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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas, 15th Circuit

Alan D. Clemmons, Horry County Master-in-Equity

COMMON PLEAS CASE NO.: 2024-CP-26-00567

Court of Appeals Appellate Case No. 2025-002471

Nicholas F. Wilson,

Appellant,

v.

Select Portfolio Servicing, Inc.,

Respondent.

APPENDIX VOLUME ONE

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ATTORNEYS FOR APPELLANT NICHOLAS F. WILSON

THE STATE OF SOUTH CAROLINA
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APPENDIX TABLE OF CONTENTS

APPENDIX BATES NO. FROM	APPENDIX BATES NO. TO	DATE FILED	DESCRIPTION
001 to	019	6/19/2023	Answer, Counterclaims and Crossclaims of Flagstar Bank, N.A.
020 to	021	4/3/2025	Select Portfolio Servicing, Inc.'s Motion to Dismiss

022 to	045	12/10/2025	Notice of Appeal, Orders on appeal dated 3/4/25, 3/25/25 and 11/10/25 and COS
046 to	047	12/16/2025	South Carolina Court of Appeals Initial Letter
048 to	052	1/28/2026	Plaintiff Wilson's Memorandum in Opposition to Select Portfolio Servicing, Inc.'s Motion to Dismiss
053 to	060	2/25/2026	Respondent's Motion to Dismiss Appeal
061 to	076	3/10/2026	Appellant's Return in Opposition to Motion to Dismiss Appeal
077 to	085	3/13/2026	Respondent's Reply to Appellant's Return in Opposition to Motion to Dismiss Appeal
086 to	088	5/29/2026	Supplemental Memorandum Regarding Collateral Estoppel (Case No.: 2023-CP-26-02475)
089 to	091	6/25/2026	Filed Form 4 Order Denying Select Portfolio Servicing, Inc.'s Motion to Dismiss (Case No.: 2023-CP-26-02475)
092 to	093	8/28/2026	South Carolina Court of Appeal' Order Granting Respondent's Motion to Dismiss Appeal
094 to	106	9/14/2026	Appellant's Motion for Rehearing
107 to	108	10/16/2026	South Carolina Court of Appeals' Order Denying Motion for Rehearing
109 to	116	1/23/2024	Summons and Complaint (Case No.: 2024-CP-26-00567)
117 to	117	5/3/2024	Filed Affidavit of Service on Wilson via Kenneth Bryant, Co-Resident
118 to	223	1/16/2025	Plaintiff's Motion to Dismiss based on Compulsory Counterclaims filed in Earlier Case Under Rules 12 and 13, SCRCP

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	SEVENTH JUDICIAL CIRCUIT

Nicholas F. Wilson, Plaintiff, vs. Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp. d/b/a Century 21; The Harrelson Group; Patton Development SC, LLC; Mortgage Electronic Registration Systems, Inc.; Sonia M. Raymond; Raymond Law Firm, P.A., Defendants.	)	Civil Action No. 2023-CP-26-02475 **Answer, Counterclaims, and Crossclaims of Flagstar Bank, N.A., incorrectly identified in the caption as Mortgage Electronic Registration Systems, Inc.**

Reserving all rights and remedies available to it, Flagstar Bank, N.A., incorrectly identified in the caption as Mortgage Electronic Registration Systems, Inc.[1] ("Flagstar") hereby responds to Plaintiff Nicholas F. Wilson's ("Plaintiff") Verified Complaint ("Complaint") as follows:

GENERAL DENIAL

Unless expressly admitted, qualified, or explained below, each and every allegation contained in the Complaint is denied.

FOR A FIRST DEFENSE

1. Flagstar lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 1 and, therefore, denies those allegations.

[1] MERS assigned its first priority mortgage on the subject property to Flagstar via Assignment dated December 9, 2021, filed with the Horry County Register of Deeds at Book 6491, Page 1568.

2. Paragraph 2 refers to a lis pendens, No. 2023-LP-26-00335, and attachments which speak for themselves, and Flagstar denies any allegations inconsistent with those documents. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegations in Paragraph 2 and, therefore, denies those allegations.

3. No response is required to Paragraph 3. To the extent a response is required, Flagstar admits that Plaintiff has purported to incorporate the documents referenced in Paragraph 3 by reference.

4. Upon information and belief, Flagstar admits Paragraph 4.

5. Upon information and belief, Flagstar admits Paragraph 5.

6. Upon information and belief, Flagstar admits Paragraph 6.

7. Upon information and belief, Flagstar admits Paragraph 7.

8. Upon information and belief, Flagstar admits Paragraph 8.

9. Upon information and belief, Flagstar admits Paragraph 9.

10. Upon information and belief, Flagstar admits Paragraph 10.

11. Upon information and belief, Flagstar admits Paragraph 11.

12. Upon information and belief, Flagstar admits Paragraph 12.

13. Responding to Paragraph 13, Flagstar lacks sufficient information to form a belief as to the truth or falsity of any the allegations in Paragraph 13 and, therefore, denies those allegations.

14. Responding to Paragraph 14, Flagstar admits that MERS was named as nominee for T2 Financial, LLC d/b/a Revolution Mortgage's, its successors and assigns, on the subject mortgage. This mortgage was assigned to Flagstar via assignment dated December 9, 2021 and Flagstar holds a first priority mortgage lien on the subject property. Flagstar lacks sufficient

information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 14 and, therefore, denies those allegations.

15. Paragraph 15 refers to a mortgage which speaks for itself, and Flagstar denies any allegations inconsistent with that mortgage. Flagstar admits that it is the assignee of MERS and holds a first priority mortgage lien on the subject property. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegations in Paragraph 15 and, therefore, denies those allegations.

16. Upon information and belief, Flagstar admits Paragraph 16.

17. Upon information and belief, Flagstar admits Paragraph 17.

18. Upon information and belief, Flagstar admits Paragraph 18.

19. No response is required to Paragraph 19. To the extent a response is required, Flagstar admits that Plaintiff's compliant refers to Sonia Raymond and Raymond Law Firm as "Plaintiff's Closing Attorney."

20. Paragraph 20 asserts legal conclusions to which no response is required. To the extent a response is required, Flagstar admits Paragraph 20.

21. Paragraph 21 refers to a written offer to purchase which speaks for itself, and Flagstar denies any allegations inconsistent with that offer to purchase. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 21 and, therefore, denies those allegations.

22. Paragraph 22 refers to a written addendum dated January 23, 2020 which speaks for itself, and Flagstar denies any allegations inconsistent with that addendum. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 22 and, therefore, denies those allegations.

23. Paragraph 23 refers to a written amendment to contract dated January 23, 2020 which speaks for itself, and Flagstar denies any allegations inconsistent with that amendment to contract. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 23 and, therefore, denies those allegations.

24. Paragraph 24 refers to a written addendum dated January 29, 2020 which speaks for itself, and Flagstar denies any allegations inconsistent with that amendment to contract. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 24 and, therefore, denies those allegations.

25. Paragraph 25 refers to an Original Survey which speaks for itself, and Flagstar denies any allegations inconsistent with that Original Survey. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 25 and, therefore, denies those allegations.

26. Paragraph 26 refers to an Original Survey which speaks for itself, and Flagstar denies any allegations inconsistent with that Original Survey. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 26 and, therefore, denies those allegations.

27. Paragraph 27 refers to a written addendum dated March 5, 2020 which speaks for itself, and Flagstar denies any allegations inconsistent with that addendum. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 27 and, therefore, denies those allegations.

28. Flagstar admits Paragraph 28.

29. Upon information and belief, Flagstar admits Paragraph 29.

30. Paragraph 30 refers to a buyer representation agreement which speaks for itself, and Flagstar denies any allegations inconsistent with that buyer representation agreement. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 30 and, therefore, denies those allegations.

31. Paragraph 31 refers to a buyer representation agreement which speaks for itself, and Flagstar denies any allegations inconsistent with that buyer representation agreement. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 31 and, therefore, denies those allegations.

32. Paragraph 32 refers to a buyer representation agreement which speaks for itself, and Flagstar denies any allegations inconsistent with that buyer representation agreement. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 32 and, therefore, denies those allegations.

33. Paragraph 33 refers to a buyer representation agreement which speaks for itself, and Flagstar denies any allegations inconsistent with that buyer representation agreement. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 33 and, therefore, denies those allegations.

34. Paragraph 34 refers to a buyer representation agreement which speaks for itself, and Flagstar denies any allegations inconsistent with that buyer representation agreement. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 34 and, therefore, denies those allegations.

35. Paragraph 35 refers to a dual agency agreement which speaks for itself, and Flagstar denies any allegations inconsistent with that dual agency agreement. Flagstar lacks sufficient

information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 35 and, therefore, denies those allegations.

36. Paragraph 36 refers to documents which speak for themselves, and Flagstar denies any allegations inconsistent with those documents. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 36 and, therefore, denies those allegations.

37. Flagstar lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 37 and, therefore, denies those allegations.

38. Paragraph 38 refers to documents which speak for themselves, and Flagstar denies any allegations inconsistent with those documents. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegation in Paragraph 38 and, therefore, denies those allegations.

39. Upon information and belief, Flagstar admits Paragraph 39.

40. Flagstar lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 40 and, therefore, denies those allegations.

41. Flagstar lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 41 and, therefore, denies those allegations.

42. Upon information and belief, Flagstar admits Paragraph 42.

43. Upon information and belief, Flagstar admits Paragraph 43.

44. Upon information and belief, Flagstar admits Paragraph 44.

45. Upon information and belief, Flagstar admits Paragraph 45.

46. Upon information and belief, Flagstar admits Paragraph 46.

47. Responding to Paragraph 47, Flagstar admits that Defendant Patton Development has filed an Answer and Counterclaim contending that it has an interest in the property that was supposed to be conveyed.

48. Upon information and belief, Flagstar admits Paragraph 48.

49. Upon information and belief, Flagstar admits Paragraph 49.

50. Upon information and belief, Flagstar admits Paragraph 50.

51. Paragraph 51 refers to a mortgage which speaks for itself, and Flagstar denies any allegations inconsistent with that mortgage. Flagstar states that it is the assignee of MERS and holds a first priority mortgage lien on the subject property. Therefore, Flagstar, not MERS is the proper party-defendant. Flagstar lacks sufficient information to form a belief as to the truth or falsity of any remaining allegations in Paragraph 51 and, therefore, denies those allegations.

52. Upon information and belief, Flagstar admits Paragraph 52.

53. Responding to Paragraph 53, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

54. Paragraph 54 is not directed at Flagstar and therefore no response is required.

55. Paragraph 55 is not directed at Flagstar and therefore no response is required.

56. Paragraph 56 is not directed at Flagstar and therefore no response is required.

57. Paragraph 57 is not directed at Flagstar and therefore no response is required.

58. Paragraph 58 is not directed at Flagstar and therefore no response is required.

59. Responding to Paragraph 59, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

60. Paragraph 60 is not directed at Flagstar and therefore no response is required.

61. Paragraph 61 is not directed at Flagstar and therefore no response is required.

62. Paragraph 62 is not directed at Flagstar and therefore no response is required.

63. Paragraph 63 is not directed at Flagstar and therefore no response is required.

64. Responding to Paragraph 64, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

65. Paragraph 65 is not directed at Flagstar and therefore no response is required.

66. Paragraph 66 is not directed at Flagstar and therefore no response is required.

67. Paragraph 67 is not directed at Flagstar and therefore no response is required.

68. Paragraph 68 is not directed at Flagstar and therefore no response is required.

69. Paragraph 69 is not directed at Flagstar and therefore no response is required.

70. Paragraph 70 is not directed at Flagstar and therefore no response is required.

71. Responding to Paragraph 71, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

72. Paragraph 72 is not directed at Flagstar and therefore no response is required.

73. Paragraph 73 is not directed at Flagstar and therefore no response is required.

74. Paragraph 74 is not directed at Flagstar and therefore no response is required.

75. Paragraph 75 is not directed at Flagstar and therefore no response is required.

76. Responding to Paragraph 76, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

77. Paragraph 77 is not directed at Flagstar and therefore no response is required.

78. Paragraph 78 is not directed at Flagstar and therefore no response is required.

79. Paragraph 79 is not directed at Flagstar and therefore no response is required.

80. Paragraph 80 is not directed at Flagstar and therefore no response is required.

81. Responding to Paragraph 81, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

82. Paragraph 82 is not directed at Flagstar and therefore no response is required.

83. Paragraph 83 is not directed at Flagstar and therefore no response is required.

84. Paragraph 84 is not directed at Flagstar and therefore no response is required.

85. Paragraph 85 is not directed at Flagstar and therefore no response is required.

86. Paragraph 86 is not directed at Flagstar and therefore no response is required.

87. Paragraph 87 is not directed at Flagstar and therefore no response is required.

88. Paragraph 88 is not directed at Flagstar and therefore no response is required.

89. Paragraph 89 is not directed at Flagstar and therefore no response is required.

90. Paragraph 90 is not directed at Flagstar and therefore no response is required. Paragraph 90 also asserts legal conclusions to which no response is required.

91. Responding to Paragraph 91, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

92. Paragraph 92 is not directed at Flagstar and therefore no response is required.

93. Paragraph 93 is not directed at Flagstar and therefore no response is required.

94. Paragraph 94 is not directed at Flagstar and therefore no response is required.

95. Paragraph 95 is not directed at Flagstar and therefore no response is required.

96. Paragraph 96 is not directed at Flagstar and therefore no response is required.

97. Paragraph 97 is not directed at Flagstar and therefore no response is required.

98. Paragraph 98 is not directed at Flagstar and therefore no response is required.

99. Paragraph 99 is not directed at Flagstar and therefore no response is required.

100. Paragraph 100 is not directed at Flagstar and therefore no response is required.

101. Paragraph 101 is not directed at Flagstar and therefore no response is required.

102. Paragraph 102 is not directed at Flagstar and therefore no response is required.

103. Responding to Paragraph 103, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

104. Paragraph 104 is not directed at Flagstar and therefore no response is required.

105. Paragraph 105 is not directed at Flagstar and therefore no response is required.

106. Paragraph 106 is not directed at Flagstar and therefore no response is required.

107. Paragraph 107 is not directed at Flagstar and therefore no response is required.

108. Responding to Paragraph 108, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

109. Paragraph 109 is not directed at Flagstar and therefore no response is required.

110. Paragraph 110 is not directed at Flagstar and therefore no response is required.

111. Paragraph 111 is not directed at Flagstar and therefore no response is required.

112. Paragraph 112 is not directed at Flagstar and therefore no response is required.

113. Paragraph 113 is not directed at Flagstar and therefore no response is required.

114. Paragraph 114 is not directed at Flagstar and therefore no response is required.

115. Responding to Paragraph 115, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

116. Responding to Paragraph 116, Flagstar states that it is the assignee of MERS and holds a first priority mortgage lien on the subject property. Flagstar admits that Plaintiff expects to and may claim an interest in property that Janet Gochenour was contractually obligated to convey to Plaintiff, but failed to do so. Flagstar lacks sufficient information to form a belief as to

the truth or falsity of any remaining allegations in Paragraph 116 and, therefore, denies those allegations.

117. Flagstar admits Paragraph 117.

118. Responding to Paragraph 118, Flagstar admits that Plaintiff expected to receive title to the driveway, Tract D, in the transaction but did not receive it. The remainder of the allegations of Paragraph 118 are not directed at Flagstar and therefore no response is required.

119. Responding to Paragraph 119, Flagstar admits, upon information and belief, that Defendants Mary Ann Parker and/or Jim Parker and/or James Parker claim ownership rights in the driveway, Tract D, despite the contract between Plaintiff and Janet Gochenour.

120. Paragraph 120 is not directed at Flagstar and therefore no response is required.

121. Responding to 121, Flagstar admits that its first priority mortgage lien should cover the entirety of the property that was supposed to be conveyed by Janet Gochenour to Plaintiff in the transaction, including the driveway/Tract D. Flagstar further admits that it has an existing first priority mortgage lien on the property identified in the legal description of the mortgage. Flagstar denies any remaining allegations of Paragraph 121.

122. Upon information and belief, Flagstar admits Paragraph 122.

123. Upon information and belief, Flagstar admits Paragraph 123.

124. Responding to Paragraph 124, Flagstar incorporates its responses to the proceeding paragraphs as if repeated verbatim herein.

125. Paragraph 125 is not directed at Flagstar and therefore no response is required.

126. Paragraph 126 is not directed at Flagstar and therefore no response is required.

127. Paragraph 127 is not directed at Flagstar and therefore no response is required.

128. Paragraph 128 is not directed at Flagstar and therefore no response is required.

129. Paragraph 129 is not directed at Flagstar and therefore no response is required.

130. Paragraph 130 is not directed at Flagstar and therefore no response is required.

131. Paragraph 131 is not directed at Flagstar and therefore no response is required.

132. Responding to Plaintiff's prayer for relief beginning with "WHEREFORE," Flagstar admits only that Plaintiff is entitled to a declaration that he owns the driveway/Tract D. The remainder of Plaintiff's prayer for relief is not directed at Flagstar and therefore no response is required. To the extent the prayer for relief seeks any affirmative relief from Flagstar, Flagstar denies that Plaintiff is entitled to the requested relief or any relief whatsoever.

FOR A SECOND DEFENSE

133. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, it fails to state a claim for relief against Flagstar upon which relief may be granted and, therefore, should be dismissed.

FOR A THIRD DEFENSE

134. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff's claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE

135. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff is comparatively or contributorily at fault for his damages, if any.

FOR A FIFTH DEFENSE

136. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff failed to mitigate his damages, if any exist and are proven at trial.

FOR A FIFTH DEFENSE

137. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff's claims are barred by the economic loss doctrine.

FOR A SIXTH DEFENSE

138. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff's tort claims fail as a matter of law because Flagstar did not owe a tort duty of care to Plaintiff.

FOR A SEVENTH DEFENSE

139. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Flagstar pleads the defense of set off. To the extent that Plaintiff obtains any monetary recovery against Flagstar, such recovery should be set off by the amounts recovered from other parties.

