

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

71730

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

RECEIVED

MAR 8 8 2014

Appellate Case No. 2013-001412

SC Court of Appeals

HSBC Bank USA, National Association, as
Trustee for MLCC 2007-2Respondent,

vs.

S. Russell Fielden; Deborah M. Fielden; and Coastal States
Bank.....Defendants,

Of whom

S. Russell Fielden and Deborah M. Fielden, are..... Appellants.

**RESPONDENT’S MOTION TO DISMISS APPEAL AND
MEMORANDUM OF LAW**

Respondent HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 (“Respondent”) hereby moves to dismiss the appeal of S. Russell Fielden and Deborah M. Fielden (“Appellants”) on the grounds that the appeal is now moot.

On October 2, 2013 Respondent filed a Motion to Dismiss seeking an Order from the Court dismissing the appeal due to the fact that the subject property had already been sold and that the Appellants are unable to obtain the requested relief.

On December 9, 2013 the Court issued an Order denying Respondent’s October 2, 2013 Motion to Dismiss on the grounds that “[b]ecause the subject property is currently

titled in the name of Respondent, this court could effectuate the relief requested by Appellant; therefore, this appeal is not moot.” Additionally, in the December 9, 2013 Order, the Court denied the Appellant’s motion to stay the sale of the subject property to a third party because the Appellants did not obtain the required bond under S.C. Code Ann. §18-9-170 (1976).

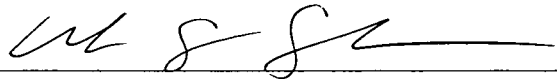
The property involved in this residential mortgage foreclosure action is TMS # R120-032-000-0372-0000. (See Exhibit A attached hereto, copy of Foreclosure Master In Equity Deed). On March 3, 2014 the subject property was sold to Richard L. Bayer and Patricia A. Bayer (“the Third-Party Purchasers”). The deed into the Third-Party Purchasers was recorded on March 25, 2014 in Book 3310 at Page 3189 in the Office of the Register of Deeds for Beaufort County. (See Exhibit B attached hereto).

When a judgment can have no practical legal effect upon the existing controversy, such that it is impossible for the reviewing court to grant effectual relief, a case becomes moot. Mathis v. S.C. State Highway Dep’t, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). In the present case, Appellants seek to have the Order of Foreclosure and Sale reversed and the judicial sale vacated. The Order of Foreclosure and Sale has already been carried out and the property has now been properly sold to a third party.

Therefore, because Appellants’ property has already been sold to a third party and that sale cannot be rescinded, Appellants are unable to obtain the requested relief. Without an available remedy, appeal of this case is moot. As such, Respondent respectfully requests this Court to dismiss the appeal and order that the Lis Pendens filed by Appellants S. Russell Fielden and Deborah M. Fielden be canceled.

Respectfully submitted,

March 26, 2014



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Erica G. Lybrand (SC Bar # 79052)
Robert P. Davis (SC Bar # 74030)
Samuel C. Waters (SC Bar # 5958)
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Attorney for the Respondent
Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Counsel of Record and Parties:

S. Russell Fielden
120 Sea Island Parkway
Beaufort, SC 29907
Pro Se Appellant

Deborah M. Fielden
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Beaufort, SC 29907
Pro Se Appellant

Mark S. Simpson, Esquire
Samuel L. Kirkland, Esquire
Jones, Simpson & Newton, P.A.
18 Pope Avenue
Hilton Head Island, SC 29928
Attorneys for Coastal States Bank

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8607

BEAUFORT COUNTY SC - ROD
BK 03253 PGS 2182-2185
FILE NUM 2013038461
07/03/2013 12:31:48 PM
REC'D BY F FRANKLIN RCPT# 715982
RECORDING FEES 10.00

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

FORECLOSURE
MASTER IN EQUITY DEED

817-2011

TO ALL TO WHOM THESE PRESENTS SHALL COME OR BE MADE KNOWN:

Or whom the same may in anywise concern, Marvin H. Dukes, III, Master in Equity for the County and State aforesaid SEND GREETING:

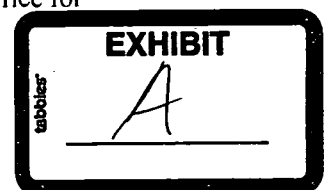
WHEREAS, **HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR MLCC 2007-2**, on or about June 14, 2010, did exhibit its complaint in the Court of Common Pleas in the County and State aforesaid, Case No. 10-CP-07-2927, against **S. RUSSELL FIELDEN; DEBORAH M. FIELDEN; ET AL.**

