortgage alone does not carry with it an assignment of the note.” 405 S.C. 214, 220–21, 746 S.E.2d 478, 481 (Ct. App. 2013) (quoting *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930)). Thus, where entitlement to enforce is disputed, the evidence concerning the Note and its transfer must establish the claimant's right to enforce the obligation under applicable South Carolina law.

Finally, where the contents or authenticity of the underlying instruments are disputed, the South Carolina Rules of Evidence remain applicable. Rule 1002, SCRE, generally requires the original to prove the contents of a writing. Although Rule 1003 ordinarily permits a duplicate to the same extent as an original, that rule expressly recognizes exceptions where “a genuine question is raised as to the authenticity of the original” or where admitting the duplicate would be unfair under the circumstances. Rules 1002–1003, SCRE. Rule 1006, SCRE, further governs proof through summaries or calculations of voluminous records and requires the underlying originals or duplicates to be made available for examination or copying. To the extent a party relies upon such a summary or calculation rather than the underlying account records, those evidentiary safeguards remain applicable.

STATEMENT OF FACTS

During the foreclosure hearing, Appellant presented testimony and multiple exhibits, including notices and communications relating to the alleged obligation, accounting, equitable interests, opportunity to cure, special deposit and setoff, and efforts to address the alleged debt. (R. pp. 39–61, 63–114). These materials were admitted into evidence. (R. pp. 43, 50–52).

Respondent presented the Note, Mortgage, Assignment, and related documents (R. pp. 115–139) and asserted that \$247,499.47 was due and owing. (R. pp. 37–38). Respondent's exhibits did not include a loan ledger, payment history, or other account statement showing the payments, debits, credits, and transactions underlying the amount claimed. (R. pp. 115–139).

Subsequent proceedings included efforts by Appellant to obtain a stay and address supersedeas requirements (R. pp. 152–165), while successive foreclosure sales were scheduled (R. pp. 144–145, 150–151, 168–171).

ARGUMENT

1. THE COURT FAILED TO PROPERLY CONSIDER APPELLANT'S EVIDENCE AND DEFENSES CONCERNING THE ALLEGED DEBT AND ACCOUNTING.

Appellant presented evidence and defenses during the hearing concerning the alleged obligation, accounting, debits and credits, and efforts to address the alleged debt. (R. pp. 45–61, 63–114). These materials were admitted into evidence. (R. pp. 43, 50–52). However, the

foreclosure judgment was entered without meaningful consideration or analysis of those materials. (R. pp. 6–16).

The party seeking foreclosure bears the initial burden of establishing the existence of the debt and the mortgagor's default. *U.S. Bank Trust National Ass'n v. Bell*, 385 S.C. 364, 374–75, 684 S.E.2d 199, 205 (Ct. App. 2009). Rule 71(a), SCRPC, further provides that “proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due.”

Here, Respondent asserted that \$247,499.47 was due and owing (R. pp. 37–38), but its admitted exhibits contained no loan ledger, payment history, or other account statement showing all payments, debits, credits, and transactions associated with the corresponding Note. (R. pp. 115–139). Appellant specifically placed the accounting at issue. (R. p. 57). In *Johnston v. Farmers & Merchants Bank*, 228 S.C. 600, 606, 91 S.E.2d 604, 607 (1956), the Supreme Court held that the appellant was “entitled to an accounting from the date of the original note.”

Appellant also raised matters concerning consideration and the underlying obligation. (R. pp. 46–47, 54–59, 95–107). South Carolina law expressly recognizes that “[t]he drawer or maker of an instrument has a defense if the instrument is issued without consideration.” S.C. Code Ann. § 36-3-303(b). These matters, together with Appellant's admitted evidence, required meaningful consideration before the amount due and entitlement to foreclosure were determined.

Accordingly, entry of foreclosure judgment without adequately resolving the accounting and admitted defenses was error.