FOR AN EIGHTH DEFENSE

140. Flagstar hereby incorporates by reference all the terms, provisions, exclusions, limitations, releases, and certification of the loan documents at issue in this civil action.

FOR A NINTH DEFENSE

141. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff's claims in equity are barred because she has an adequate remedy at law.

FOR A TENTH DEFENSE

142. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff's claims are barred by the doctrines of res judicata and or collateral estoppel.

FOR AN ELEVENTH DEFENSE

143. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff's damages, if any exist and are proven at trial, were proximately caused by Plaintiff's own acts or omissions, and not by the acts or omissions of Flagstar.

FOR A TWELFTH DEFENSE

144. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Plaintiff's damages, to the extent he has any, were proximately caused by the acts or omissions of third parties and not by the acts or omissions of Flagstar.

FOR A THIRTEENTH DEFENSE

145. To the extent Plaintiff's Complaint seeks any affirmative relief from Flagstar, Flagstar would show that Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, and unclean hands.

FOR A FOURTEENTH DEFENSE

146. To the extent Plaintiff seeks to recover civil penalties from Flagstar, any civil penalties sought by Plaintiff are punitive in nature and will deprive Flagstar of Due Process guaranteed under the United States Constitution and the Constitution of South Carolina. Therefore, the remedies requested by Plaintiff are unconstitutional and should be barred.

FOR A FIFTEENTH DEFENSE

147. To the extent Plaintiff seeks to recover punitive damages from Flagstar, any claim for punitive damages is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Flagstar pleads and incorporates all defenses, limitations or damages, and other privileges contained in S.C. Code Ann. § 15-32-520 and 15-32-530.

FOR A SIXTEENTH DEFENSE

148. Flagstar reserves the right to amend and supplement its affirmative defenses to include any applicable defense of law or fact of which it is not presently aware.

FOR A SEVENTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM AND CROSSCLAIM

149. Flagstar incorporates its responses to the preceding paragraphs by reference.

PARTIES AND JURISDICTION

150. Flagstar is a corporation organized under the laws of the State of Delaware authorized to do business in South Carolina.

151. Upon information and belief, Plaintiff is a resident of Horry County, South Carolina.

152. Defendant Janet P. Gochenour, a/k/a Janet T. Gochenour, a/k/a Janet P. Gochenour, Trustee ("Defendant Janet"), upon information and belief, is a resident of Horry County, South Carolina, and was the seller of the property that is the subject of this action to the Plaintiff, which sale occurred on or about March 6, 2020.

153. Defendant James B. Parker ("Jim Parker"), upon information and belief, is a resident of Horry County, South Carolina.

154. Defendant James B. Parker, Sr. ("James Parker"), upon information and belief, is a resident of Horry County, South Carolina.

155. Defendant Mary Ann Parker, upon information and belief, is a resident of Horry County, South Carolina.

156. Defendant Kenneth Gregory Moore, upon information and belief, is a resident of Horry County, South Carolina.

157. Defendant Patton Development SC, LLC ("Patton Development"), upon information and belief, is a South Carolina Limited Liability Company doing business in Horry County, South Carolina.

Jurisdiction and Venue

158. Jurisdiction and venue are appropriate before this Court because the Property is located entirely within Horry County, South Carolina, and the events giving rise to the claims occurred in this County.

FACTS

159. Flagstar incorporates the factual allegations from Plaintiff's Verified Complaint by reference herein in full.

160. Based on those allegations, upon information and belief, Plaintiff was not deeded a portion of the property which Defendant Janet and Plaintiff agreed would be part of the contract for sale.

161. This portion of the property is the driveway reflected on the Original Survey attached to Plaintiff's Verified Complaint (also known as "Tract D").

162. Plaintiff did not receive title to the driveway/Tract D.

163. Upon information and belief, Mary Ann Parker, Jim Parker, and James Parker maintained an ownership interest in the driveway/Tract D following the sale.

164. Upon information and belief, all or a portion of the driveway/Tract D that was to be conveyed to Plaintiff by Defendant Janet may now be claimed, in whole or in part, by Defendant Patton Development.

165. Flagstar expected that its mortgage would secure the entire property contemplated by the contract for sale between Plaintiff and Defendant Janet, which was to include the driveway/Tract D.

166. The driveway/Tract D was not identified in the legal description of the deed to Plaintiff or the mortgage held by Flagstar.

FOR A FIRST COUNTERCLAIM AND CROSSCLAIM
(Declaratory Judgment)

167. Flagstar re-alleges and incorporates the allegations contained in paragraphs 150-170 as if fully set forth herein.

168. Upon information and belief, Defendant Janet was contractually obligated to convey the driveway/Tract D to Plaintiff, yet failed to do so.

169. The contract between Defendant Janet and Plaintiff was enforceable and valid.

170. As a result of the facts detailed above and in Plaintiff's Verified Complaint, Plaintiff did not receive title to the driveway/Tract D, as shown on the Original Survey, and Defendants Mary Ann Parker, Jim Parker, and James Parker benefitted by the same.

171. As a result of the facts detailed above and in Plaintiff's Verified Complaint, Defendants Mary Ann Parker, Jim Parker, and James Parker remained as owners or maintained ownership rights in the driveway in contradiction of the contract between Plaintiff and Defendant Janet.

172. But for the facts detailed above and in Plaintiff's Verified Complaint, Defendants Mary Ann Parker, Jim Parker, and James Parker would not have any legal right to accept, upon information and belief, valuable consideration from Patton Development for its access to and use of Plaintiff's driveway.

173. But for the facts detailed above and in Plaintiff's Verified Complaint, the mortgage held by Flagstar would have encumbered the entirety of the property that Defendant Janet was supposed to convey Plaintiff pursuant to the Contract for Sale, including the driveway/Tract D.

174. Upon information and belief, the legal description of the mortgage held by Flagstar does not identify the driveway/Tract D as part of the encumbered property.

175. Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Plaintiff is entitled to an order from this Court declaring his ownership of the driveway/Tract D.

176. Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Flagstar is entitled to an order from this Court declaring that its mortgage encumbers the driveway/Tract D.

177. Such order / declaration should be recorded in the RMC office for Horry County.

PRAYER FOR RELIEF

WHEREFORE, Flagstar respectfully requests that the Court issue the declaratory relief requested herein and in Plaintiff's Verified Complaint. To the extent any of Plaintiff's other claims could be construed to be asserted against Flagstar, Flagstar respectfully requests that the Court dismiss those claims, with prejudice, enter judgment in favor of Flagstar, award Flagstar its costs and attorneys' fees expended herein, and issue such other and further relief as the Court may deem just and appropriate.

Signature on Following Page

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Blake T. Williams

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Attorneys for Flagstar Bank, N.A., incorrectly identified in the caption as Mortgage Electronic Registration Systems, Inc.

Columbia, South Carolina

June 19, 2023

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT

Nicholas F. Wilson, Plaintiff, vs. Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp. d/b/a Century 21; The Harrelson Group; Patton Development SC, LLC; Flagstar Bank, N.A.; Sonia M. Raymond; Raymond Law Firm, P.A., Defendants.	)	Civil Action No. 2023-CP-26-02475 **MOTION TO DISMISS** **(With Prejudice)**

Pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure, Defendant Select Portfolio Servicing, Inc. ("SPS") respectfully requests the Court enter an order dismissing it from this case, with prejudice. As SPS's pending motion to substitute SPS for Flagstar Bank, N.A. ("Flagstar") details, SPS is the current holder of the loan which was held by Flagstar at the outset of this case and, therefore, SPS is now the proper party defendant.

Plaintiff's complaint asserted claims arising out of a purchase of real property. The gravamen alleged that although Plaintiff received the bulk of the property he believed he was purchasing, he was also supposed to receive title to an additional tract of land ("the driveway tract"). Mr. Wilson brought claims against the seller of the property, the closing attorney, the realtor, and any interested parties who may claim title to the driveway tract.

At the time the Complaint was filed, Flagstar held the first priority mortgage lien on the property Wilson received through this transaction. Accordingly, Flagstar was named as an

ELECTRONICALLY FILED - 2025 Apr 03 2:22 PM - HORRY - COMMON PLEAS - CASE#2023CP2602475

interested party defendant to the declaratory judgment portion of the case only, as Plaintiff anticipated that Flagstar may claim to have a lien on the driveway tract if he successfully obtained it through this litigation. Flagstar asserted a contingent counter and crossclaim for declaratory judgment contending that if Plaintiff was correct that he was supposed to receive the driveway tract, the mortgage should also cover it.

As noted, SPS now holds the lien previously held by Flagstar. SPS hereby disclaims interested party status to Plaintiff's declaratory judgment action and withdraws the affirmative counter and cross claim for declaratory judgment asserted by Flagstar.[1]

Therefore, having no interest remaining in this action, SPS respectfully moves the Court to dismiss SPS with prejudice pursuant to Rule 41(a)(2), SCRCP.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Blake T. Williams

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Attorneys for Select Portfolio Servicing, Inc.

Columbia, South Carolina
April 3, 2025

[1] This is limited solely to Mr. Wilson's claim for declaratory relief. SPS expressly preserves, and does not waive, its rights to collect the amounts payable under the subject note and mortgage, to recover all costs, charges, and fees as permitted under the note and mortgage, and to pursue foreclosure in accordance with the note, mortgage, and applicable law.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF
COMMON PLEAS
15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

CASE NO.: 2024-CP-26-00567

Nicholas Wilson, a/k/a Nicholas F. Wilson,

Appellant,

v.

Select Portfolio Servicing, Inc., successor in interest to Flagstar Bank, N.A.,

Respondent.

CERTIFICATE OF SERVICE

I, Wes Few, On behalf of the law office of Wesley D. Few, LLC, attorneys for Appellant in this matter, do hereby certify that I have served the below parties and / or their counsel of record by U.S. Mail / Email / NEF as set forth below on this date in this action with a copy of the document(s) listed below.

1) Plaintiff's Notice of Appeal;

2) Orders dated March 4, 2025, March 25, 2025 and Nov. 10, 2025.

Reginald Patrick Corley - reggiec@scottandcorley.com

Angelia Jacquline Grant - angig@scottandcorley.com

Sean Matthew - Sean.Foerster@rogerstownsend.com

WESLEY D. FEW, LLC

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ATTORNEYS FOR APPELLANTS

Greenville, South Carolina
December 10, 2025

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

STATE OF SOUTH CAROLINA COUNTY OF HORRY Select Portfolio Servicing, Inc., Plaintiff, v. Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc.; Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2024CP2600567 ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND DEFENDANT'S MOTION TO STAY

This matter came before the Court at a hearing on September 25, 2025, on the following motions filed by Defendant Nicholas Wilson a/k/a Nicholas F. Wilson ("Wilson"):

1) "Motion to Dismiss Based on Compulsory Counterclaims Filed in Earlier Case Under Rules 12 and 13, SCRCP" filed on January 16, 2025 (hereafter the "Motion to Dismiss"); and
2) "Joint Motion to Stay Foreclosure Action" filed on April 8, 2025 (hereafter the "Motion to Stay").

Wesley D. Few, Esquire, appeared on behalf of Wilson. Sean M. Foerster, Esquire, appeared on behalf of Plaintiff Select Portfolio Servicing, Inc. ("SPS"). Based on arguments of counsel and other credible evidence presented at the September 25, 2025, hearing, the Court denies the Motion to Dismiss and the Motion to Stay.

FINDINGS OF FACT

This foreclosure action arises out of allegations of Wilson's default under the terms of the Note and Mortgage at issue for his failure to make the monthly payment due for March 1, 2021, and all payments thereafter.

Due to Wilson's loan default, his loan was accelerated and SPS now seeks to foreclose the mortgage securing that loan (hereafter the "Mortgage") against a property owned by Wilson that is comprised of the following three tracts: Tract A containing 1.29 acres, Tract B containing 3.77 acres, and Tract C containing 2.70 acres (hereafter collectively the "Property"). SPS has waived its right to a personal judgment against Wilson for any deficiency remaining on the mortgage debt after the foreclosure sale of the Property.

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

On March 21, 2024, Wilson was properly served with process in this action, but he failed to timely file an answer or other response to the Complaint and was held in default. When Wilson was served in March of 2024, he was aware that he had defaulted on his mortgage as of March 1, 2021, and was subject to the remedy of foreclosure. Wilson was also aware of a pending lawsuit he had filed against the sellers and others associated with the sale of the subject property and the dispute over the property's driveway. *See Nicholas F. Wilson v. Janet P. Gochenour et al*., C/A # 2023CP2602475 (Horry County Court of Common Pleas)(filed April 19, 2023)(hereafter the "2023 Action").

A Certification of Default was filed in this action on April 23, 2024. Wilson filed a Motion to Set Aside Default on June 21, 2024. An Order denying Wilson's Motion to Lift Default was issued March 4, 2025. Wilson filed a Motion for Reconsideration regarding the Order denying Wilson's request to lift default. The Motion for Reconsideration was denied March 25, 2025.

Wilson filed a Motion to Dismiss on January 16, 2025, and a Motion to Stay April 8, 2025. The Motion to Dismiss was not filed until approximately nine months after the time to answer the Complaint had passed.

On April 8, 2025, the final foreclosure hearing took place in this action, but the Court took SPS's foreclosure claim under advisement until after Wilson's Motion to Dismiss and Motion to Stay could be properly noticed, heard, and decided.

Both of Wilson's motions revolve around the 2023 Action. In the 2023 Action, Wilson seeks, among other relief, a declaration as to his rights in a separate parcel not encumbered by the Mortgage: Tract "D" containing 0.49 acres and which contains the driveway to the Property (hereafter the "Driveway Parcel"). The crux of the 2023 Action is that Wilson believed he would be receiving fee simple title to the Driveway Parcel from the seller when he purchased the Property in March 2020, but instead received only an easement interest[1] in the Driveway Parcel through that sale. In that action, Wilson has asserted various causes of action against the seller, the closing attorney, the realtor, and other parties who may claim an interest in the Driveway Parcel.

One of the defendants in the 2023 Action was the original mortgagee of record with respect to the Mortgage—Mortgage Electronic Registration Systems, Inc., or "MERS"—who Wilson named only because he "on information and belief…expected [it] to claim an interest in the

[1] A "Right of Way Easement" recorded on April 7, 1978, in the Office of the Register of Deed for Horry County in Book 607 at Page 687 provides access for the Property.

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

[Driveway Parcel] by virtue of [the Mortgage]…" and "based on its anticipated claim to have a mortgage lien on the property."

With respect to MERS and the Mortgage, Wilson's Complaint in the 2023 Action asserted only a single cause of action for "Declaratory Judgment" in which he alleged that "MERS is expected to and may claim an interest in property that [seller] was contractually obligated to convey to [Wilson], but failed to do so…" and that "[b]ut for the fraudulent representations relied upon by [Wilson], MERS would have a mortgage on [Wilson]'s property, including the driveway." In that cause of action, Wilson sought relief only in the form of an "order from this Court declaring his ownership of the driveway."

Wilson's Complaint in the 2023 Action did not seek rescission or reformation of the Mortgage.

In the 2023 Action, Flagstar Bank, N.A. ("Flagstar")—who had been assigned the Mortgage by then and was eventually substituted in place of MERS—filed an Answer, Counterclaims, and Crossclaims in which it asserted a contingent counterclaim and crossclaim for declaratory judgment contending that if Wilson was correct that he was supposed to receive title to the Driveway Parcel, then the Mortgage should also cover it.

However, after Flagstar assigned the Mortgage to SPS, SPS moved to substitute itself as a defendant into the 2023 Action and filed a Motion to Dismiss whereby it "disclaim[ed] interested party status to [Wilson]'s declaratory judgment action and withdr[ew] the affirmative counter and cross claim for declaratory judgment asserted by Flagstar."

As it currently stands, SPS does not seek to foreclose the Mortgage against or sell the fee simple title to the Driveway Parcel through this foreclosure action and SPS has withdrawn its claim to a mortgage lien on the fee simple title to the Driveway Parcel in the 2023 Action.

Procedurally, this foreclosure action and the 2023 Action are in two completely different stages. A final foreclosure hearing was already held in this case and, in light of this Order, SPS may now proceed with seeking the entry of a Judgment of Foreclosure and Sale.

The 2023 Action, on the other hand, still has a long way to go: with the exception of certain limited discovery, that action is currently stayed pending an appeal by Wilson to the South Carolina Court of Appeals from interlocutory orders that dismissed his claims against two of the defendants, denied his motion to alter or amend the dismissal order, and denied his motion to amend his

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

complaint in that action. *See Nicholas F. Wilson v. Janet P. Gochenour et al.*, Appellate Case No. 2024-000440 (Ct. App. filed March 18, 2024).

Meanwhile, Wilson has not made a mortgage payment in over four years while SPS and his prior mortgage servicers have been paying his property taxes, hazard insurance premiums, and private mortgage insurance premiums during that time.

Nonetheless, Wilson's Motion to Stay seeks a stay of this foreclosure pending the outcome of the 2023 Action.

Alternatively, Wilson's Motion to Dismiss seeks a dismissal of this foreclosure under two different procedural arguments. First, Wilson seeks dismissal under Rule 12(b)(8), SCRCP, based on the argument that the scope of the mortgage is already being litigated in the 2023 Action and, therefore, the parties and the issues are substantially the same in both proceedings. Second, Wilson seeks dismissal under Rule 13(a), SCRCP, based on the argument that SPS's foreclosure claim in this action was a compulsory counterclaim to the 2023 Action.

CONCLUSIONS OF LAW

The Court denies both of Wilson's motions for the following reasons:

1. Wilson's Motion to Dismiss is denied.

Wilson is in default so his Motion to Dismiss, in which he raises issues of compulsory counterclaims, is untimely, moot, and, therefore, denied.

a. The Motion to Dismiss is untimely.

The general rule is that a Motion to Dismiss is filed before the defendant files an Answer.