And the Cause, being at issue before Marvin H. Dukes, III, Master in Equity, came on to be heard on February 18, 2013, when the said Marvin H. Dukes, III, after a full hearing thereof, and mature deliberation in the Premises, Did Order, Adjudge and Decree that the premises hereinafter mentioned and described should be sold at public auction on the terms and for the purposes mentioned in said Decretal Order, as by reference thereto, on file in the said Court will appear; and after having duly advertised the said premises for sale by Public outcry, on May 6, 2013, which sale, according to statute, was made final on June 5, 2013. I, the said Marvin H. Dukes, III did then, openly and publicly, and according to the custom of auction, sell and dispose of the said premises below described, unto HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Series MLCC 2007-2 for \$629,091.67 being, at that price, the highest bidder for the same.

NOW, KNOW ALL MEN, That I, the said Master in Equity in consideration of the premises, and also in consideration of the sum of \$629,091.67 paid me by the below-named Grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents, do grant, bargain, sell and release unto the below named Grantee, its successors and assigns:

HSBC Bank USA, National Association as Trustee for
Merrill Lynch Mortgage Investors Trust, Series MLCC 2007-2
4001 Leadenhall Road
Mt. Laurel, NJ 08054

ALL that certain piece, parcel or lot of land with improvements located in the City of Beaufort, Beaufort County, South Carolina, being shown and depicted as Lot 112. Plowmans Point, on that plat entitled, "Subdivision Plat Main Island Phase III Islands Of Beaufort", prepared for Beaufort Properties, L.L.C., prepared by Gasque & Associates, Inc., by David E. Gasque. R.L.S dated January 14, 2002 and recorded in Plat Book 87 at Page 128 with the Register of Deeds Office for Beaufort County.



Said property is subject to all Rights, Easements, Restrictions, Affirmative Obligations, Conditions, described in the Declaration of Master Covenants, Conditions And Restrictions for the Islands Of Beaufort Subdivision recorded in Book 1060 at Page 954, and Supplemental Declaration of Covenants And Restrictions Running with Phase III Of The Islands of Beaufort Subdivision recorded in Book 1255 at Page 859 with the Register of Deeds Office for Beaufort County.

This being the identical property conveyed to S. Russell Fielden and Deborah M. Fielden by deed of Michael L. Mapes and Jackie G. Clarkson dated May 11, 2006 and recorded May 19, 2006 in Deed Book 2376 at Page 1738.

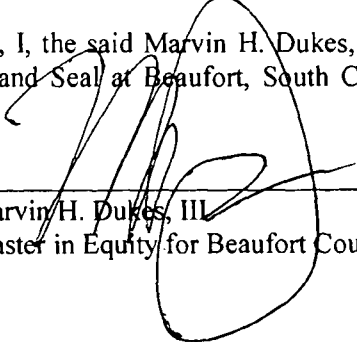
TMS# R120-032-000-0372-0000

TOGETHER with all and singular the rights, members, hereditaments and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession, property, benefit, claim and demand whatsoever, both at law and in equity, of the said S. Russell Fielden and Deborah M. Fielden and of all the parties to the said suit and of all other persons rightfully claiming or to claim the same, or any part thereof, by, from or under them, or either of them.

Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

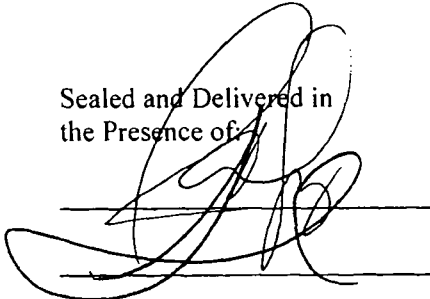
TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, I, the said Marvin H. Dukes, III under and by virtue of the said Decree, have hereunto set my Hand and Seal at Beaufort, South Carolina this 20 day of June, 2013



Marvin H. Dukes, III
Master in Equity for Beaufort County

Sealed and Delivered in
the Presence of



STATE OF SOUTH CAROLINA

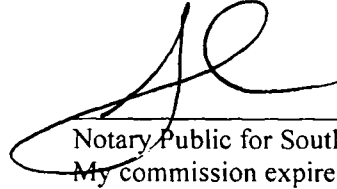
COUNTY OF BEAUFORT

ACKNOWLEDGMENT

S.C. Code §30-5-30

I, Jared Braune, a Notary Public for the State of South Carolina, do hereby certify that Marvin H. Dukes, III, Master in Equity for Beaufort County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS our hands and seals on this 20 day of June, 2013.


