

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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**S.C. Supreme Court**

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On Certiorari to the Court of Appeals of South Carolina  
Opinion No. 5027 (S.C. Ct. App. filed August 22, 2012)

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Regions Bank..... Petitioner,

v.

Richard C. Strawn, Robert K. Borchers, individually and as  
Personal Representative of the Estate of Marie Borchers and  
Nancy Davidson Borchers..... Respondents.

Appellate Case No.: 2012-213178

Lower Court Case No.: 2006-CP-04-00770

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**REPLY BRIEF OF PETITIONER**

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## ARGUMENTS IN REPLY

A. Request for mortgage satisfaction by attorney for remote purchaser of mortgaged property does not satisfy requirements of either the mortgage or of §29-3-50 of the South Carolina Code (2007).

The recorded mortgage expressly states on its face that it "... shall remain an open mortgage of record to secure future advances in accordance with §29-3-50; ... however, upon request of grantor, lender will cause this mortgage to be released and cancelled of record...." Section 29-3-50, South Carolina Code (2007), supports the right of the holder of the mortgage to require satisfaction by the grantor of the mortgage. *Central Production Credit Ass'n v. Page*, 268 SC 1, 231 S.E.2d (S.C., 1977). The Respondents side-steps the overwhelming authority of the controlling statutory and case law authority by arguing that Respondents' attorney had the authority under §29-3-310 and 320 to request satisfaction of the mortgage. It is undisputed the grantor, Richard C. Strawn, never made a request on the Petitioner to cancel or satisfy the mortgage. As pointed out in the dissent to the opinion of the Court of Appeals, "[B]ecause no request to cancel was made, §29-3-310 did not require cancellation of the mortgage and the §29-3-320 penalty does not apply."

Because the grantor, Richard C. Strawn, never made a request to cancel or release the mortgage, the Petitioner was never required to cancel the mortgage and since the Petitioner was never required to cancel the mortgage, the penalty provisions of §29-3-320 do not apply.

B. No question of the violation of §29-3-310 and 320 of the South Carolina Code (2007) was addressed by the Court prior to the Order of Honorable R. Lawton McIntosh, Judge of the Circuit Court, dated May 24<sup>th</sup>, 2010.

Nothing in the record supports any contention that an issue relating to the penalty provided for in §29-3-320 was addressed by any Court prior to the Order of Honorable R. Lawton McIntosh, Judge of the Circuit Court, dated May 24<sup>th</sup>, 2010. Therefore, no issue of estoppel was addressed by the Court of Appeals and no issue of estoppel exists before this Court.

C. The provisions of §29-3-320 for assessing a penalty must be strictly construed.

Sections 29-3-310 and 320 are penal statutes. Penal statutes must be strictly construed. *Bostic v. Am. Home Mortg. Servicing, Inc.*, 375 S.C. 143, 149, 650 S.E.2d 479, 482 (Ct. App., 2007).


The South Carolina Court of Appeals in *Rorrer v. P. J. Club, Inc.*, 347 S.C. 560, 567, 556 S.E.2d 726, 730 (Ct. App., 2001) expounded: The rule that penal statutes, as contradistinguished from remedial statutes, must be construed strictly, is but a means of arriving at the intention. When a law imposes a punishment which acts upon the offender alone, and not as a reparation of the party injured, and when it is entirely within the discretion of the lawgiver, it will not be presumed that he intended it should be extended further than expressed; and humanity would require that it should be so limited in the construction as to be certain not to exceed the intention.

Section 29-3-320 clearly shows its penalty provision was intended to apply only to a "closed-end" mortgage where payment has been made and the mortgage lien has expired with nothing left to do but satisfy and cancel the mortgage. The mortgage in this case never expired and was terminated only by a ruling made in equity years after payment was made by the closing attorney under uncertain and irregular circumstances causing and creating the problem leading to this litigation.

CONCLUSION

Under the circumstances, the Trial Court erred by assessing a penalty against the Petitioner pursuant to the provisions of §29-3-310 and 320 and the judgment of the Trial Court should be reversed and entered for the Petitioner.

Respectfully submitted,

  
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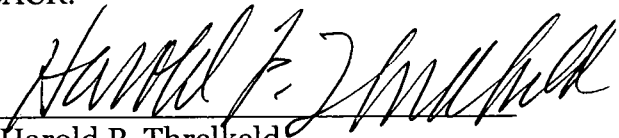
Appellate Case No.: 2012-213178  
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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this final Reply Brief of Appellant complies  
with the requirements of Rule 211(b), SCACR.



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**PROOF OF SERVICE**

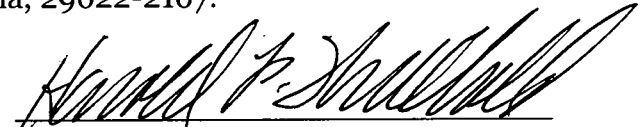
I certify that I have served a copy of the Reply Brief of Petitioner on the Respondents, Robert K. Borchers, individually and as Personal Representative of Estate of Marie Borchers and Nancy Davidson Borchers, by depositing a copy of it in the United States Mail, postage prepaid, on July 7<sup>th</sup>, 2014 addressed to their attorney of record, Samantha Nelson Murphy, Esquire, Epps, Nelson & Epps, at P. O. Box 2167, Anderson, South Carolina, 29622-2167.

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