The Motion to Dismiss is untimely to the extent that it is made pursuant Rule 12(b)(8), SCRCP. "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: … (8) another action is pending between the same parties for the same claim." Rule 12(b)(8), SCRCP.

"A motion making any of these defenses shall be made before pleading if a further pleading is permitted." Rule 12(b), SCRCP (emphasis added).

"A defense … that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course." Rule 12(h)(1), SCRCP (emphasis added).

"Rule 12(b)(8) is a waivable defense." Professor James F. Flanagan *et al*., South Carolina Civil Procedure § 12.C.7 (2020 Edition).

Wilson was required to assert his defense under Rule 12(b)(8) in either a pre-answer motion or within a pleading. Wilson defaulted by failing to plead in response to the complaint within the time permitted by the rules and the Court denied his request for relief from the entry of default. Wilson did not file the Motion to Dismiss until after his default, and no other pleadings were permitted at the time that he filed it. Wilson's motion is therefore untimely, and he has waived any defense based on Rule 12(b)(8).

The Motion to Dismiss is also untimely to the extent that it is made pursuant Rule 13(a), SCRCP.

The failure to plead a Rule 13(a) compulsory counterclaim bars its litigation in a subsequent case under principles of *res judicata*. *Jaynes v. Cty. of Fairfield*, 303 S.C. 434, 438, 401 S.E.2d 183, 185 (Ct. App. 1991)(holding that plaintiffs' complaint was barred by *res judicata* since it was a Rule 13(a) compulsory counterclaim to an earlier action).

Res judicata is an affirmative defense that must be pleaded. *Dawkins v. Mozie*, 399 S.C. 290, 294, 731 S.E.2d 342, 345, (Ct. App. 2012)(*citing RIM Assocs. v. Blackwell*, 359 S.C. 170, 182, 597 S.E.2d 152, 159 (Ct. App. 2004).

"An affirmative defense is waived if not pled." *Id*.

Here, Wilson was required to assert an affirmative defense of *res judicata* based on Rule 13(a) within a pleading. By defaulting and failing to plead in response to the Complaint, Wilson waived that affirmative defense. His Motion to Dismiss based on a waived affirmative defense under Rule 13(a) is therefore untimely.

b. Rule 12(b)(8) is inapplicable because there is no other action pending between the parties for the same claim.

There is no action "pending between the same parties for the same claim" as required for dismissal under Rule 12(b)(8). This action involves a claim for foreclosure of the lien of the Mortgage against only Tracts A, B, and C based on Wilson's loan default in March 2021. The 2023 Action, on the other hand, involves a claim seeking a "declaratory judgment" as to Wilson's

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

ownership of the Driveway Parcel based on issues arising out of the property purchase transaction in March 2020. The 2023 Action includes no claim for rescission or reformation of the Mortgage, or any other type of claim challenging the enforceability of the lien of the Mortgage against Tracts A, B, and C.

Because this action involves different claims and different requested relief from the 2023 Action, Rule 12(b)(8) is inapplicable.

c. Rule 13(a) is inapplicable because SPS's foreclosure claim was not a compulsory counterclaim to the 2023 Action.

SPS's foreclosure claim in this action was not a compulsory counterclaim to the 2023 Action because it does not arise out of the same transaction or occurrence as Wilson's claims in that action.

"A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Rule 13(a), SCRCP (emphasis added).[2]

SPS's action to foreclose the mortgage did not arise out of the same transaction or occurrence giving rise to the 2023 Action against the sellers and others associated with the purchase of the Property. SPS's right to foreclose remains intact, and SPS is not seeking foreclosure of the Driveway Parcel currently in dispute as part of the 2020 purchase of the Property. The Property was purchased at the March 2020 closing and Wilson defaulted on this loan in March of 2021. The two transactions are mutually exclusive. The 2023 Action involves a dispute over whether a driveway was to be included in the purchase and this action involves default on a loan. Wilson defaulted on this loan two years (March of 2021) before pursuing claims in the

[2] The parties argued about the appropriate test to be applied by the Court in determining whether SPS's foreclosure claim was a compulsory counterclaim given the South Carolina Supreme Court's prospective abolishment of the "logical relationship" test effective August 9, 2023—several months after the filing of the 2023 Action—in favor of a "plain language of the rule" test. *Deutsche Bank Nat'l Tr. Co. v. Estate of Houck*, 440 S.C. 409, 412-13, 892 S.E.2d 280, 282 (2023)("We now hold that in cases commenced on or after the effective date of this opinion, the question of whether a counterclaim is compulsory is governed by the plain language of Rule 13(a)."). These arguments are irrelevant as the Court concludes that SPS's foreclosure claim is not a compulsory counterclaim under either test.

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

2023 Action regarding the inclusion of the driveway as part of the purchase. Wilson should have continued paying his loan payments as he pursued a remedy regarding the driveway issue. SPS's right to foreclose upon the loan default is unaffected by the 2023 Action.

For these reasons, SPS was not required to plead the foreclosure claim as a compulsory counterclaim in the 2023 action.

2. Wilson's Motion to Stay is denied.

Wilson's Motion to Stay is also denied as it would be inequitable to bar SPS from its right to pursue the remedy of foreclosure as Wilson pursues the 2023 Action which is currently on appeal.

"The granting of a motion for a stay of proceedings rests entirely within the discretion of the trial [court]." *Thompson v. Swicegood*, 430 S.C. 648, 659, 845 S.E.2d 920, 925 (Ct. App. 2020)(*quoting City of Spartanburg v. Belk's Dep't Store of Clinton*, 199 S.C. 458, 20 S.E.2d 157, 167 (1942)).

"An equitable stay may be invoked if justified by circumstances which outweigh any potential harm to the party against whom it is operative." *Merritt Bros. v. Marine Midland Realty Credit Corp*., 307 S.C. 213, 216, 414 S.E.2d 167, 169 (1992). "In making this determination, the court must weigh competing interests and maintain an even balance." *Id*. (*quoting United States Central Building Supply, Inc. v. Wilke*, 685 F. Supp. 936, 938 (D.C. Md. 1988)).

"Where the same parties and the same subject matter are involved in both an action at law and a suit in equity, the pendency of one may authorize a stay of proceedings in the other, the facts and circumstances in each particular case determining in large measure whether the stay should or should not be granted." *Rush v. Thompson*, 203 S.C. 106, 114, 26 S.E.2d 411, 414 (1943)(*quoting* 1 C.J.S. Actions § 133).

"To obtain a stay of a later action, as a general rule, it is necessary that the two suits involve the same claims, concern the same subject matter, involve the same issues, and seek the same relief." 1 Am. Jur. 2d Actions § 68. "In order to prevail on the issue of a stay, the party requesting a stay must make out a clear case of hardship or inequity in being required to go forward." 1 Am. Jur. 2d Actions § 67. "Considerations that may serve the trial court in the exercise of its discretion in granting or denying a stay include expense and convenience, availability of witnesses, the stage to which proceedings in the action have already progressed, and the possibility of prejudice resulting from the stay." *Id*.; *see also Rush v. Thompson*, 203 S.C. 106, 114, 26 S.E.2d 411, 414

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

(1943)(considering the prejudice to the other party as a factor when deciding whether to stay court proceedings).

a. The outcome of the 2023 Action will make no difference to the outcome of this foreclosure action.

As discussed *supra* in section 1(c) above, this foreclosure action involves different issues and different requested relief than the 2023 Action. Whether or not Wilson is entitled to fee simple title to the Driveway Parcel in the 2023 Action has no bearing on his March 2021 loan default, on the amount of the current debt secured by the Mortgage, or on SPS's right to enforce the Mortgage against Tract A, Tract B, and Tract C. Wilson has not identified any issue to be litigated in the 2023 Action that will make a difference in this foreclosure action.

b. A stay of the foreclosure would result in prejudice to SPS.

SPS will be prejudiced by having to wait for the final adjudication of the 2023 Action because SPS, not Wilson, is currently paying the property taxes, hazard insurance premiums, and mortgage insurance premiums. SPS is also having to incur property inspection charges to monitor the condition of its loan collateral.

Every day that this foreclosure action is delayed is another day that SPS suffers the loss of the use of the money that was loaned to Wilson—money which he stopped repaying over four years ago. Wilson should have continued making his mortgage loan payments while he pursued his remedies in the 2023 Action, but he failed to do so.

c. This action is in a completely different procedural stage than the 2023 Action.

The cases are in two completely different stages. The foreclosure case has already had its final hearing and will be concluded shortly, while the 2023 Action may be several years away from a complete adjudication due to Wilson's pending appeal from interlocutory orders in that action.

d. Wilson has identified no economic benefit to the Court or the parties from a stay of the foreclosure action.

Finally, Wilson has failed to proffer any argument that wasteful duplication will occur if this foreclosure case goes forward before the 2023 Action is adjudicated.

For these reasons, it would be inequitable to bar SPS from its right to pursue the remedy of foreclosure while Wilson pursues the 2023 Action.

IT IS THEREFORE ORDERED THAT:

1. Wilson's "Motion to Dismiss Based on Compulsory Counterclaims Filed in Earlier Case Under Rules 12 and 13, SCRCP" filed on January 16, 2025, is DENIED; and

2. Wilson's "Joint Motion to Stay Foreclosure Action" filed on April 8, 2025, is DENIED.

AND IT IS SO ORDERED.

[Court's signature page to follow]

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP260567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP260567

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP2600567

Select Portfolio Servicing, Inc.

PLAINTIFF(S)

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc.;

DEFENDANT(S)

Submitted by:
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Post Office Box 100200(29202)
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(803) 744-1855
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Attorney for: ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Master in Equity **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Sean M. Foerster, Esquire
Rogers Townsend, LLC
P.O. Box 100200
Columbia, SC 29202-3400
ATTORNEY(S) FOR THE PLAINTIFF(S) (23945.1)

Wesley D. Few, Esquire
Post Office Box 9398
Greenville, South Carolina 29604
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2025 Nov 10 11:39 AM - HORRY - COMMON PLEAS - CASE#2024CP2600567
ELECTRONICALLY FILED - 2025 Dec 10 4:39 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

Horry Common Pleas

Case Caption: Select Portfolio Servicing Inc VS Nicholas Wilson, defendant, et al

Case Number: 2024CP2600567

Type: Master/Order/Other

So Ordered

s/Alan D. Clemmons 3088 Master in Equity

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP2600567

Select Portfolio Servicing Inc
PLAINTIFF(S)

Nicholas Wilson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The court has reviewed Plaintiff's Motion for Reconsideration of the March 4, 2025 Order Denying Defendant Wilson's Motion to Lift Default. The court's position regarding the denial of Defendant's Motion to Lift Default is unchanged; therefore, Defendant Wilson's Motion for Reconsideration is denied for reasons stated in the March 4, 2025 Order.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/25/2025 .

Sofi Lending Corp
Wells Fargo Bank NA
Midland Credit Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Horry Common Pleas

Case Caption: Select Portfolio Servicing Inc , plaintiff, et al VS Nicholas Wilson , defendant, et al

Case Number: 2024CP2600567

Type: Order/Electronic Form 4

So Ordered

s/Alan D. Clemmons 3088 Master in Equity

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Flagstar Bank, N.A., PLAINTIFF, VS. Nicholas Wilson a/k/a Nicholas F. Wilson, SoFi Lending Corp., Wells Fargo Bank, N.A. and Midland Credit Management, Inc., DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2024-CP-26-00567 ORDER DENYING DEFENDANT WILSON'S MOTION TO LIFT DEFAULT

(241063.00006)

This is a foreclosure action as to certain real property located in Horry County. This action was commenced by a Lis Pendens, Summons and Complaint filed January 23, 2024. A Certification of Service and Default was filed April 23, 2024. An Order of Reference was filed April 24, 2024. Defendant Nicholas Wilson filed a Notice of Motion and Motion for Relief from Default on June 21, 2024. The motion appeared on the court's roster for December 9, 2024, and a hearing on the motion was held on January 14, 2025.

Appearing at the hearing were Wesley D. Few as attorney for Defendant Nicholas Wilson and Allison E. Heffernan as Plaintiff's counsel. The court heard arguments from both parties and requested the parties submit memoranda of law.

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial court." *Richardson v. P.V., Inc.*, 383 S.C. 610, 614, 682 S.E.2d 263, 265 (2009). "An abuse of discretion . . . occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997). "Rule 55(c), [of the South Carolian Rules of Civil Procedure (SCRCP)], allows the circuit court to set aside an entry of default 'for good cause shown." *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 510, 602 S.E.2d 99, 102 (Ct. App. 2004) (quoting Rule 55(c). "Whether good cause is established is within the sound discretion of the [trial] court." *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

A review of the record shows that the pleadings were served on Nicholas Wilson a/k/a Nicholas F. Wilson at the subject property on March 21, 2024, by substitute service on Kenneth Bryant, a person of suitable age and discretion residing at the property. Defendant's motion cites Rule 4(d)(1), SCRCP and argues that the affidavit of service as to Nicholas Wilson is defective as the "person served did not reside at Wilson's 'dwelling

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house or usual place of abode,' and, arguably, is not of 'suitable . . .. discretion.'" No affidavit was filed with the motion. Defendant Wilson subsequently submitted an affidavit in the form of a "Declaration" in support of the motion on January 15, 2025. The affidavit by Nicholas Wilson stated that he was out of town when the pleadings were served and the person served, Kenneth Bryant, was living temporarily in a guest house at the property. The affidavit further stated that Kenneth Bryant was of "diminished capacity" and was never authorized to accept service on behalf of him. Plaintiff submitted a memorandum of law opposing the motion as well as the affidavit of attorneys Blake T. Williams and H. Guyton Murrell.

This court has carefully reviewed the pleadings, evidence presented at the January 14, 2025 hearing on the Defendant's Motion to Set Aside Default and memoranda and has determined that Defendant Wilson's Motion to Set Aside Default is denied. This court finds that service of process upon Mr. Wilson proper under the South Carolina Rules of Civil Procedure (Rule 4(d)(1). The Summons and Complaint were served at Mr. Wilson's "dwelling house or usual place of abode with a person of suitable age and discretion then residing therein". The Affidavit of Service and Mr. Wilson's Affidavit in support of his Motion to Set Aside Default confirms the place of service as his residential address. This address is also noted in the filed Lis Pendens and Complaint. Mr. Wilson presented no independent evidence that the occupant of an accessory building on his property was of diminished capacity and lacked discretion to receive service of process. He also presented no independent evidence to indicate the accessory building was sufficiently disassociated with the main house to render it a separate dwelling house/abode or address apart from his property.

South Carolina has not defined "dwelling house or place of abode." Based on a review of federal case law, it appears that one's dwelling or place of abode is determined by the particularized facts of each case. *Karlsson v. Rabinowitz,* 318 F.2d 666, 668 (4th Cir. 1963) (finding no set definition of dwelling or place of abide and that it must be determined by the facts of the particular case"; 62B Am. Jur. 2d Process 209 (1990) ("No hard and fast definition can be laid down as to what constitutes a defendant's dwelling house or place of abide.) *Fassett v. Evans,* 364 S.C. 42, 610 S.E.2d 841 (Ct. App. 2005).

There is a presumption of proper service when the civil rules of process are followed. *Moore v. Simpson,* 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). "Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Id.* "Exacting compliance with the rules is not required to effect service of process. Rather, inquiry must be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant, and the defendant has notice of the proceedings." *Id.* Further, an officer's return of process creates the legal presumption of proper service that cannot be "impeached by the mere denial of service by the defendant." *Richardson Constr. Co. v. Meek Eng'g and Constr.,* 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980); *Fassett v. Evans,* 364 S.C. 42, 610 S.E.2d 841 (Ct. App. 2005).

Service of process occurred March 21, 2024. Credible evidence was presented that Mr. Wilson's attorney was notified February 2, 2024, of the pending foreclosure that was filed January 23, 2024. Ongoing communication between the respective attorneys thereafter included an offer to allow Mr. Wilson to answer the

pleadings with certain stipulations. No Answer on behalf of Mr. Wilson was ever filed and his Motion to Set Aside Default ("Motion") was not filed until June 21, 2024. Further, it was not until the December 9, 2024 Horry County Master in Equity roster meeting that this case progressed to the point of scheduling a Motion hearing on January 14, 2025. Significant delay occurred between service of the pleadings, the filing of the motion to Set Aside Default and the January 14, 2025 Motion hearing. This court finds no evidence of good cause to set aside the default and note that equitable maxims "Delay defeats equity" and "Equity aides the vigilant, not the indolent" support this ruling.

THEREFORE, IT IS HEREBY ORDERED that Defendant Wilson's Motion to set Aside Default is denied.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

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Horry Common Pleas

Case Caption: Flagstar Bank Na VS Nicholas Wilson , defendant, et al

Case Number: 2024CP2600567

Type: Master/Order/Other

So Ordered

s/Alan D. Clemmons 3088 Master in Equity

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF
COMMON PLEAS
15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

CASE NO.: 2024-CP-26-00567

Nicholas Wilson, a/k/a Nicholas F. Wilson,

Appellant,

v.

Select Portfolio Servicing, Inc., successor in interest to Flagstar Bank, N.A.,

Respondent.

NOTICE OF APPEAL

Appellant Nicholas Wilson, hereby gives notice of appeal of the orders and judgments entered by this Court, identified as follows: (i) Order Denying Defendant's Motion to Dismiss and Defendant's Motion To Stay (filed Nov. 10, 2025); (ii) Form 4 Order Denying Wilson's Motion for Reconsideration of the March 4, 2025 Order Denying Defendant Wilson's Motion to Lift Default (filed Mar. 25, 2025); and (iii) Order Denying Defendant Wilson's Motion to Lift Default (filed March 4, 2025).

The undersigned counsel certifies that this appeal is timely filed within 30 days of receipt of notice of the last order and / or judgments identified above.

Appellant's undersigned counsel is already in possession of the transcript from the Jan. 14, 2025 hearing related to the Mar. 4, 2025 Order identified above at (iii). There was no hearing

related to the order identified above at (ii). Accordingly, the undersigned will advise the Court upon receipt of the transcript from the Sept. 25, 2025 hearing that relates to the order identified above at (i).