Notary Public for South Carolina
My commission expires: March 6, 2017

Index by: Marvin H. Dukes, III, Master in Equity for Beaufort County

Titleholders(s) at filing of Lis Pendens: S. Russell Fielden and Deborah M. Fielden

Prepared by:

Rogers Townsend & Thomas, PC (jms/011227-00448)
P.O. Box 100200
Columbia, SC 29202-3200

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF LEXINGTON

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Deed to property located at 241 De La Gaye Point, Beaufort, SC 29902, TMS# R120-032-000-0372-0000, was executed by Marvin H. Dukes, III, Master in Equity, to HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Series MLCC 2007-2 on

June 20, 2013.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. code Ann. Section 12-24-10 et. seq. because the deed is:

#13. Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Elie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
William S. Koehler (SC Bar #74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)
Mary Powers (SC Bar #16534)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)
John F. McLeod, IV (SC Bar # 100693)
J. Pamela Price (SC Bar # 014336)

220 Executive Center Drive
Columbia, SC 29210

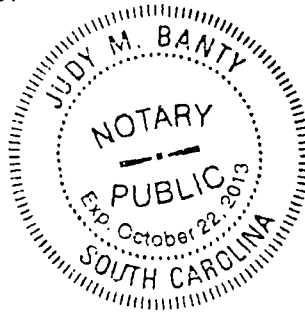
Post Office Box 100200 (29202)
(803) 744-4444

Sworn to before me this 2 day of July, 2013.

(Signature)

(Printed Name)
Notary Public for South Carolina
My Commission Expires: _____

(011227-00448)



TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever, as Joint Tenants with the rights of survivorship, as defined in §27-7-40 SC Code of Laws (1976), and not as tenants in common.

And the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs and Assigns against itself and its successors and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, to all Grantor's right, title and interest thereto during its period of ownership of this property which was obtained as a result of that certain mortgage foreclosure action entitled "HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 vs. S. Russell Fielden and Deborah M. Fielden, et al."

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

File No: 020614 - 00002
7100213235

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal.

Date: March 3 2014

Signed, Sealed and Delivered
In the Presence of:

HSBC BANK USA, NATIONAL
ASSOCIATION AS TRUSTEE FOR
MERRILL LYNCH MORTGAGE
INVESTORS TRUST, SERIES MLCC
2007-2 BY: PHH Mortgage Corporation,
Attorney in Fact

[Signature]
Witness 1

[Signature]
Witness 2

By: [Signature]
Its: John J. O'Connor
V.P.

Property: 241 Dela Gaye Pt, Beaufort, SC 29902-5887

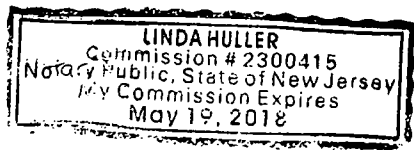
STATE OF NJ)
COUNTY OF Burl)

ACKNOWLEDGMENT
S.C. §30-5-30
(EFFECTIVE JANUARY 1, 1995)

I, a Notary Public for the State of New Jersey do hereby certify that John J. O'Connor, the duly authorized officer of PHH Mortgage Corporation, Attorney in Fact for HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Series MLCC 2007-2 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 3 day of March, 2014

[Signature]
Notary Public for the State of _____



My Commission Expires: _____

File No: 020614 - 00002
7100213235

EXHIBIT "A"

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND WITH IMPROVEMENTS LOCATED IN THE CITY OF BEAUFORT, BEAUFORT COUNTY, SOUTH CAROLINA, BEING SHOWN AND DEPICTED AS LOT 112. PLOWMANS POINT, ON THAT PLAT ENTITLED, "SUBDIVISION PLAT MAIN ISLAND PHASE III ISLANDS OF BEAUFORT", PREPARED FOR BEAUFORT PROPERTIES, L.L.C., PREPARED BY GASQUE & ASSOCIATES, INC., BY DAVID E. GASQUE. R.L.S DATED JANUARY 24, 2002 AND RECORDED IN PLAT BOOK 87 AT PAGE 128 WITH THE REGISTER OF DEEDS OFFICE FOR BEAUFORT COUNTY. REFERENCE IS MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION THEREOF.