2. THE COURT ERRED IN FAILING TO PROPERLY CONSIDER APPELLANT'S SPECIAL DEPOSIT AND SETOFF.

Appellant presented testimony and documentary evidence concerning a special deposit tendered directly to BOKF for the purpose of settling the alleged debt claims. (R. pp. 49–50, 57–59, 65–71). The accompanying instructions stated that the special deposit was tendered “to settle all debt claims in full upon acceptance,” with reference to OK UCC § 12A-3-603. (R. p. 57). Respondent acknowledged that his client received the tender but did not accept it as a reinstatement or payoff. (R. p. 58). These materials were admitted into evidence. (R. pp. 49–52).

Appellant tendered special deposit as part of his efforts to settle the matter amicably by setoff of the alleged obligation. (R. pp. 57–60). In *Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788 (1928), the Supreme Court recognized that courts have applied equitable setoff “with great liberality to prevent injustice even in cases where elements requisite to legal set-off have been lacking.”

Rather than determining the legal or equitable effect of the special deposit and its stated purpose, the court entered foreclosure judgment without meaningfully addressing that admitted evidence. (R. pp. 6–16). Accordingly, the special deposit and setoff remedy should have been considered in determining whether or not the alleged obligation remained due.

3. THE PROCEEDING DID NOT REFLECT PROPER EXERCISE OF EQUITABLE DISCRETION.

“A mortgage foreclosure is an action in equity.” *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). Appellant presented evidence of efforts to address and resolve the alleged obligation, including notices, communications, and other admitted evidence bearing upon the equitable circumstances of the dispute. (R. pp. 45–52, 57–61, 65–114).

Nevertheless, the foreclosure judgment was entered without meaningful consideration of those circumstances. (R. pp. 6–16). As recognized in *Hayne*, “He who seeks equity must do equity.” *Id.*

Likewise, the established equitable maxim provides that “equity will not suffer a wrong without a remedy.” Henry R. Gibson, *A Treatise on Suits in Chancery* § 33 (2d ed. 1907). Gibson further identifies “the redemption and foreclosure of mortgages” among the remedies historically administered in equity. The equitable nature of foreclosure therefore includes protection of the mortgagor’s equity of redemption and consideration of appropriate equitable relief warranted by the circumstances. The equitable nature of foreclosure required consideration of the admitted evidence and the totality of the circumstances before granting the equitable remedy of foreclosure.

Accordingly, the failure to meaningfully consider Appellant’s admitted evidence and equitable defenses reflects an improper exercise of equitable discretion.

4. THE COURT ERRED IN TREATING APPELLANT AS IN DEFAULT.

Although Respondent asserted that Appellant was in default, the record reflects that Appellant had appeared and filed responsive materials before the Affidavit of Default was filed. (R. pp. 95–107, 143). Respondent acknowledged at the foreclosure hearing that he had received Appellant’s correspondence, but stated that because the filing was not titled as an answer and, in Respondent’s view, did not address the allegations of the Complaint, Respondent considered Appellant to be in default. (R. p. 35).

Appellant thereafter appeared at the foreclosure hearing, participated in the proceedings, and presented testimony and documentary evidence that was admitted into the record. (R. pp.

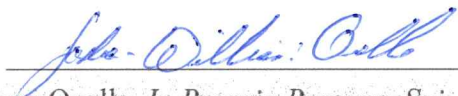
34-61). Respondent's characterization of Appellant as being in default therefore required consideration of the substance and legal sufficiency of Appellant's prior filing, rather than merely its title or Respondent's characterization of that filing.

Accordingly, entry of judgment based upon Appellant's purported default, without determining whether Appellant's prior filing constituted a sufficient response or otherwise demonstrated an intent to defend the action, was improper.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the Order of Foreclosure and Sale, or in the alternative, remand the matter for further proceedings consistent with proper consideration of Appellant's evidence and defenses and such equitable relief as may be appropriate.

Respectfully submitted in good faith this 7th day of October 2026.

 , LS
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