WESLEY D. FEW, LLC

/s/Wesley D. Few
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ATTORNEYS FOR APPELLANTS

Greenville, South Carolina
December 10, 2025

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The South Carolina Court of Appeals

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December 16, 2025

Mr. Wesley D. Few, Esquire
PO Box 9398
Greenville SC 29604

Re: Select Portfolio Servicing, Inc. v. Nicholas Wilson
Appellate Case No. 2025-002471

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at **www.sccourts.org/courtreg**. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals.

The order can be found at **www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02**. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Select Portfolio Servicing, Inc., Respondent,

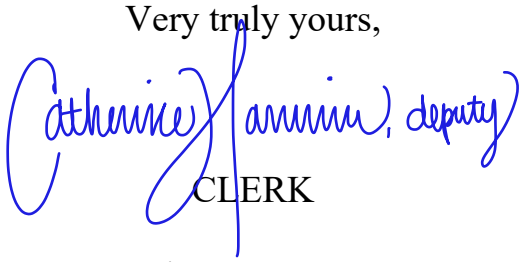
v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc.; Defendants,

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,



CLERK

cc: Sean Matthew Foerster, Esquire

ELECTRONICALLY FILED - 2026 Jan 28 8:37 AM - HORRY - COMMON PLEAS - CASE#2023CP2602475

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Case No: 2023-CP-26-02475
Nicholas F. Wilson, Plaintiff, vs. Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp., d/b/a Century 21 The Harrelson Group; Patton Development SC, LLC; Mortgage Electronic Registration Systems, Inc.; Sonia M. Raymond; Raymond Law Firm, P.A.; Defendants.	)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS OF DEFENDANT LENDER SELECT PORTFOLIO SERVICES, INC., SUCCESSOR TO FLAGSTAR BANK, N.A., SUCCESSOR TO MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**

Plaintiff respectfully submits this Response in Opposition to the Motion to Dismiss by Select Portfolio Services, Inc., Successor to Flagstar Bank, N.A., Successor to Mortgage Electronic Registration Systems, Inc. (hereafter "Lender" or "SPS") (filed April 3, 2025) with a Memorandum in Support (filed Nov. 10, 2025). Plaintiff additionally responds herein with its position on the other five motions set to be heard on Monday, Feb. 2, 2026, currently identified as Nos. 1-4, and 6 on the Court's Motion Roster, as follows:

1. Motion/Dismiss,[1] James B Parker-DEF (filed Feb. 14, 2024);
2. Motion/Quash Subpoena, [2] Raymond Law Firm PA-DEF (filed Feb. 12, 2025);

[1] This motion is essentially a copy-cat of the motions to dismiss currently on appeal as Case No. 2024-000440. On Jan. 14, 2025, the Court of Appeals letter to "Ms. Gochenour, Mr. Parker Sr., Mr. Parker, and Ms. Parker" in Case No. 2024-000440 stated as follows, "As of today's date, this Court has not received your respondents initial briefs. Therefore, this appeal will proceed without consideration of your respondents initial briefs." (*Id.*).

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3. Motion/Substitute Parties, [3] Flagstar Bank NA-DEF (filed Feb. 18, 2025);
4. Motion/Quash Subpoenas,[4] Raymond Law Firm PA-DEF (filed Mar. 17, 2025);
5. **Motion/Dismiss (SPS not substituted), Flagstar Bank DEF (filed Apr. 3, 2025)**; and
6. Motion/Stay,[5] Nicholas F Wilson-PLT (filed Apr. 8, 2025).

(Docket Report, Jan. 28, 2025, Case No. 2023-Cp-26-02475).

Accordingly, it is believed only the Motion to Dismiss with Prejudice identified as No. 5 above could be ripe to be heard. However. That motion is also not proper for consideration at this time for the reasons set forth herein.

Movant Lender / Flagstar / SPS states in its motion to dismiss, filed April 3, 2025, as follows:

> As noted, SPS now holds the lien previously held by Flagstar. SPS hereby disclaims interested party status to Plaintiff's declaratory judgment action and withdraws the affirmative counter and cross claim for declaratory judgment asserted by Flagstar.
>
> Therefore, having no interest remaining in this action, SPS respectfully moves the Court to dismiss SPS with prejudice pursuant to Rule 41(a)(2), SCRCP.

Id. (underline emphasis added).

---

[2] This motion sought quashing of a four (4) subpoenas, as follows: (1) Inabnit & Dingle P.A.; (2) Kal Kassel, (3) Johnson Land and Timber, LLC, and (4) T2 Financial LLC. It is believed the subpoena recipients have all responded and therefore, this motion is moot.

[3] This motion is not opposed by Plaintiff apart from Plaintiff's request for the documents showing the details of the transfers of his loan from MERS to Flagstar Bank to SPS, which has been refused.

[4] This motion sought quashing of two (2) subpoenas: (1) to Ken Jordan, the property surveyor; and (2) Chicago Title, the title insurer and holder of rights under a Closing Protection Letter for the benefit of Lendr / SPS. It is believed the subpoena recipients have all responded and therefore, this motion is also moot.

[5] Plaintiff's Motion to Stay, which was also filed in the Foreclosure Action, case No. 2024-CP-26-00567 is now the subject of Appellate Case No. 2025-002471, with the case status as "awaiting transcript."

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In its Memorandum filed Nov. 10, 2025, SPS further states, "Since SPS has disclaimed any interest remaining in this action and Plaintiff's motion to stay should be denied, SPS respectfully requests that the Court grant its motion to dismiss with prejudice pursuant to Rule 41(a)(2), SCRCP." (*Id.*).

Applicable Law - Standard of Review

"A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Patterson v. Witter*, 418 S.C. 66, 76, 791 S.E.2d 294, 300 (Ct. App. 2016).

In *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019), our Supreme Court stated:

> A circuit court does not have "discretion" to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Id. (underline emphasis added).

APPLICATION

It is well known to all that have participated in these matters[6] that the Plaintiff has a First [proposed] Amended Complaint, filed on Dec. 5, 2024, that is the subject of Appellate Case No.

[6] Pursuant to the order of this Court dated, Jan. 28, 2025, Plaintiff took the depositions of Defendants James. B. Parker and Janet Gochenour in Myrtle Beach, pursuant to Rule 27, SCRCP.

ELECTRONICALLY FILED - 2026 Jan 28 8:37 AM - HORRY - COMMON PLEAS - CASE#2023CP2602475

2024-000440). It is also well known that Plaintiff necessarily must replead also to add Ramon Parker as a necessary party to reform the deed and also add in a Declaratory Judgment claim to specifically reform the mortgage (consistent with the crossclaim of the Lender, filed June 19, 2023, *see* below). A filing to reform the mortgage necessitates the presence of the Lender to remain in this the first-filed case.

On June 19, 2023, the Lender[7] filed its "Answer, Counterclaims, and Crossclaims of Flagstar Bank, N.A., incorrectly identified in the caption as Mortgage Electronic Registration Systems, Inc.," alleging as follows on page 17 of 19 at ¶¶'s 168 to 171:

> 168. Upon information and belief, Defendant Janet was contractually obligated to convey the driveway/Tract D to Plaintiff, yet failed to do so.
>
> 169. The contract between Defendant Janet and Plaintiff was enforceable and valid.
>
> 170. As a result of the facts detailed above and in Plaintiff's Verified Complaint, Plaintiff did not receive title to the driveway/Tract D, as shown on the Original Survey, and Defendants Mary Ann Parker, Jim Parker, and James Parker benefitted by the same.
>
> 171. As a result of the facts detailed above and in Plaintiff's Verified Complaint, Defendants Mary Ann Parker, Jim Parker, and James Parker remained as owners or maintained ownership rights in the driveway in contradiction of the contract between Plaintiff and Defendant Janet.

(*Id.*) (underline emphasis added).

---

[7] In the Foreclosure Action, Case No. 2024-CP-26-00567 and Case No. 2025-00, the Lender alleges a default on payments since March 1 2021. (Complaint, filed Jan. 23, 2024, stating in ¶ _, as follows: "Plaintiff … alleges that the installments of principal and interest falling due from and after March 1, 2021 have not been paid [and Plaintiff SPS declares] the entire balance of said principal and interest due and payable at once." *Id.* On information and belief, the Lender withheld o its foreclosure because it knew of the defects in the title. *See* Plaintiff Wilson's Motion to Stay, filed Apr. 28, 2025, at Exhibit Nos. 11-14, showing two title claims filed by Flagstar with Chicago Title, each of which was denied because the closing attorney's file showed "a review of the Property's chain of title shows that the Grantor did not own the Driveway Tract, and therefore, could not have conveyed the Driveway Tract to the Borrower." (*Id.* at Ex. 13, at p. 3 of 3).

ELECTRONICALLY FILED - 2026 Jan 28 8:37 AM - HORRY - COMMON PLEAS - CASE#2023CP2602475

In ¶¶'s 175-176 of that same Crossclaim filed June 19, 2023, the Lender sought a Declaratory Judgment under S.C. Code Ann. § 15-53-10, as follows:

> 175. Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Plaintiff is entitled to an order from this Court declaring his ownership of the driveway/Tract D.
>
> 176. Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Flagstar is entitled to an order from this Court declaring that its mortgage encumbers the driveway/Tract D.

(*Id.*) (underline emphasis added).

The above claims and crossclaims were all pending in this action when it was appealed on March 17, 2024. Accordingly, here, on remand, Plaintiff would be amending its claims to specifically seek the same relief formerly sought by the Lender in this the first-filed 2023 action.

CONCLUSION

For at least the reasons set forth herein and in the accompanying documents and information filed and of record in this action, and incorporated by reference herein, the Motions to Dismiss of the Lender must be denied.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Jan. 28, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Alan D. Clemmons, Master in Equity

Case No. 2024CP2600567
Appellate Case No.: 2025-002471

Select Portfolio Servicing, Inc., ...Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., ... Defendants.

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

Sean M. Foerster (SC Bar # 77466)
ROGERS TOWNSEND LLC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900
sean.foerster@rogerstownsend.com

Attorneys for Respondent Select Portfolio Servicing, Inc.

February 25, 2026

Respondent Select Portfolio Servicing, Inc. ("Respondent") hereby respectfully moves the Court for an order dismissing the appeal of Appellant Nicholas Wilson a/k/a Nicholas F. Wilson ("Wilson").

FACTS

This is an appeal by a mortgage foreclosure defendant from the following orders entered by the Master in Equity for Horry County (the "Master") in this foreclosure action:

(i) Order Denying Defendant's Motion to Dismiss and Defendant's Motion To Stay (filed November 10, 2025), which denied Wilson's motion[1] to dismiss this foreclosure action and denied Wilson's motion[2] to stay this foreclosure action pending the outcome of a separate lawsuit[3];

(ii) Order Denying Defendant Wilson's Motion to Lift Default (filed March 4, 2025), which denied Wilson's motion[4] for relief from the entry of default made pursuant to Rule 55(c), SCRCP; and

(iii) Form 4 Order (filed March 25, 2025), which denied Wilson's motion[5] made pursuant to Rule 59(e), SCRCP, seeking reconsideration of the Order of March 4, 2025, denying his motion for relief from the entry of default.

While the Master held a foreclosure hearing on April 8, 2025, he took the foreclosure claim under advisement while deciding on Wilson's motions to dismiss and/or stay the foreclosure and

[1] "Motion to Dismiss Based on Compulsory Counterclaims Filed in Earlier Case under Rules 12 and 13, SCRCP" filed January 16, 2025.
[2] "Defendant Nicholas Wilson's Joint Motion to Stay Foreclosure Action" filed April 6, 2025.
[3] *Nicholas F. Wilson v. Janet P. Gochenour et al.*, C/A # 2023CP2602475 (Horry County Court of Common Pleas)(filed April 19, 2023).
[4] "Notice of Motion and Motion for Relief from Default by Nicholas Wilson" filed June 21, 2024.
[5] "Nicholas Wilson's Motion to Reconsider Denial of Motion for Relief from Default" filed March 14, 2025.

has not yet entered a Judgment of Foreclosure and Sale in this case. As such, no final order has yet been entered in the lower court.

ARGUMENT

The orders being appealed—which simply denied Wilson's request for relief from the entry of default and denied his requests for a stay or dismissal of the foreclosure case—are not immediately appealable. The Court must therefore dismiss this appeal.

This Court's ability to hear appeals is limited by statute to only final judgments and certain interlocutory orders. "The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver."

S.C. Code Ann. § 14-3-330.

The Order Denying Defendant's Motion to Dismiss and Defendant's Motion To Stay filed November 10, 2025, does not meet the requirements of S.C. Code Ann. § 14-3-330 and is not immediately appealable.

"Currently, this Court does not allow immediate appellate review of the *denial* of any Rule 12(b), SCRCP motion." *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000). "[T]he denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings." *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 (1994).

Further, the grant or denial of a motion to stay is not immediately appealable. *Edwards v. SunCom*, 369 S.C. 91, 94-95, 631 S.E.2d 529, 530-31 (2006)("The order here does not discontinue the proceeding. It merely temporarily stays the matter pending a ruling … [a]ccordingly, we find an order granting a stay is not immediately appealable."); *see also Serv. Corp. v. Bahama Sands Dev., LLC*, No. 2011-UP-300, 2011 S.C. App. Unpub. LEXIS 351, at *3 (Ct. App. June 14, 2011)("[T]he order denying Appellants' motion to stay did not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken. Therefore, we hold Appellants' appeal is not immediately appealable.").

Likewise, neither the Order Denying Defendant Wilson's Motion to Lift Default filed March 4, 2025, nor the Form 4 Order filed March 25, 2025, denying its reconsideration meets the requirements of S.C. Code Ann. § 14-3-330 and are therefore not immediately appealable.

The denial of a motion to set aside an entry of default is not appealable until after final judgment. *5Star Life Ins. Co. v. Peek Performance, Inc.*, 434 S.C. 334, 335, 863 S.E.2d 468, 469 (Ct. App. 2021); *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 635-36, 856 S.E.2d 150, 151 (2021)("A party in default has three primary options: (1) do nothing pending the entry of judgment by default under Rule 55(b), SCRCP; (2) file an appearance under Rule 55(b)(2), SCRCP, in an attempt to protect its interests before the entry of judgment by default;

or (3) request the entry of default be set aside pursuant to Rule 55(c), SCRCP. Under either option, the party has no right of appeal until after final judgment.").

None of these orders are immediately appealable because they do not involve the merits, do not affect a substantial right, do not strike a pleading, do not determine the action, do not prevent a judgment from which an appeal may later be taken, do not grant or refuse a new trial, do not grant, continue, modify, or refuse an injunction, and do not grant, continue, modify, or refuse the appointment of a receiver.

These orders simply allowed the foreclosure action to proceed toward the next steps in the case: a damages hearing to establish the current debt amount secured by the mortgage followed by the entry of a default judgment of foreclosure and sale against Wilson.

Further, the immediate appeal of these interlocutory orders is a backdoor attempt by Wilson to force the stay of the foreclosure that the Master denied to him and to avoid the supersedeas bond requirement of S.C. Code Ann. § 18-9-170[6] in the process. The Court must dismiss this premature appeal, and Wilson must wait until the entry of the final judgment of foreclosure and sale. Thereafter, Wilson can appeal from that foreclosure judgment if he so chooses and can seek a stay of its enforcement in accordance with S.C. Code Ann. § 18-9-170.

[6] Conditioning the stay of a foreclosure sale upon the filing of a supersedeas bond executed by two sureties in an amount equal to the value of the use and occupation of the property during the expected duration of the appeal.

CONCLUSION

For these reasons, Respondent respectfully moves for an Order dismissing the appeal of Appellant Nicholas Wilson a/k/a Nicholas F. Wilson. Pursuant to Rule 240(b), SCACR, Respondent also respectfully requests that the time to serve and file the Initial Briefs of the parties be stayed until this motion is decided by the Court.

Respectfully submitted,

s/ Sean M. Foerster

Sean M. Foerster (SC Bar # 77466)
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Attorneys for Respondent Select Portfolio Servicing, Inc.

February 25, 2026

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Feb 25 2026
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Alan D. Clemmons, Master in Equity

Case No. 2024CP2600567
Appellate Case No.: 2025-002471

Select Portfolio Servicing, Inc., ...Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., ... Defendants.

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss Appeal on Appellant Nicholas Wilson a/k/a Nicholas F. Wilson by email on February 25, 2026, to the following email address from the Attorney Information System ("AIS") for his attorney of record:

Wesley D. Few, Esquire
Post Office Box 9398
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s/ Sean M. Foerster
Sean M. Foerster (SC Bar# 77466)
ROGERS TOWNSEND LLC

RECEIVED
Feb 25 2026
SC Court of Appeals

Sean Foerster

From: Sean Foerster
Sent: Wednesday, February 25, 2026 11:48 AM
To: Wes Few
Cc: 'Cassy Young'
Subject: 2025-002471 - Select Portfolio Servicing, Inc., v. Nicholas Wilson
Attachments: Respondent's Motion to Dismiss Appeal (2025-002471).pdf; Proof of Service - Respondent's Motion to Dismiss Appeal (2025-002471).pdf

Hi Wes –

Please find attached Respondent's Motion to Dismiss Appeal and Proof of Service, which I hereby serve on you. Thanks.

ROGERS TOWNSE

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Mar 10 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas, 15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

Appellate Case No. 2025-002471

COMMON PLEAS CASE NO.: 2024-CP-26-00567

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., Defendants,

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

APPELLANT'S RETURN IN OPPOSITION TO MOTION TO DISMISS APPEAL

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ATTORNEYS FOR APPELLANT WILSON

APPELLANT'S RETURN IN OPPOSITION TO MOTION TO DISMISS APPEAL

Appellant Wilson, pursuant to Rule 240(e), by and through his undersigned attorneys, hereby responds to the Motion to Dismiss Appeal by Respondent Select Portfolio Servicing, Inc.,[1] filed Feb. 25, 2026.