File No: 020614 - 00002
7100213235

STATE OF ~~SOUTH CAROLINA~~ NT)
COUNTY OF ~~BEAUFORT~~ Burl)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

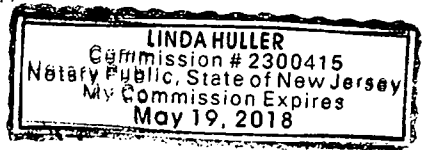
1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Beaufort County, bearing tax map number R120-032-000-0372-0000 was transferred by HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Series MLCC 2007-2 to Richard L. Bayer and Patricia A. Bayer by deed dated March 3, 2014.
3. Check one of the following: The deed is
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) exempt from the deed recording fee because pursuant to exemption number ____ of the South Carolina Code Section 12-24-40.
(If exempt, please skip items 4-7, and go to item 8 of this affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$519,000.00.
 - (b) The fee is computed on the fair market value of the realty which is _____.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes or No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$0.00
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$519,000.00
 - (b) Place the amount listed in item 5 above here: \$0.00
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$519,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$1,920.30.

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
Responsible Person Connected with the Transaction
Angeh Hawk
Print or Type Name Here

SWORN to before me this March 3, 2014
[Signature]
Notary Public for _____
My Commission Expires: _____



In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2013-001412

HSBC Bank USA, National Association, as
Trustee for MLCC 2007-2Respondent,

vs.

S. Russell Fielden; Deborah M. Fielden; and Coastal States
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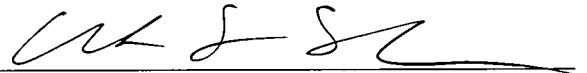
Of whom

S. Russell Fielden and Deborah M. Fielden, are..... Appellants.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S MOTION TO DISMISS APPEAL AND MEMORANDUM OF LAW** on Appellants S. Russell Fielden and Deborah M. Fielden and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on March 26, 2014, at the addresses shown on the attachment listing Other Counsel of Record and Parties.

March 26, 2014



Charles S. Gwynne Jr. (SC Bar # 73844)
Erica G. Lybrand (SC Bar # 79052)
Robert P. Davis (SC Bar # 74030)
Samuel C. Waters (SC Bar # 5958)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109
(29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200

(803)771-7900

Attorney for the Respondent

Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Counsel of Record and Parties:

S. Russell Fielden
120 Sea Island Parkway
Beaufort, SC 29907
Pro Se Appellant

Deborah M. Fielden
120 Sea Island Parkway
Beaufort, SC 29907
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Mark S. Simpson, Esquire
Samuel L. Kirkland, Esquire
Jones, Simpson & Newton, P.A.
18 Pope Avenue
Hilton Head Island, SC 29928
Attorneys for Coastal States Bank

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W RTT-LAW.COM

CHARLES S. GWYNNE JR.
SHAREHOLDER
CHARLIE.GWYNNE@RTT-LAW.COM
P 803.744.1933
F 803.343.7017

LICENSED IN SOUTH CAROLINA



March 26, 2014

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

MAR 28 2014

SC Court of Appeals

RE: HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 v. S. Russell Fielden; Deborah M. Fielden; CoastalStates Bank AND Coastal State Bank v. S. Russell Fielden and Deborah M. Fielden
Appellate Case # 2013-001412
Civil Action# 2010-CP-07-2927
Our File # 511227.448

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Respondent's Motion to Dismiss Appeal and Memorandum of Law, along with a Proof of Service. Please return a filed copy of the document to me in the enclosed self-addressed, postage pre-paid envelope provided for your convenience. Also included is my firm's check for \$25 representing the filing fee.

By copy of this letter, I am serving a copy of the Respondent's Motion to Dismiss Appeal and Memorandum of Law and Proof of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. Gwynne", with a long horizontal flourish extending to the right.

Charles S. Gwynne Jr.

/dm
Enclosures as stated

cc:

S. Russell Fielden
120 Sea Island Parkway
Beaufort, SC 29907
Pro Se Appellant

Deborah M. Fielden
120 Sea Island Parkway
Beaufort, SC 29907
Pro Se Appellant

Mark S. Simpson, Esquire
Samuel L. Kirkland, Esquire
Jones, Simpson & Newton, P.A.
18 Pope Avenue
Hilton Head Island, SC 29928
Attorneys for Coastal States Bank