Respondent argues this appeal is premature under S.C. Code Ann. § 14-3-330. (*Id.* at 3). Respondent then gives its case law in support of its conclusion that Section 330 bars this appeal. (*Id.* at 4). Respondent, however, skips over a critical detail, namely that it was sued first by Appellant Wilson in the Court of Common Pleas in Civil Action No. 2023-CP-26-02475, which is now the subject of Appellate Case No. 2024-000440. While Respondent mentions in footnote 1 to its Motion to Dismiss that is the subject of this appeal was pursuant to Rule 13, as a "compulsory counterclaim," Respondent's analysis and argument merely cites to cases addressing a denial of a Motion to Dismiss under Rule 12, not Rule 13. (*Id.* at 4, first ¶ 1).[2] Next, in ¶ 2 on page 4 of the Motion to Dismiss, Respondent moves on to its analysis of the denial of the Motion to Stay. (*Id.*).

Because Respondent's efforts in this the 2024 Foreclosure Case (Civil Action No. 2024-CP-26-00567) are with respect to the same property and same subject matter for which MERS was joined in as a party in 2023 (Civil Action No. 2023-CP-26-02475, Appellate Case No. 2024-000440, hereafter the "2023 Fraud Case"), Respondent cannot now claim the denial of the

[1] In Civil Action No. 2023-CP-26-02475, which is presently the subject of Appellate Case No. 2024-000440, Appellant Nicholas F. Wilson initially sued Mortgage Electronic Registration Systems, Inc. ("MERS"), who assigned / substituted Flagstar Bank, N.A., who then sold / assigned to Select Portfolio Servicing, Inc. ("Respondent" or "Lender").

[2] Appellant Wilson filed his Memorandum in Opposition to the Motion to Dismiss on Jan. 28, 2026, which is attached here as Exhibit 1.

Rule 13 Motion does not affect a substantial right of Appellant under Section 330. *See e.g.*, *House Healers Restorations v. Ball*, 112 N.C. App. 783, 785, 437 S.E.2d 383, 385 (1993) (holding, [t]his Court has held that the denial of a motion to amend an answer to add a compulsory counterclaim is immediately appealable because it affects a substantial right."); and *Clean N Dry, Inc. v. Edwards*, 284 N.C. App. 771, 874 S.E.2d 923 (2022) (Unpublished) (stating, "[b]ecause we agree with Mr. Edwards that the trial court's denial of his Motion to Amend affects a substantial right, we review the merits of his appeal."). In the 2023 Fraud Case, Respondent even filed its cross-claim against the seller of the subject property and her siblings in its pleading dated June 19, 2023.

In addition, Respondent in the 2023 Fraud Case filed a motion to be dismissed with prejudice on April 3, 2025, in the Circuit Court, which has now scheduled a hearing on that motion for March 24, 2026. No leave of Court (from this Court) was obtained prior to the filing of any such motion in the Circuit Court, pursuant to Rule 240, SC ACR, or otherwise.

S.C. Code Ann. § 14-3-330(1) and (2) provide:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

Id. (underline emphasis added).

Appellant maintains for the reasons set forth herein, this appeal is proper under S.C.

Code Ann. §§'s 14-3-330(1) or (2). As set forth above, the Respondent Lender is seeking to terminate all of Appellant Wilson's claims against it by virtue of its actions in the two pending cases. As such, Appellant Wilson's pending claims against Respondent MERS / Flagstar/ SPS would be extinguished and he would get no trial of any of those claims, and have no right to amend his claim in the 2023 Fraud Case when it gets remanded. In addition, on information and belief, the Respondent Lender did not assert Appellant Wilson's claim in the 2023 Fraud Case should be dismissed pursuant to the statute of limitations, which is the subject matter of Appellate Case No. 2024-000440.

S.C. Code Ann. § 14-330(1) – "involving the merits …"

Under Section 330(1), to the extent the denial of the Motion to Dismiss or Stay under Rule 13(a) could be considered to be an "intermediate judgment," this rule still allows for an appeal when the consequences of such a ruling would be to deny Appellant Wilson the right to pursue his earlier filed claims against Respondent MERS / Flagstar / SPS on their merits.

Rule 13(a), SCRCP, states:

> A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought the suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

Id. (underline emphasis added).

Neither exception to Rule 13(a) set forth in 13(a)(1) or (2) applies in this instance. *Id.*

In addition, courts interpret Rule 13 to preclude a subsequently plead action in violation of Rule 13(a). *See e.g., Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63, 566 S.E.2d 863, 866 (Ct. App. 2002) (noting, the federal rule "requires that a compulsory counterclaim be pleaded and adjudicated or all right of action thereon is foreclosed."); *see also* Note to S.C. R. Civ. P. Rule 13 (stating, "Rules 13(a) through (i) are the same as the Federal Rules on counterclaims and cross-claims."); and *Longphre v. Longphre*, No. E2006-00323-COA-R3-CV, 2007 Tenn. App. LEXIS 247, at *20-21 (Ct. App. Apr. 25, 2007) (noting, "[o]ne of the purposes of this rule is 'to insure against the 'undesirable possibility … whereby a party having a . . . compulsory counterclaim could avoid stating it … by bringing an independent action in another court after the commencement of the [initial action].'" (citing *Twillman*, 566 S.E.2d at 865)).

Here, the Respondent alleges in its Foreclosure Complaint, filed Jan.23, 2024, that Wilson was in default since March 1, 2021. (Foreclosure Complaint at p. 6, ¶ 14). Therefore, the claim for a default for failure to pay the note when due was ripe when Appellant Wilson sued MERS in 2023, and Flagstar filed its cross-claim to reform the deed / mortgage on June 19, 2023. Not only has Respondent thus far avoided the requirement to have brought its foreclosure claim in the earlier filed action, but it now seeks to permanently extinguish Appellant Wilson's rights in both cases.

As will also be set forth in the Record on Appeal in this matter, Appellant Wilson's complaints to Flagstar about the failure to have the driveway deeded to him, as per his contract with the property seller, were the subject not one, but two "title claims," by Flagstar to its title insurer, Chicago Title Insurance Company ("CTIC"). *See* Exhibits 11 to 14, Appellant Wilson's

Joint Motion to Stay Foreclosure Action, filed April 8, 2025.[3] Respondent Lender has the ability to file a Closing Protection Letter[4] claim with CTIC, which Appellant Wilson intends to make part of his claims in the 2023 Fraud Action, upon remand / remittitur.

Respondent Lender, through its actions in these cases seeks to, in effect, strike the pleading of Appellant Wilson in the prior filed 2023 Fraud Action, as against it. *See e.g.*, *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 97-98, 800 S.E.2d 488, 492 (Ct. App. 2017) (remanding for determination of the nature of the claims / counterclaims). Because the Respondent Lender's agent, the loan closing attorney failed to procure the deed as required by Appellant Wilson's contract, and as it was underwritten by the Respondent Lender (*i.e.*, as an 8.24 acre tract),[5] Appellant Wilson has claims he can bring against Respondent in the 2023 Fraud Case that would impact the enforceability of the note and mortgage. *Id.* (noting claim was legal and compulsory, thus impacting the enforceability of the note). In addition, Respondent SPS has refused to turn over any discovery related to the sale of the Note from Flagstar Bank to it, thus indicating further a known defect in the Note, which required or encouraged it to be sold at a discount. *See e.g.*, S.C. Code Ann. § 36-3-302; *see also* *Rosemond v. Campbell*, 288 S.C.

[3] The Joint Motion was filed in each of Civil Action Nos. 2023-CP-26-02475 and 2024-CP-26-00567.

[4] *See e.g.*, https://www.stewart.com/en/real-estate-dictionary/closing-protection-letter-or-cpl (explaining that a CPL "An indemnity is given to a lender from a title insurance company, agreeing to be responsible if the closing agent does not follow the lender's instructions or misappropriates the loan proceeds."). Here, Wilson has made it clear and the documents obtained show that his closing attorney delegated preparation of the deed to another attorney, yet the Lender's "Instructions to Escrow/Title/Closing Agent" (closing instructions) at no. 1, required the Lender's Agent to do as follows: "Closing Agent to secure/prepare warranty deed." (Exhibit 21, Joint Motion to Stay, at p. 4 of 5, filed April 8, 2025).

[5] *See* Exhibits 1 and 2 to Verified Complaint, filed April 19, 2023, in Case No. 2023-CP-26-02475, wherein Ex. 2 is the Respondent Lender's own underwriting appraisal showing Appellant Wilson receiving the 8.24 acres as per his contract (Exhibit 3 to Verified Complaint).

516, 523 n.3, 343 S.E.2d 641, 645 (Ct. App. 1986) (noting a "'holder in due course' is a person who is a holder of a negotiable instrument, who took it for value, in good faith, without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person." (citations omitted) (underline emphasis added)).

S.C. Code Ann. § 14-330(2) – "affecting a substantial right …"

Appellant Wilson brought declaratory judgment claims in his 2023 Fraud Case. In *Plaza Dev. Servs. v. Joe Harden Builder, Inc.*, 296 S.C. 115, 118, 370 S.E.2d 893, 895 (Ct. App. 1988), this Court stated, "[Section 330(2)] provides for an interlocutory appeal from an order affecting a substantial right when the order 'in effect determines the action and prevents a judgment from which an appeal might be taken.'" If Appellant Wilson is not allowed to pursue his earlier filed claims versus Respondent Lender(s), then he will have been denied the "substantial right" he asserted when he joined MERS in the action in 2023. Had Wilson not taken such steps, this argument would not be available to him. The Respondent Lender seeks to have this Court simply ignore the prior procedural history.

In *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 452-53, 661 S.E.2d 81, 87 (2008), our Supreme Court stated, "[p]ursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled to as a matter of right, such order is immediately appealable." *Id.* (citing *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000)). The Supreme Court further stated in *Flagstar Corp.*, "the mode of trial analysis indubitably includes the consideration of the availability of trial. The question of the denial of an actual trial is intrinsic." *Id.* If Appellant Wilson cannot pursue his claims as against Respondent Lender in the earlier filed action, he will

be deprived of his substantial rights, as well as his preferred mode of trial, which Respondent asserts ought to be "no trial at all."

S.C. R. Civ. P. Rule 15

Under Rule 15, Appellant Wilson has the right to amend his claims against Respondent Lender. The actions of Respondent Lender in these two cases seek to squelch and extinguish that right as well. Rule 15(a), states in relevant part, "A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served ..." *Id.* In the underlying 2023 Fraud Action, several of the named Defendants have not even filed an Answer, only motions to dismiss (with prejudice) based on application of the discovery rule to the statute of limitations. As such, Appellant Wilson has a right to amend under Rule 15(a), as well as a right to move to amend, which shall be "shall be freely given when justice so requires and does not prejudice any other party," to assert new claims not previously known to Appellant. This would include claims under the CPL referenced above, and / or to challenge the enforceability of the note due to the misconduct of the parties in procuring it fraudulently, including specifically the Respondent Lender's agent.

CONCLUSION

For the reasons set forth herein, Appellant Wilson respectfully requests Respondent's Motion to Dismiss this Appeal be denied.

[signature on next page]

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ATTORNEYS FOR APPELLANT NICHOLAS F. WILSON

Greenville, South Carolina
March 9, 2026

Table of Exhibits

Ex. 1 – Memo. in Opp. to SPS Motion to Dismiss, C/A No. 2023-CP-26-02475 (Jan. 28, 2026);

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STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT Case No: 2023-CP-26-02475
Nicholas F. Wilson,)) Plaintiff,) vs.)) Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp., d/b/a Century 21 The Harrelson Group; Patton Development SC, LLC; Mortgage Electronic Registration Systems, Inc.; Sonia M. Raymond; Raymond Law Firm, P.A.;)) Defendants.)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS OF DEFENDANT LENDER SELECT PORTFOLIO SERVICES, INC., SUCCESSOR TO FLAGSTAR BANK, N.A., SUCCESSOR TO MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**

Plaintiff respectfully submits this Response in Opposition to the Motion to Dismiss by Select Portfolio Services, Inc., Successor to Flagstar Bank, N.A., Successor to Mortgage Electronic Registration Systems, Inc. (hereafter "Lender" or "SPS") (filed April 3, 2025) with a Memorandum in Support (filed Nov. 10, 2025). Plaintiff additionally responds herein with its position on the other five motions set to be heard on Monday, Feb. 2, 2026, currently identified as Nos. 1-4, and 6 on the Court's Motion Roster, as follows:

1. Motion/Dismiss,[1] James B Parker-DEF (filed Feb. 14, 2024);
2. Motion/Quash Subpoena, [2] Raymond Law Firm PA-DEF (filed Feb. 12, 2025);

[1] This motion is essentially a copy-cat of the motions to dismiss currently on appeal as Case No. 2024-000440. On Jan. 14, 2025, the Court of Appeals letter to "Ms. Gochenour, Mr. Parker Sr., Mr. Parker, and Ms. Parker" in Case No. 2024-000440 stated as follows, "As of today's date, this Court has not received your respondents initial briefs. Therefore, this appeal will proceed without consideration of your respondents initial briefs." (*Id.*).

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3. Motion/Substitute Parties, [3] Flagstar Bank NA-DEF (filed Feb. 18, 2025);
4. Motion/Quash Subpoenas,[4] Raymond Law Firm PA-DEF (filed Mar. 17, 2025);
5. **Motion/Dismiss (SPS not substituted), Flagstar Bank DEF (filed Apr. 3, 2025)**; and
6. Motion/Stay,[5] Nicholas F Wilson-PLT (filed Apr. 8, 2025).

(Docket Report, Jan. 28, 2025, Case No. 2023-Cp-26-02475).

Accordingly, it is believed only the Motion to Dismiss with Prejudice identified as No. 5 above could be ripe to be heard. However. That motion is also not proper for consideration at this time for the reasons set forth herein.

Movant Lender / Flagstar / SPS states in its motion to dismiss, filed April 3, 2025, as follows:

> As noted, SPS now holds the lien previously held by Flagstar. SPS hereby disclaims interested party status to Plaintiff's declaratory judgment action and withdraws the affirmative counter and cross claim for declaratory judgment asserted by Flagstar.
>
> Therefore, having no interest remaining in this action, SPS respectfully moves the Court to dismiss SPS with prejudice pursuant to Rule 41(a)(2), SCRCP.

Id. (underline emphasis added).

---

[2] This motion sought quashing of a four (4) subpoenas, as follows: (1) Inabnit & Dingle P.A.; (2) Kal Kassel, (3) Johnson Land and Timber, LLC, and (4) T2 Financial LLC. It is believed the subpoena recipients have all responded and therefore, this motion is moot.

[3] This motion is not opposed by Plaintiff apart from Plaintiff's request for the documents showing the details of the transfers of his loan from MERS to Flagstar Bank to SPS, which has been refused.

[4] This motion sought quashing of two (2) subpoenas: (1) to Ken Jordan, the property surveyor; and (2) Chicago Title, the title insurer and holder of rights under a Closing Protection Letter for the benefit of Lendr / SPS. It is believed the subpoena recipients have all responded and therefore, this motion is also moot.

[5] Plaintiff's Motion to Stay, which was also filed in the Foreclosure Action, case No. 2024-CP-26-00567 is now the subject of Appellate Case No. 2025-002471, with the case status as "awaiting transcript."

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In its Memorandum filed Nov. 10, 2025, SPS further states, "Since SPS has disclaimed any interest remaining in this action and Plaintiff's motion to stay should be denied, SPS respectfully requests that the Court grant its motion to dismiss with prejudice pursuant to Rule 41(a)(2), SCRCP." (*Id.*).

Applicable Law - Standard of Review

"A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Patterson v. Witter*, 418 S.C. 66, 76, 791 S.E.2d 294, 300 (Ct. App. 2016).

In *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019), our Supreme Court stated:

> A circuit court does not have "discretion" to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Id. (underline emphasis added).

APPLICATION

It is well known to all that have participated in these matters[6] that the Plaintiff has a First [proposed] Amended Complaint, filed on Dec. 5, 2024, that is the subject of Appellate Case No.

[6] Pursuant to the order of this Court dated, Jan. 28, 2025, Plaintiff took the depositions of Defendants James. B. Parker and Janet Gochenour in Myrtle Beach, pursuant to Rule 27, SCRCP.

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2024-000440). It is also well known that Plaintiff necessarily must replead also to add Ramon Parker as a necessary party to reform the deed and also add in a Declaratory Judgment claim to specifically reform the mortgage (consistent with the crossclaim of the Lender, filed June 19, 2023, *see* below). A filing to reform the mortgage necessitates the presence of the Lender to remain in this the first-filed case.

On June 19, 2023, the Lender[7] filed its "Answer, Counterclaims, and Crossclaims of Flagstar Bank, N.A., incorrectly identified in the caption as Mortgage Electronic Registration Systems, Inc.," alleging as follows on page 17 of 19 at ¶¶'s 168 to 171:

> 168. Upon information and belief, Defendant Janet was contractually obligated to convey the driveway/Tract D to Plaintiff, yet failed to do so.
>
> 169. The contract between Defendant Janet and Plaintiff was enforceable and valid.
>
> 170. As a result of the facts detailed above and in Plaintiff's Verified Complaint, Plaintiff did not receive title to the driveway/Tract D, as shown on the Original Survey, and Defendants Mary Ann Parker, Jim Parker, and James Parker benefitted by the same.
>
> 171. As a result of the facts detailed above and in Plaintiff's Verified Complaint, Defendants Mary Ann Parker, Jim Parker, and James Parker remained as owners or maintained ownership rights in the driveway in contradiction of the contract between Plaintiff and Defendant Janet.

(*Id.*) (underline emphasis added).

---

[7] In the Foreclosure Action, Case No. 2024-CP-26-00567 and Case No. 2025-00, the Lender alleges a default on payments since March 1 2021. (Complaint, filed Jan. 23, 2024, stating in ¶ _, as follows: "Plaintiff … alleges that the installments of principal and interest falling due from and after March 1, 2021 have not been paid [and Plaintiff SPS declares] the entire balance of said principal and interest due and payable at once." *Id.* On information and belief, the Lender withheld o its foreclosure because it knew of the defects in the title. *See* Plaintiff Wilson's Motion to Stay, filed Apr. 28, 2025, at Exhibit Nos. 11-14, showing two title claims filed by Flagstar with Chicago Title, each of which was denied because the closing attorney's file showed "a review of the Property's chain of title shows that the Grantor did not own the Driveway Tract, and therefore, could not have conveyed the Driveway Tract to the Borrower." (*Id.* at Ex. 13, at p. 3 of 3).

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In ¶¶'s 175-176 of that same Crossclaim filed June 19, 2023, the Lender sought a Declaratory Judgment under S.C. Code Ann. § 15-53-10, as follows:

> 175. Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Plaintiff is entitled to an order from this Court declaring his ownership of the driveway/Tract D.
>
> 176. Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Flagstar is entitled to an order from this Court declaring that its mortgage encumbers the driveway/Tract D.

(*Id.*) (underline emphasis added).

The above claims and crossclaims were all pending in this action when it was appealed on March 17, 2024. Accordingly, here, on remand, Plaintiff would be amending its claims to specifically seek the same relief formerly sought by the Lender in this the first-filed 2023 action.

CONCLUSION

For at least the reasons set forth herein and in the accompanying documents and information filed and of record in this action, and incorporated by reference herein, the Motions to Dismiss of the Lender must be denied.

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s/Wes Few/

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ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Jan. 28, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF
COMMON PLEAS
15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

Appellate Case No.: 2025-002471

CASE NO.: 2024-CP-26-00567

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., Defendants,

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

WESLEY D. FEW, LLC

/s/Wesley D. Few
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ATTORNEYS FOR APPELLANT

PROOF OF SERVICE

I, Cassy Young, On behalf of the law office of Wesley D. Few, LLC, attorneys for Appellant in this matter, do hereby certify that I have served the below parties and / or their counsel of record by Email / E-File as set forth below on this date in this action with a copy of the document(s) listed below.

1) Appellant's Return in Opposition to Motion to Dismiss Appeal

The Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Sean Matthew Foerster - Sean.Foerster@rogerstownsend.com

/s/Cassy Young
Cassy Young

Columbia, South Carolina
March 9, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Alan D. Clemmons, Master in Equity

Case No. 2024CP2600567
Appellate Case No.: 2025-002471

Select Portfolio Servicing, Inc., ...Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., ... Defendants.

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

RESPONDENT'S REPLY TO APPELLANT'S RETURN TO MOTION TO DISMISS APPEAL

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Attorneys for Respondent Select Portfolio Servicing, Inc.

March 13, 2026

Respondent Select Portfolio Servicing, Inc. ("Respondent") hereby replies to the return of Appellant Nicholas Wilson a/k/a Nicholas F. Wilson ("Wilson") to Respondent's Motion to Dismiss Appeal.

ARGUMENT

1. Wilson has conceded that the orders denying his motion to stay and denying his request for relief from the entry of default are not immediately appealable.

Wilson's Return fails to address Respondent's contention that the Order Denying Defendant Wilson's Motion to Lift Default filed on March 4, 2025, and the Form 4 Order filed on March 25, 2025, denying its reconsideration are not immediately appealable. Wilson's Return also fails to address Respondent's contention that the portion of the Order[1] filed on November 10, 2025, denying Wilson's Motion to Stay is not immediately appealable.

Wilson has thereby conceded[2] that these orders are not immediately appealable. Wilson's appeal from those orders must therefore be dismissed.

2. The Order filed on November 10, 2025, denying Wilson's motion to dismiss does not affect any of the "substantial rights" contemplated by S.C. Code Ann. § 14-3-330(2).

The Order filed on November 10, 2025, denying Wilson's motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2).

"The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal … [a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action…" S.C. Code Ann. § 14-3-330(2).

---

[1] "Order Denying Defendant's Motion to Dismiss and Defendant's Motion To Stay".
[2] *See* Rule 240(e), SCACR ("Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.").

The "mode of trial" is one of the substantial rights contemplated by S.C. Code Ann. § 14-3-330(2). *Creed v. Stokes*, 285 S.C. 542, 543, 331 S.E.2d 351, 352 (1985). "If an order deprives a party of a mode of trial to which that party is entitled as a matter of right, the order is immediately appealable and failure to do so forever bars appellate review." *Cobb v. S.C. DOT*, 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005).

The Order denying Wilson's motion to dismiss did not prevent a judgment from which an appeal might be taken or discontinue this action. There has been no final judgment entered in this foreclosure action. Once the final foreclosure judgment is entered, Wilson will have the opportunity to file a motion under Rule 60(b), SCRCP, for relief from that judgment and then, if that motion is denied, appeal from the order denying the motion.[3] As such, the order denying Wilson's motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2)(a).

The order denying Wilson's motion to dismiss did not grant or refuse a new trial. Wilson never filed a motion for a new trial in this case. As such, the order denying his motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2)(b).

The order denying Wilson's motion to dismiss did not strike out an answer or any part thereof or any pleading in any action. Wilson failed to plead at all in this action and he is in default. As such, the order denying his motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2)(c).

Finally, the order denying Wilson's motion to dismiss did not deprive him of a mode of trial to which he was entitled in this case. This case was properly referred to the Master in Equity

[3] *Winesett v. Winesett*, 287 S.C. 332, 334, 338 S.E.2d 340, 341 (1985)("[A] default judgment may not be appealed to this Court. The proper procedure for challenging a default judgment is to move the trial court to set aside the judgment pursuant to Rule 60(b), SCRCP."); *Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987)("[T]he denial of a motion under Federal Rule 60(b) to set aside a default judgment is immediately appealable.").

under Rule 53(b), SCRCP[4], because it is a foreclosure action and because Wilson is in default. As shown by the Record of Hearing filed in this case on April 8, 2025, the Master held the type of foreclosure trial required by Rule 71(a), SCRCP,[5] on that date.

To the extent that Wilson ever had a right to a different mode of the foreclosure trial, he waived that right by 1) defaulting and thereby waiving any defenses and counterclaims that may have entitled him to a different mode of trial, and 2) by failing to immediately appeal from the Order of Reference entered on April 24, 2024, in this action. *Creed*, 285 S.C. at 542, 331 S.E.2d at 352 ("The order [of reference] was not interlocutory, and should have been appealed immediately because it affected the mode of trial, a substantial right."); *see also Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997)("Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.").

For these reasons, the Order filed November 10, 2025, denying Wilson's motion to dismiss is not immediately appealable pursuant to the "substantial rights" exception of S.C. Code Ann. § 14-3-330(2).

3. The Order filed November 10, 2025, denying Wilson's motion to dismiss did not "involve the merits" as required for immediate appealability by S.C. Code Ann. § 14-3-330(1).

The Order filed on November 10, 2025, denying Wilson's motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(1).

"The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal … [a]ny intermediate judgment, order or decree in a law case

[4] "In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court." Rule 53(b), SCRCP (emphasis added).

[5] "Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." Rule 71(a), SCRCP.

involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions…" S.C. Code Ann. § 14-3-330(1).

In arguing that the Order denying his motion to dismiss is immediately appealable under this subsection, Wilson's Return never actually addresses whether that order "involved the merits" of this foreclosure action. That is because it did not.

Instead, Wilson's Return argues that the denial of his motion to dismiss this foreclosure somehow involves the merits of his claims in a different lawsuit: *Nicholas F. Wilson v. Janet P. Gochenour et al*., C/A # 2023CP2602475 (Horry County Court of Common Pleas)(filed April 19, 2023)(the "2023 Action"). Specifically, Wilson contends that the Order denying his motion to dismiss is immediately appealable because "the consequences of such a ruling would be to deny Appellant Wilson the right to pursue his earlier filed claims against Respondent MERS / Flagstar / SPS on their merits" in the 2023 Action. (Return p. 4.)

Following that statement, Wilson embarks upon a convoluted argument that fails to articulate why Wilson cannot pursue whatever claims he has pending in his other lawsuit as a result of the Master simply denying his motion to dismiss this foreclosure. Further confusing the matter, Wilson appears to be arguing that the denial of his motion to dismiss this foreclosure action is somehow prejudicing claims that he has not even filed yet in his other lawsuit.[6]

[6] "Because the Respondent Lender's agent, the loan closing attorney failed to procure the deed as required by Appellant Wilson's contract, and as it was underwritten by the Respondent Lender (i.e., as an 8.24 acre tract), Appellant Wilson has claims he can bring against Respondent in the 2023 Fraud Case that would impact the enforceability of the note and mortgage." (Return p. 6)(emphasis added).

Ultimately, the Order denying his motion to dismiss this foreclosure action did not "involve the merits" of Wilson's claims in the 2023 Action for the reasons the Master clearly explained in that order:

> "This action involves a claim for foreclosure of the lien of the Mortgage against only Tracts A, B, and C based on Wilson's loan default in March 2021. The 2023 Action, on the other hand, involves a claim seeking a 'declaratory judgment' as to Wilson's ownership of the Driveway Parcel based on issues arising out of the property purchase transaction in March 2020. The 2023 Action includes no claim for rescission or reformation of the Mortgage, or any other type of claim challenging the enforceability of the lien of the Mortgage against Tracts A, B, and C."

(Order filed November 10, 2025, pp. 5-6.)

> "SPS is not seeking foreclosure of the Driveway Parcel currently in dispute as part of the 2020 purchase of the Property … [t]he two transactions are mutually exclusive. The 2023 Action involves a dispute over whether a driveway was to be included in the purchase and this action involves default on a loan."

(Order filed November 10, 2025, pp. 6-7.) The Order made no findings of fact or conclusions of law as to the claims pending in the 2023 Action and therefore did not "involve the merits" of that action.

For these reasons, the Order filed on November 10, 2025, denying Wilson's motion to dismiss is not immediately appealable pursuant to the "involving the merits" exception of S.C. Code Ann. § 14-3-330(1).

4. Wilson's Rule 15 argument is misplaced.

Wilson's contention that he has the right to amend his claims against Respondent is perplexing. Wilson is in default in this action, has no pleadings or claims in this action, and has not filed any motion to amend in this action. None of the orders being appealed concern any denial of any motion to amend his pleadings. As such, that issue is not before the Court in this case.

Whether or not Wilson will amend his pleadings in the 2023 Action at some point in the future has no bearing on the issue of the immediate appealability of the orders currently before the Court.

CONCLUSION

For these reasons, Respondent implores the Court to dismiss this appeal and shut down Wilson's blatant attempt to avoid the supersedeas bond requirement of S.C. Code Ann. § 18-9-170[7].

Respectfully submitted,

s/ Sean M. Foerster

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Attorneys for Respondent Select Portfolio Servicing, Inc.

March 13, 2026

[7] Conditioning the stay of an order for a foreclosure sale upon the filing of a supersedeas bond executed by two sureties in an amount equal to the value of the use and occupation of the property during the expected duration of the appeal.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Alan D. Clemmons, Master in Equity

Case No. 2024CP2600567
Appellate Case No.: 2025-002471

Select Portfolio Servicing, Inc., ...Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., ... Defendants.

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Reply to Appellant's Return to Motion to Dismiss Appeal on Appellant Nicholas Wilson a/k/a Nicholas F. Wilson by email on March 13, 2026, to the following email address from the Attorney Information System ("AIS") for his attorney of record:

Wesley D. Few, Esquire
Post Office Box 9398
Greenville, South Carolina 29604
wes@wesleyfew.com

s/ Sean M. Foerster
Sean M. Foerster (SC Bar# 77466)
ROGERS TOWNSEND LLC

Sean Foerster

From: Sean Foerster
Sent: Friday, March 13, 2026 4:04 PM
To: 'Wes Few'
Cc: 'Cassy Young'
Subject: 2025-002471 - Select Portfolio Servicing, Inc., v. Nicholas Wilson
Attachments: Respondent's Reply to Return to Motion to Dismiss Appeal (2025-002471).pdf; Proof of Service - Respondent's Reply to Return to Motion to Dismiss Appeal (2025-002471).pdf

Hi Wes –

Please find attached Respondent's Reply to Appellant's Return to Motion to Dismiss Appeal and Proof of Service, which I hereby serve on you. Thanks.

ROGERS TOWNSE

Sean Foerster
Member

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SC Court of Appeals

ELECTRONICALLY FILED - 2026 May 29 12:20 PM - HORRY - COMMON PLEAS - CASE#2023CP2602475

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT

Nicholas F. Wilson, Plaintiff, vs. Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp. d/b/a Century 21; The Harrelson Group; Patton Development SC, LLC; Flagstar Bank, N.A.; Sonia M. Raymond; Raymond Law Firm, P.A., Defendants.	)	Civil Action No. 2023-CP-26-02475 **SUPPLEMENTAL MEMORANDUM REGARDING COLLATERAL ESTOPPEL**

Plaintiff filed an identical motion to stay in this action and the parallel foreclosure matter brought by SPS against Plaintiff, C/A No. 2024-CP-26-00567. Plaintiff also moved to dismiss the foreclosure action pursuant to Rules 12(b)(8) and Rule 13, SCRCP asserting that SPS's foreclosure claim was a compulsory counterclaim to the present case. The Master-in-Equity considered and denied both motions in his Order, a copy of which was attached as Exhibit A to SPS's memorandum in support of its motion to dismiss and in opposition to Plaintiff's motion to stay (filed November 10, 2025). Therefore, Plaintiff is collaterally estopped from relitigating those arguments here.

The doctrine of collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. *Judy v. Judy*, 383 S.C. 1, 9, 677 S.E.2d 213, 218 (Ct. App. 2009); *S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213,

403 S.E.2d 625, 627 (1991) ("Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action."). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 372, 315 S.E.2d 186, 191 (Ct. App. 1984); *see also Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (same). All three of those elements are met here.

First, Plaintiff's motion to dismiss and motion to stay were actively litigated in the foreclosure case. They were fully briefed and then argued before the Master-in-Equity at a hearing on September 25, 2025.

Second, the issues raised in those motions were directly determined in the other action. The Master-in-Equity's Order found that:

1. Plaintiff's motion to dismiss pursuant to Rules 12(b)(8) and Rule 13(a), SCRCP was untimely.
2. Even if the motion to dismiss was timely, Rule 12(b)(8) was inapplicable because there was no action pending between the parties for the same claim. The foreclosure action sought foreclosure of Plaintiff's mortgage on property that he has undisputed title to whereas this case involves a declaratory judgment as to Plaintiff's potential ownership of an ***additional*** driveway tract.
3. Even if the motion to dismiss was timely, the foreclosure claim was not a compulsory counterclaim to this suit because it did not arise out of the same transaction and occurrence.

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4. Finally, a stay was not warranted because: (1) the outcome of this case would make no difference to the outcome of the foreclosure, (2) a stay of the foreclosure would prejudice SPS, (3) the foreclosure is in an entirely different procedural stage than this case and (4) Plaintiff identified no economic benefit to the Court or parties for a stay of the foreclosure action.

Finally, these rulings were necessary to support the prior judgment. The Court's rulings fully and finally disposed of the attempts by Plaintiff to avoid his default and to block SPS from proceeding with the foreclosure sale.

Therefore, for all these reasons, Plaintiff is collaterally estopped from relitigating the issues determined by the Master-in-Equity's order herein.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Blake T. Williams

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Attorneys for Select Portfolio Servicing, Inc.

Columbia, South Carolina

May 29, 2026

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2602475

Nicholas F Wilson
PLAINTIFF(S)

Janet P Gochenour et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

After careful consideration and review, the Defendant Select Portfolio Servicing, Inc.'s Motion to Dismiss is respectfully DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/25/2026 .

James B Parker for James B Parker
Janet P Gochenour for Janet P Gochenour
James B Parker, Sr
Mary Ann Parker for Mary Ann Parker
James B Parker for James B Parker
Mary Ann Parker for Mary Ann Parker
Janet P Gochenour for Janet P Gochenour

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Horry Common Pleas

Case Caption: Nicholas F Wilson VS Janet P Gochenour , defendant, et al

Case Number: 2023CP2602475

Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

The South Carolina Court of Appeals

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc.; Defendants,

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

Appellate Case No. 2025-002471

ORDER

Appellant has filed a notice of appeal from three orders: (1) an order denying Appellant's motion to dismiss and motion to stay, (2) an order denying Wilson's motion to lift default in a foreclosure action, and (3) an order denying Appellant's motion for reconsideration of the order denying his motion to lift default. Respondent has now filed a motion to dismiss, arguing the orders on appeal are interlocutory and not immediately appealable. Appellant filed a return, opposing dismissal. Respondent filed a reply.

After careful consideration of the filings, we grant the motion to dismiss. *See* S.C. Code Ann. § 14-3-330 (2017) (defining appellate jurisdiction); *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final."); *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) (holding the denial of a motion to dismiss is not immediately appealable); *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (holding an order granting a stay is not immediately appealable); *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm'n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (holding an order lifting a stay is not immediately appealable); *Palmetto Constr. Grp., LLC v.*

Restoration Specialists, LLC, 432 S.C. 633, 636, 856 S.E.2d 150, 151 (2021) (holding an order denying a motion to lift an entry of default is not immediately appealable). Remittitur will be sent in accordance with Rule 221(b) of the South Carolina Appellate Court Rules.

Blake L Hewitt J.

FOR THE COURT

Columbia, South Carolina

FILED
Aug 28 2026

cc:
Wesley D. Few, Esquire
Sean Matthew Foerster, Esquire

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Sep 14 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF COMMON PLEAS
15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

Appellate Case No.: 2025-002471

(Circuit Court Case No.: 2024-CP-26-00567)

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; [1] Wells Fargo Bank, N.A.; and Midland Credit Management, Inc.; Defendants,
of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant,

Respondent.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221, SC ACR, Appellant Nicholas Wilson respectfully files this petition for rehearing of the Court's August 28, 2026, Order dismissing this appeal. Rehearing is warranted because the Order treats the November 10, 2025, lower court ruling as the denial of an ordinary motion to dismiss governed by *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 (1994), without addressing the distinct and preserved ground for which

[1] The August 28, 2026, Order identifies SoFi Lending Corp. in the caption. SoFi was identified in the Circuit Court pleading for a recorded judgment in Case No. 2022-CP-26-02258, which is now marked as satisfied on the sccourts.org online docket, as of July 5, 2024. Similarly, prior recorded judgments of Wells Fargo Bank, N.A. in an amount of $8,263.25 (2022-CP-26-06012), and Midland Credit Management (2023-CP-26-05566) in an amount of $11,577.69, are also paid off or being paid off, but are not yet marked as satisfied on the record. These parties are not part of this appeal.

Wilson sought review, namely the Master finally adjudicated Wilson's Rule 13(a), SCRCP, compulsory-counterclaim defense, and authorized Respondent to prosecute a later foreclosure action outside the earlier-filed action involving the same loan, mortgage, title, and property transaction.

POINTS OVERLOOKED OR MISAPPREHENDED

1. The motion denied on November 10, 2025, was not merely a Rule 12 motion, as was the case in *McClendon*. *Id.* at 540 (noting, "Respondent now moves to dismiss this appeal asserting the order denying the motion to dismiss is not immediately appealable."). It was expressly titled a "Motion to Dismiss Based on Compulsory Counterclaims Filed in Earlier Case under Rules 12 and 13, SCRCP." Respondent's Motion to Dismiss Appeal acknowledged that title. (Resp. Mot. Dismiss Appeal, at p. 2 n.1). Appellant Wilson's Return then noted Respondent relied on decisions involving ordinary Rule 12 denials while "skip[ping] over," the Rule 13 issue. (Appellant's Return, at p. 2). The dismissal Order cites *McLendon*[2] for the general proposition that denial of a motion to dismiss is not immediately appealable, but does not decide or address whether an order conclusively adjudicating a Rule 13 defense is an intermediate order involving the merits under S.C. Code Ann. § 14-3-330(1).

2. The November 10, 2025, Order did finally decide the Rule 13 question. It did not merely decline to dismiss without reaching the defense. The Master ruled that the two actions

[2] *McClendon* is also not applicable here for at least the reason that Appellant in this action has been held to be in default, therefore, he has no opportunity to prevail at summary judgment, and the resultant remittitur pursuant to the August 28, 2026, Order will result in Appellant being permanently deprived of his property, the same property for which Respondent's predecessor, Flagstar Bank, N.A., previously joined with Appellant in the prior filed action, Circuit Court Case No. 2023-CP-26-02475, seeking an order declaring "Flagstar is entitled to an order from this Court declaring that its mortgage encumbers the driveway/Tract D." (Ans. and Cross-Claim of Flagstar Bank, N.A., filed June 19, 2023, Case No. 2023-CP-26-02475, at ¶ 176). Flagstar then asserted, "Such order / declaration should be recorded in the RMC office for Horry County." (*Id.* at ¶ 177). That same cross-claim was pending when Flagstar filed this foreclosure action.

involved "mutually exclusive" transactions, that the 2023 action concerned only the driveway parcel, and that the foreclosure claim arose from a separate loan-default transaction. (Resp. Reply, at pp. 5-6 (quoting Nov. 10, 2025, Order, at pp. 5-7)). Those determinations rejected the factual and legal premise of Appellant Wilson's compulsory-counterclaim defense. Whether a counterclaim is compulsory is a question of law reviewed *de novo*. *Deutsche Bank National Trust Co. v. Estate of Houck*, 439 S.C. 280, 286, 887 S.E.2d 411, 414 (2023).

3. Because both actions were commenced after *Houck*, the Rule 13 question is governed by the rule's plain language, not by a generalized characterization of the claims. *Houck* prospectively abolished the former "logical-relationship" test and held that courts must ask whether the claim "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." *Id.* at 414-15. The Court's dismissal Order does not address *Houck* or the effect of the Master's conclusive Rule 13 determination.

4. Appellant Wilson's Return argued both statutory routes for immediate review: Section 14-3-330(1), because the ruling finally determined the compulsory-counterclaim defense, and Section 14-3-330(2), because allowing the later foreclosure to proceed separately defeats the right protected by Rule 13 to have transactionally related claims adjudicated in one action before the collateral is sold. (Return, at pp. 3-8). The dismissal Order does not address either argument in the Rule 13 posture.

ARGUMENT

I. THE NOVEMBER 10, 2025, ORDER FINALLY DETERMINED A SUBSTANTIAL RULE 13 DEFENSE AND THEREFORE INVOLVED THE MERITS UNDER SECTION 14-3-330(1).

Section 14-3-330(1) authorizes immediate review of an intermediate order in a law case that involves the merits. An order involves the merits when it "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993); *Peterkin v. Brigman*, 319 S.C. 367, 368, 461 S.E.2d 809, 810 (1995).[3]

McLendon does not establish that every ruling captioned as a denial of dismissal falls outside that definition. *McLendon* also involved much simpler facts than this case. *McLendon* explained that an ordinary denial of a motion to dismiss does not establish the law of the case and may be raised later. *Id.* at 540, n.2. Here, by contrast, the Master reached and rejected the legal defense itself. He determined that the actions involve different transactions and that Respondent / SPS's foreclosure claim was not compulsory in the earlier action. Those conclusions finally disposed of Wilson's Rule 13 defense unless reversed or revisited, they were not a refusal to reach it.

As also noted in *Midland*, "A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial." *Id.* at 780. Such is not the case here, as the denial of the motion under Rule 13(a), will result in Appellant's loss of his primary residence property via foreclosure of a mortgage, for which the scope of that mortgage was already being litigated in the 2023 action.

[3] In *Peterkin*, the Supreme Court stated, "The order in this case does not prevent a judgment from being rendered in the action, and appellant can seek review of the current order in any appeal from final judgment." *Id.* at 810. Here, however, the Order would preclude Appellant Wilson from obtaining and enforcing the judgment he sought in the earlier filed 2023 action, absent some stipulation from Respondent which they will undoubtedly not agree to provide. In addition, Appellant here can amend his pleadings in the 2023 action, to add more claims against Respondent, which they will also allege are not permitted due to the final judgment in this 2024 foreclosure case.

Rule 13(a) is mandatory. A pleading "shall state" a qualifying counterclaim. As Appellant Wilson showed in his Return, the foreclosure Complaint alleged a March 1, 2021, default. (Return, at p. 5). The 2023-CP-26-02475 action was filed in April 2023, and Flagstar asserted a pleading concerning reformation of the deed and mortgage on June 19, 2023. (*Id.* at pp. 2, 5). According to the jurisdictional record, the loan default had occurred "after March 1, 2021," (Foreclosure Complaint at ¶ 14), and the foreclosure claim existed when the lender litigated the deed-and-mortgage dispute in the first filed action, 2023-CP-26-02475.

Houck confirms that this is a merits issue, not merely docket administration. There, borrowers asserted that a bank's later foreclosure was barred because foreclosure had been a compulsory counterclaim in earlier litigation involving the same loan. The Supreme Court treated compulsoriness as a question of law, applied Rule 13(a), and reviewed the ruling on the merits. 439 S.C. at 284-87, 887 S.E.2d at 413-15. *Houck* ultimately found the foreclosure claim was not compulsory on its facts, but it establishes the governing legal inquiry and the substantive consequence of the determination. Here, the distinguishing fact is the June 19, 2023 voluntarily pursuit by Respondents Flagstar / SPS in the 2023 action to reform the mortgage to include the driveway, which was pending when the foreclosure action as filed.

The November 10, 2025, Order performed that inquiry and resolved it adversely to Wilson. It finally determined a substantial defense to SPS's separate foreclosure action. It therefore satisfies Section 14-3-330(1), even though the foreclosure case remains pending. The Court should rehear the dismissal and distinguish an ordinary Rule 12 denial from this conclusive Rule 13 adjudication.

II. THE RULE 13 DETERMINATION CANNOT BE SEPARATED FROM THE MERITS BY LABELING THE FIRST ACTION A DIFFERENT LAWSUIT.

Respondent's Reply argued that Wilson relied on claims in a "different lawsuit" and that the November 10, 2025, Order, therefore, did not involve the "merits" of this foreclosure. (Reply at pp. 5-6). That reasoning overlooks the nature of Rule 13. The rule necessarily asks a court in one action to examine the claims and pleadings in the earlier action and decide whether the later claim had to be asserted there. The relationship between the two actions is the merits of the Rule 13 defense.

Nor does the Master's subjective conclusion that the first action concerns a driveway parcel while the foreclosure concerns loan default remove the issue from appellate jurisdiction. That conclusion is the disputed Rule 13 ruling. Appellant contends both cases arise from the same financed purchase and closing: (i) the lender underwrote the purchase as an 8.24-acre tract, (ii) the lender's closing agent allegedly failed to secure the contracted deed, (iii) the deed and mortgage required reformation, (iv) the lender made title claims regarding that failure, and (v) the later foreclosure seeks enforcement of the same note and mortgage. (Appellant's Return, at pp. 5-7). Whether those facts satisfy Rule 13(a) is the appellate merits question.

The Court need not decide at rehearing that the foreclosure claim was compulsory. It need decide only that the Master's definitive rejection of that defense was an intermediate merits ruling eligible for review under Section 14-3-330(1). Reinstatement would allow the issue to be resolved on a complete record and full briefing under the *Houck* plain-language standard. *Id.* at 413 (noting, "Judges and lawyers are well-equipped to determine whether a claim is compulsory under the plain language of this rule."). In addition, the claims brought by Respondent in this action violated Rule 12(b)(8), which provides for dismissal of "another action is pending between the same parties for the same claim." *Id*.

III. THE ORDER ALSO AFFECTS THE SUBSTANTIAL RIGHT RULE 13 PROTECTS AGAINST DUPLICATIVE AND POTENTIALLY INCONSISTENT ADJUDICATION.

Rule 13(a) is designed to prevent a party from withholding a transactionally related claim and prosecuting it separately after the first action begins. *Beach Co. v. Twillman, Ltd.*[4], 351 S.C. 56, 61-63, 566 S.E.2d 863, 865-66 (Ct. App. 2002). The rule protects more than a defense that can always be restored after a second final judgment. It protects the right to a single adjudication of interdependent claims before inconsistent judgments or irreversible consequences occur.

Appellant Wilson's Return explained the concrete consequence here. The separate foreclosure determines enforceability of the note and mortgage and permits sale of the collateral while the earlier action concerning the lender's closing, title, deed, and (scope of the) mortgage conduct remains unresolved. (Appellant's Return, at pp. 3-8). If the foreclosure proceeds first, the practical availability and mode of adjudicating Wilson's earlier claims are fundamentally altered. South Carolina recognizes that the availability of trial itself is intrinsic to the mode-of-trial analysis. *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 452-53, 661 S.E.2d 81, 87 (2008) (noting, "Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled to as a matter of right, such order is immediately appealable." (citing *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000)).

Appellant cited North Carolina decisions recognizing immediate review when a compulsory-counterclaim ruling affects a substantial right. (Appellant's Return at 2-3 (citing

[4] As noted in *Twillman*, "The purpose of the amendment was 'to insure against the 'undesirable possibility presented under the original rule whereby a party having a . . . compulsory counterclaim could avoid stating it . . . by bringing an independent action in another court after the commencement of the federal action but before serving his pleading in the federal action.'" *Id.* at 866 (citing *Sparrow v. Nerzig*, 228 S.C. 277, 283, 89 S.E.2d 718, 721 (1955) (quoting Rule 13, SCRCP, advisory committee's notes on amendments)).

House Healers Restorations v. Ball, 112 N.C. App. 783, 785, 437 S.E.2d 383, 385 (1993))). Those decisions are persuasive rather than controlling, but they reinforce the point overlooked here: a compulsory-counterclaim ruling is materially different from an ordinary Rule 12 denial because the very right asserted is freedom from a second, separate adjudication of the same transaction.

At minimum, these circumstances warrant rehearing and a ruling directed to the preserved Rule 13 argument rather than application of the categorical rule governing ordinary Rule 12 motions.

CONCLUSION

Appellant respectfully requests the Court grant rehearing, withdraw the August 28, 2026, dismissal to the extent it dismisses the appeal from the November 10, 2025, Order denying Wilson's Rule 13 motion, deny Respondent's Motion to Dismiss Appeal as to that Order, and reinstate the appeal limited to whether Respondent SPS's foreclosure was a compulsory counterclaim in the earlier-filed action, at the time it was filed. Appellant Wilson does not request rehearing concerning the independent appealability of the March 4 and March 25, 2025 default-related orders.

WESLEY D. FEW, LLC

s/Wesley D. Few/
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Attorney for Appellant Nicholas Wilson

Greenville, South Carolina
September 15, 2026

The South Carolina Court of Appeals

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc.; Defendants,

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

Appellate Case No. 2025-002471

ORDER

Appellant has filed a notice of appeal from three orders: (1) an order denying Appellant's motion to dismiss and motion to stay, (2) an order denying Wilson's motion to lift default in a foreclosure action, and (3) an order denying Appellant's motion for reconsideration of the order denying his motion to lift default. Respondent has now filed a motion to dismiss, arguing the orders on appeal are interlocutory and not immediately appealable. Appellant filed a return, opposing dismissal. Respondent filed a reply.

After careful consideration of the filings, we grant the motion to dismiss. *See* S.C. Code Ann. § 14-3-330 (2017) (defining appellate jurisdiction); *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final."); *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) (holding the denial of a motion to dismiss is not immediately appealable); *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (holding an order granting a stay is not immediately appealable); *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm'n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (holding an order lifting a stay is not immediately appealable); *Palmetto Constr. Grp., LLC v.*

Restoration Specialists, LLC, 432 S.C. 633, 636, 856 S.E.2d 150, 151 (2021) (holding an order denying a motion to lift an entry of default is not immediately appealable). Remittitur will be sent in accordance with Rule 221(b) of the South Carolina Appellate Court Rules.

Blake L Hewitt J.

FOR THE COURT

Columbia, South Carolina

FILED
Aug 28 2026

cc:
Wesley D. Few, Esquire
Sean Matthew Foerster, Esquire

RECEIVED
Sep 14 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF
COMMON PLEAS
15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

Appellate Case No.: 2025-002471

CASE NO.: 2024-CP-26-00567

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., Defendants,

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

WESLEY D. FEW, LLC

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ATTORNEYS FOR APPELLANT

PROOF OF SERVICE

I, Cassy Young, on behalf of the law office of Wesley D. Few, LLC, attorneys for Appellant in this matter, do hereby certify that I have served the below parties and / or their counsel of record by E-File/Hand-Delivery as set forth below on this date in this action with a copy of the document(s) listed below.

1) Appellant's Petition for Rehearing of the Order dated August 28, 2026, Order Granting the Respondent's Motion to Dismiss
2) Order dated August 28, 2026, Order Granting the Respondent's Motion to Dismiss

The Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Sean Matthew Foerster - smfoerster@wardandsmith.com

Robert P. Wood – Robert.wood@rogerstownsend.com

/s/Cassy Young
Cassy Young

Columbia, South Carolina
September 14, 2026

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RECEIVED

Sep 14 2026

SC Court of Appeals

September 14, 2026

Via E-File and Hand-Delivery:

The Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Columbia, South Carolina 29211
ctappfilings@sccourts.org

RE: Select Portfolio Servicing, Inc. v. Nicholas Wilson
Case No.: 2024-CP-26-00567
Appellate Case No. 2025-002471
Our File No.: 00334-001

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's Petition for Rehearing of the Order dated August 28, 2026, Order Granting the Respondent's Motion to Dismiss (attached), $50.00 filing fee check and proof of service for same.

If you have any questions or need anything further, please do not hesitate to contact me at either number above.

Sincerely Yours,

Wesley D. Few

Enclosures

WDF/cgy

CC: Counsel of Record (*Via E-File)*
Client (*Via email)*

The South Carolina Court of Appeals

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc.; Defendants,

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

Appellate Case No. 2025-002471

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Stephanie P. McDonald J.

Blake L. Hewitt J.

J.

Columbia, South Carolina

cc:

Wesley D. Few, Esquire
Sean Matthew Foerster, Esquire

FILED
Oct 16 2026

ELECTRONICALLY FILED - 2024 Jan 23 5:19 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

STATE OF SOUTH CAROLINA COUNTY OF HORRY Flagstar Bank, N.A., PLAINTIFF, VS. Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2024-CP-26 SUMMONS

(240855.00011)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code § 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on

the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCACR, effective June 1, 1999.

SCOTT AND CORLEY, P.A.

By: s/Jordan D. Beumer

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January 23, 2024

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Flagstar Bank, N.A., PLAINTIFF, VS. Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2024-CP-26 COMPLAINT Foreclosure – Non-Jury (Deficiency Demanded)

(240855.00011)

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Horry County, South Carolina.

2. Plaintiff is a corporation or other legal entity securing or collecting debts or enforcing mortgages, security interests or other rights in property securing debts in the State of South Carolina pursuant to § 33-15-101(B)(8) and is the real party in interest under Rule 17(a), SCRCP, to enforce the Note and Mortgage described herein.

3. Some lien on or interest in the real estate and improvements thereon, the subject of this action, may be claimed by the Defendant(s) herein. In order to comply with the Lis Pendens statute (S.C. Code Section 15-11-10, et. seq.) and case law, and to also clear or adjudicate any claims or interests in the real estate and improvements thereon, Defendant(s) named herein are also made a necessary party due to similarity in names of parties of public record, or pursuant to the laws and statutes of Descent and Distribution or other statutory or regulatory requirements.

4. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

5. Heretofore, under date of March 6, 2020, Nicholas F. Wilson made, executed and delivered to T2 Financial LLC dba/Revolution Mortgage a certain mortgage note ("Note") in writing wherein and whereby Nicholas F. Wilson promised to pay to T2 Financial LLC dba/Revolution Mortgage, its successors and assigns, the principal sum of $418,500.00.

6. In order to secure the payment of said Note, the said Nicholas F. Wilson did on the same date, to-wit, March 6, 2020, make, execute and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for T2 Financial LLC dba/Revolution Mortgage, its successors and

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assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Horry County, on March 6, 2020, in Book 6188 at Page 1316; thereafter, said Mortgage was assigned to Flagstar Bank, N.A. by assignment instrument dated December 9, 2021 and recorded December 13, 2021 in Book 6491 at Page 1568.

The description of the premises as contained in said mortgage is as follows:

ALL AND SINGULAR, all that certain piece, parcel or lot of land lying and being in Conway Township, State and County aforesaid, being designated as Tract 1, containing 7. 75 acres (which is comprised of Tract A, 1.29 acres, Tract B, 3.77 acres and Tract C, 2.70 acres) as more fully shown on that certain plat of survey prepared for Janet P. Gochenour by K&R Land Surveyors, Inc., dated February 10, 2020 and recorded March 5, 2020 in Plat Book 291 at Page 324 in the Office of the ROD for Horry County, South Carolina. Said plat being incorporated herein by reference and made a part and parcel of this description.

Together with the right of ingress, egress and other customary usages to that certain Existing 30` Right-of-Way Easement as more fully shown on the hereinabove referenced plat.

This being the same property conveyed to Nicholas F. Wilson by deed of Janet E. Gochenour a/k/a Janet P. Gochenour and Janet P. Gochenour as Trustee of the Janet P. Gochenour Living Trust Dated July 21, 1994, by deed dated March 6, 2020 and recorded March 6, 2020 in Book 4294 at Page 699 in the Office of the Clerk of Court/Register of Deeds for Horry County.

TMS No. 36304020005

Property address: 4708 Highway 90 a/k/a 4704 Highway 90
Conway, SC 29526

7. Plaintiff is informed and believes that the Mortgage constitutes a purchase money first mortgage lien on the subject real estate and improvements thereon, including any mobile/manufactured home located thereon.

8. Plaintiff and/or its counsel has complied with all of their obligation(s) under the specific terms of the Note and Mortgage being foreclosed as well as all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices (where applicable), e.g. post referral loss mitigation solicitation letter and/or acceleration warning letter as to default and post acceleration reinstatement, provided to the obligor(s), if or where applicable.

9. Plaintiff's counsel has read the allegations in this pleading and to the best of his/her knowledge, and upon information and belief, there are good grounds to support it. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. Seq.), Plaintiff's counsel has accomplished a Report on Title whereby Plaintiff's counsel has, upon information and belief, named all parties who claim or may claim an interest in the subject property. *See*, Rule 71(a), SCRCP; S.C. Code Section 15-11-20; *South Carolina National Bank v. Cook*, 291 S.C. 530, 354 S.E.2d 562 (1987); *Horry County v. Ray*, 382 S.C. 76, 674 S.E.2d 519 (Ct. App. 2009). This Report

on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts.

10. According to the business records of Plaintiff, which have been made available to its Counsel and also upon information and belief, neither Plaintiff nor its counsel is aware of any party, who executed the Note and/or Mortgage, currently being on active duty (after mortgage was originated) or recently discharged from the active duty of the United States Military or a State Guard or Reserve Unit. In addition, Counsel for Plaintiff has caused and/or conducted a search of the DOD website for which Counsel, upon information and belief, reports that no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is entitled to SCRA protection. If any party has any information or record of a defendant currently being on active duty or recently discharged, it is requested that you contact counsel for Plaintiff immediately as you may possibly be eligible for protection under the Servicemembers Civil Relief Act (SCRA).

11. According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

12. In and by the terms of the Note and the Mortgage, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

13. In and by the terms of the Note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the Note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to, or in the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

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14. Plaintiff, to the best of its knowledge and upon information and belief, alleges that the installments of principal and interest falling due from and after March 1, 2021 have not been paid although demand for the payment thereof has been made, and Plaintiff has and does hereby elect to declare the entire balance of said principal and interest due and payable at once. Pursuant to a review of the business records of Plaintiff or its designated agent, as of January 23, 2024, there is now due and owing and unpaid upon the Note and Mortgage the total amount of $485,203.76, which is itemized as follows: Unpaid Principal Balance of $400,029.91, Interest from February 1, 2021 to January 23, 2024 of $37,214.37, Pre-Acceleration Late Charges of $145.77, Pro Rata MIP/PMI Amount of $620.78, Escrow Advance Balance of $42,838.48, Recoverable Corporate Advance Balance of $4,344.45, and Release Fee of $10.00 plus reasonable attorney's fees for the collection thereof, and all other costs and expenses of this action allowable by law, equity, or contracts referenced above, including but not limited to the costs or charges in reporting to this Honorable Court and/or as may be permitted under Rules 54 and 71, South Carolina Rules of Civil Procedure. Pursuant thereto, Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees, charges and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage. Interest on the unpaid principal balance will continue to accrue at the contractual interest rate, which is currently 3.125%.

15. Upon information and belief, the Defendant(s) below-named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, including but not limited to the subordinate lien or junior interests specifically described below, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant(s) is/are further made a party due to the similarity in name(s) to the primary defendant(s) against whom they claim or may claim a lien and in order to clear title to this property as follows:

a) The Defendant, SoFi Lending Corp., by virtue of that certain judgment against Nicholas Wilson in the original amount of $121,460.15, filed on August 1, 2022, in the Office of the Clerk of Court/Register of Deeds for Horry County as Case No. 2022-CP-26-02258.

b) The Defendant, Wells Fargo Bank, N.A., by virtue of that certain judgment against Nicholas Wilson in the original amount of $8,263.25, filed on February 9, 2023, in the Office of the Clerk of Court/Register of Deeds for Horry County as Case No. 2022-CP-26-06012.

c) The Defendant, Midland Credit Management, Inc., by virtue of that certain judgment against Nicholas Wilson in the original amount of $11,577.69, filed

on January 11, 2024, in the Office of the Clerk of Court/Register of Deeds for Horry County as Case No. 2023-CP-26-05566.

16. Plaintiff demands a personal or deficiency judgment against Nicholas F. Wilson and any right to the same is specifically demanded. If, however, Nicholas F. Wilson has previously received a discharge in bankruptcy during the life of the Mortgage, this demand for a deficiency judgment is not applicable. Plaintiff additionally reserves the right to subsequently waive its rights to the personal or deficiency judgment currently requested against the named defendant(s) at any time prior to the occurrence of the requested judicial sales event.

17. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

18. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third-party bidder.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and that:

1. The amount due upon the Note and the Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and all of the costs or charges incurred in prosecuting this action.

2. The Mortgage be declared a purchase money first mortgage lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with reasonable attorney's fees as well as for all of the costs or charges of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

Second, to the payment and discharge of the amount due on the Note and Mortgage, together with attorney's fees as aforesaid; and

Third, the surplus, if any, be distributed according to law.

4. Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and/or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

ELECTRONICALLY FILED - 2024 Jan 23 5:19 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

5. Issue an order directing the Sheriff of Horry County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile/manufactured home collateralized under the security documents of the Plaintiff.

6. Plaintiff have judgment against the Defendant(s) Nicholas F. Wilson for the full amount found to be due Plaintiff on the Note and Mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises provided, however, that if Nicholas F. Wilson has previously received a discharge in bankruptcy during the life of the Mortgage, then this demand for a deficiency judgment is not applicable at all. Plaintiff additionally reserves the right to subsequently waive its rights to the personal or deficiency judgment currently requested against the named defendant(s) at any time prior to the occurrence of the requested judicial sales event.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT AND CORLEY, P.A.

By: s/Jordan D. Beumer

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January 23, 2024

ELECTRONICALLY FILED - 2024 Jan 23 5:19 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

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AFFIDAVIT OF SERVICE

DOCKET NUMBER: 2024CP2600567 FILE NUMBER: 240855.00011

COURT OF COMMON PLEAS FOR HORRY COUNTY, SC

PLAINTIFF FLAGSTAR BANK, N.A.

vs.

DEFENDANT **NICHOLAS WILSON A/K/A NICHOLAS F. WILSON, et al.**

SERVICE OF PROCESS ON: **NICHOLAS WILSON A/K/A NICHOLAS F. WILSON**

METHOD OF SERVICE: **A true and correct copy of the above-described papers were served on the below-named party in the following manner:**

(X) (**SUBSTITUTE**) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

ADDRESS: **4704 HIGHWAY 90**
CONWAY, SC 29526

Is the place of service the dwelling house or usual place of abode for the party being served? (X) YES ( ) NO

DATE: 3/21/2024 TIME: 11:04 AM

TYPE OF DOCUMENTS: Summons, Complaint, Lis Pendens

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:
NAME: KENNETH BRYANT; RELATIONSHIP/TITLE: CO-RESIDENT
Gender: MALE; Age: 41-45; Ethnicity: White; Hair: Brown/Gray;
Height: 5ft 8in - 5ft 11in; Weight: 131 lbs - 150 lbs;

MARITAL STATUS: (X) Single ( ) Married ( ) Separated ( ) Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
( ) WAS (X) WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE
( ) UNKNOWN MILITARY BRANCH IF APPLICABLE:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not party to nor interested in this action.

NAME: ~~DAVID MILLIGAN~~ ROGER TURNER

Roger Turner 3/22/24
Signature of Process Server / ProVest Case ID: 7094461 Date

STATE OF SC
COUNTY OF FLORENCE

Sworn to and subscribed before me this 22 day of MAR, in the year of 2024

Personally known by me, or ___ identified by the following document:

Type: DL Number/Reference: _____

[signature] Notary Public for SOUTH CAROLINA
Notary Public (Legal Signature)

Printed Name: _____

Commission Expiration: _____

DAVID P MILLIGAN
NOTARY PUBLIC
State of South Carolina
My Commission Expires Apr. 25, 2026

ELECTRONICALLY FILED - 2025 Jan 16 2:53 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS 15TH JUDICIAL CIRCUIT
Flagstar Bank, N.A., Plaintiff, V. Nicholas Wilson A/K/A Nicholas F. Wilson; Sofi Lending Corp.; Wells Fargo Bank, N.A.; and Midland Credit Management, Inc., Defendants.	)	C.A. No.: 2024-CP-23-00567 **MOTION TO DISMISS BASED ON COMPULSORY COUNTERCLAIMS FILED IN EARLIER CASE UNDER RULES 12 AND 13, SCRCP**

TO: ALLISON HEFFERNAN, ESQUIRE, COUNSEL TO PLAINTIFF:

Defendant Nicholas Wilson ("Wilson"), by and through his undersigned counsel, hereby respectfully moves this Court for an order dismissing this action under Rules 12(b)(8) and Rule 13, SCRCP.

Because Flagstar's claims related to the scope and existence of Defendant Wilson's title to the driveway and its mortgage on the same were compulsory counterclaims under Rule 13, SCRCP, in earlier filed Case No. 2023-CP-26-02475, those claims cannot be raised in this separate lawsuit. In addition, because Flagstar actively sought to pursue its claims in Case No. 2023-CP-26-02475 to reform Wilson's deed and its mortgage, it cannot separately bring its substantially identical foreclosure claims in this case as a separate action.

ELECTRONICALLY FILED - 2025 Jan 16 2:53 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

LEGAL STANDARD

In *North Carolina Federal Sav. & Loan Asso. v. DAV Corp.*, 381 S.E.2d 903, 905, 298 S.C. 514, 517-518 (1989), the S.C. Supreme Court stated as follows with respect to the requirement to plead a "compulsory counterclaim," in a responsive pleading:

> By definition a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim. Rule 13(a), SCRCP. Courts have employed four tests to determine whether a counterclaim is compulsory under this definition:
>
> 1) Are the issues of fact and law largely the same?
>
> 2) Would res judicata bar a subsequent suit on the counterclaim?
>
> 3) Does substantially the same evidence apply?
>
> 4) Is there any logical relationship between the claim and the counterclaim?
>
> The fourth test, the "logical relationship test" is by far the most widely accepted because of its flexibility. *See* 6 C. *Wright & A. Miller, Federal Practice & Procedure* § 1410 (1971). The Court of Appeals applied both the "same issues of law and fact test" and the "logical relationship test" to determine DAV's counterclaims were permissive rather than compulsory.

Id.; see also Carolina First Bank v. BADD, L.L.C., 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015); and *see also Deutsche Bank Nat'l Trust Co. v. Estate of Houck*, 440 S.C. 409, 413, 892 S.E.2d 280, 282 (2023) (abolishing the "logical relationship" test and stating, "Judges and lawyers are well-equipped to determine whether a claim is compulsory under the plain language of this rule.").

In *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 97, 800 S.E.2d 488, 492 (Ct. App. 2017) (decided before *Deutsche Bank v. Houck*, the Court of Appeals found defendant borrower's counterclaim under the S.C. Unfair Trade Practices Act was a compulsory

ELECTRONICALLY FILED - 2025 Jan 16 2:53 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

counterclaim in response to the bank's foreclosure action, stating, "we find the UTPA claim was both legal and compulsory.").

Rule 13(a), SCRCP, states as follows:

> **(a) Compulsory Counterclaims**. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought the suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

Id. (underline emphasis added). In addition, Rule 13(b), SCRCP, states as follows: "**(b) Permissive Counterclaims**. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. *Id.* (underline emphasis added).

Rule 12(b)(8), provides for dismissal of an action if "another action is pending between the same parties for the same claim." (*Id.*). *See e.g.*, *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 106, 674 S.E.2d 524, 532 (Ct. App. 2009) (noting, "we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)."). In *Capital City*, the Court of Appeals further noted, "while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other." *Id.* In *Capital City*, the administrative claim involved issuance of a Workers Compensation policies to BP Staff, wherein BP Staff's application was assigned to

ELECTRONICALLY FILED - 2025 Jan 16 2:53 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

Capital City to review. *Id.* at 526. BP disputed the "experience modifier" of 1.33 applied to its resultant premiums. *Id.* The *unrelated* claims in that action were for "breach of contract and fraud," brought by Capital City. *Id.* at 529 (noting, "[t]he mere fact that Capital City was also engaged in an administrative proceeding regarding the modifier did not divest the circuit court of its power to hear and determine the claims of breach of contract and fraud.").

Here, the scope of the mortgage is already being litigated in Case No. 2023-CP-26-02475, and, therefore, the issues are "substantially the same in both proceedings." *Id.* at 532. Flagstar, in filing this foreclosure action to foreclose on Wilson's property that does not include the "deed to the driveway,"[1] is taking contradictory positions in the two lawsuits.

ARGUMENT

Under Rule 13(a), the claim / counterclaim of Flagstar Bank, N.A. for foreclosure of the mortgage was a compulsive counterclaim in Case No. 2023-CP-26-02475, filed April 19, 2023.

In Wilson's originally filed action, Case No. 2023-CP-26-02475, Claim 10 seeks a Declaratory Judgment to reform the deed and the (Flagstar) mortgage. (*Id.*). More specifically, ¶ 121 of Wilson's Verified Complaint for Declaratory Judgments, Specific Performance, and Damages, states, "But for the fraudulent representations relied upon by [Wilson], [Flagstar] would have a mortgage on the [Wilson's] property, including the driveway." (*Id.*); *see also* Verified Complaint at ¶¶'s 13-15 (identifying Defendant MERS as the "nominee" for the lender associated with the "mortgage recorded on March 6, 2020.").

FLAGSTAR'S 2023 CROSS-CLAIM V. GOCHENOUR AND PARKERS

On June 19, 2023, in Case No. 2023-CP-26-02475, Flagstar filed its "Answer, Counterclaims, and Crossclaims of Flagstar Bank, N.A., incorrectly identified in the caption as

[1] *See* [Wilson's] Verified Complaint, at 5, ¶ 22, filed April 19, 2023, Case No. 2023-CP-26-02475.

Mortgage Electronic Registration Systems, Inc." (*Id.*). Janet Gochenour was the seller of the subject property to Wilson, excepting he did not get the "deed to the driveway,"[1] as the contract required. Parker is Gochenour's brother and he owned or co-owned adjacent parcels, portions of which were necessary to Wilson's contract with Gochenour, namely the requirement that Wilson get the "deed to the driveway as part of the sale."[1] In its cross-claim, Flagstar alleged, *inter alia*, as follows: "Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Plaintiff is entitled to an order from this Court declaring his ownership of the driveway/Tract D." (*Id.* at 18, ¶ 175) (underline emphasis added). Flagstar further alleged, "Based upon the facts as set forth herein, in Plaintiff's Verified Complaint, and in the public record, under S.C. Code § 15-53-10 et seq., the Uniform Declaratory Judgments Act, Flagstar is entitled to an order from this Court declaring that its mortgage encumbers the driveway/Tract D." (*Id.* at 18, ¶ 176) (underline emphasis added).

Flagstar has now filed this separate foreclosure action on the exact same issues in the 2023-CP-26-02475 action, namely reformation of the mortgage to include the driveway, and reformation of the deed to show ownership of the driveway to Wilson.

On July 14, 2023, Defendant James B. ("Jim") Parker filed his handwritten *pro se* response to Flagstar's cross-claim in the 2023-CP-26-02475 action. Accordingly, the same issues were not only plead in the April 19, 2023 action by Wilson, but Flagstar and the other necessary parties have further plead and joined those issues in that action as well, making the foreclosure claim inappropriate to bring in this newly filed action. Had Flagstar first filed its foreclosure action, there can be no doubt but that Wilson's Declaratory Judgment claims to reform the deed and the mortgage would have been a compulsory counterclaims in that action.

ELECTRONICALLY FILED - 2025 Jan 16 2:53 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567

CONCLUSION

For the reasons set forth above, this action must be dismissed.

WESLEY D. FEW, LLC

s/Wesley D. Few/
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ATTORNEYS FOR DEFENDANT NICHOLAS F. WILSON

Greenville, South Carolina
January 16, 2025

ELECTRONICALLY FILED - 2025 Jan 16 2:53 PM - HORRY - COMMON PLEAS - CASE#2024CP2600567