

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM EDGEFIELD COUNTY  
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

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Case No. 2014-001742

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Bernard Loyer, Jr. and Sherry Loyer, Respondents.

v.

S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Robert J. Berning; Jeanne M. Clavel; Greg Connell; Gerald Crawford; Bruce C. Douglas; Jonathan D. Dunn; Les Galazka; Michaël V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Laura Linn; Roger McCoig; Charles Wilmont Miller; Michael O'Brien; Carolyn M. Rischbieter; William Satcher and Belinda Smith-Sullivan, Defendants,

OF WHOM S17 Owners Association, Inc.; John L. Avent; Frances Avent; Sylvia S. Berger; Greg Connell; Jonathan D. Dunn; Michael V. Goransky; Frank L. Gougher; David E. Harris; Cathryn A. Knight; John H. Lacher; Kyle R. Larson; Michael O'Brien; Carolyn M. Rischbieter; and Belinda Smith-Sullivan, are Appellants.

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INITIAL BRIEF OF APPELLANTS

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SEP 29 2014

**SC Court of Appeals**

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STATEMENT OF THE ISSUES ON APPEAL

1. DID THE COURTS HEARING THIS CASE HAVE JURISDICTION OVER THE PARTIES?
  
2. DID THE SPECIAL REFEREE IMPROPERLY IGNORE THE EQUITY ASPECTS OF THIS CASE?
  
3. DID THE SPECIAL REFEREE IMPROPERLY BAR 21 CO-LENDERS FROM A SHARE OF THE FORECLOSURE SALE PROCEEDS?
  
4. DID THE SPECIAL REFEREE ERR IN BARRING 21 CO-LENDERS FROM RECOVER UNDER THE MORTGAGE?

## STATEMENT OF THE CASE

The runway was the only asset of the Corporate Defendant, and the corporation had the responsibility of operating and maintaining the runway. The runway is a public facility for airplane traffic, and it bears the FAA identification "S17", hence the derivation of the corporate name, S17 Owners Association, Inc..

The S17 Runway was constructed in the mid-1970's, and by the year 2002, it became obvious that major repairs/upgrades were required by the asphalt runway. The S17 Corporation first sold stock to raise funds for continual operation of the runway. Due to a serious income deficiency, the stock sale goal was not met and the decision was made by the S17 Corporation to borrow \$300,000.00 from the runway community using a promissory note/mortgage process.

24 Notes were issued to co-lenders by the S17 Corporation, all were multiples of \$5,000.00 and ranged in value from \$5,000.00 to \$40,000.00. The Notes bore an interest rate of 9.75%. A single mortgage was executed by the S17 Owners Association, Inc. and recorded May 2, 2006 in Aiken and Edgefield Counties.

The S17 Owners Association, Inc. was unable to pay any of the required semi-annual installments to co-lenders, starting with non-payment of the scheduled October 15, 2008 installment.

The "Summons and Complaint" for this action was filed on November 10, 2009. For a considerable time, more than a year, there was an effort by the Plaintiffs to complete service upon the large number of defendants. The service process was complicated by the uncertainty of the defendants' representation, whether by counsel or by self representation. In addition, the Corporate Defendant, S17 Owners Association,

Inc., was deeply involved with restructuring and associated actions, in an unsuccessful attempt to improve the corporation's ability to collect funds from the community of lot owners surrounding and benefiting from the 1 mile long aviation runway.

The two Respondents hold Promissory Notes totaling \$50,000.00. Charles Wilmont Miller, with his wife, holds a Promissory Note of \$15,000.00, and is a named defendant in the case. Mr. Miller presented his Note for payment under the Foreclosure Sale discussed below.

During the five year period that this case has been before the Court, there have been numerous hearings, motions, and transfers of representation. Actions before this Court include the following:

1. Motion to Dismiss by Atty. Marsha Banks, filed 12/11/2009. This Motion was based upon improper venue and non-joining of co-lenders as 3<sup>rd</sup> party Plaintiffs.
2. Crossclaim by Defendant, Robert Berning, filed 3/03/2010, asking that the Co-Lenders have a judgment of foreclosure.
3. Answer and Crossclaim by Defendant, Charles Wilmont Miller, filed 12/16/2009, which states "each individual Lender's lien priority rights and liquidation rights are *pari passu* to the other Lenders" and "Plaintiffs lack standing to foreclose on the Mortgage described in the Complaint without the express consent of all Lenders."
4. Alternatively, a crossclaim against Defendant, S17 Owners Association, Inc. was made.
5. Order of Continuance filed 10/05/2010 holding all matters in abeyance for 6 months to allow for "Service of Process and Discovery".

6. Order filed 12/09/2013 denying Motion to Dismiss based upon:
  - a) Venue in Edgefield County is proper; and,
  - b) *Pioneer Savings* (275 S.C.469) does not apply in the present case; and,
  - c) SRCP Rule 19 does not apply because “all necessary co-lenders are made a party to this action; and,
  - d) SCRPC Rule 1.7, does not prevent the Plaintiffs’ attorney from representation of the Plaintiffs because “concurrent representation of multiple parties could bring up multiple issues: and a considerable list of other problems.
  - e) The 12/09/2013 Order also referred this action to a special referee to hear Rule 60 & 61 Motions and other matters such as omitted lien holders.
7. Special Referee’s Order and Judgment dated 6/11/2014 authorizing a foreclosure sale of the Runway, disposition of sale receipts, foreclosure of all Appellants’ rights and elimination of any relief to be granted to the Appellants.
8. Notice of Appeal filed 7/07/2014.
9. Motion to Postpone Sale Fund Distribution filed 7/08/2014, which was rejected by the Special Referee.

Based upon the above summary, the information required by SCACR Rule 208(b)(1)(C) is as follows:

1. Nature of Action: The Respondents hold 2 of the 24 notes listed on a single mortgage, which binds the Borrower unto the 24 lenders for the payment of

\$300,000.00. Under a foreclosure procedure, the 2 Respondents, joined by a single Defendant, have received a portion of the Foreclosure Sale proceeds to the exclusion of the other 21 lenders. The Foreclosure Sale was held on July 8, 2014. The winning bid amount was \$88,000.00, with 21 of the 24 co-lenders excluded from a share of the Sale Proceeds.

2. Response: The Appellants are claiming the distribution of the Foreclosure Sale proceeds is neither fair nor equitable nor legal. The Foreclosure Judgment is claimed to be void from the start of the action because of a claimed lack of service upon all Defendants.
3. Action of the Special Referee: Based upon information, claimed to be false, the Special Referee proceeded with the Foreclosure Sale. The Special Referee also extinguished all continued lien-holder rights of 21 co-lenders, a position claimed to be lacking legal support.
4. Date of the Hearing: May 19, 2014
5. Mode of the Hearing: The Hearing was conducted by a Special Referee, without a jury.
6. Amount involved on Appeal: The 21 co-lenders barred from any share of the Foreclosure Sale proceeds, or from any future liens against the successful bidder at the Foreclosure Sale, hold notes in the total amount of \$235,000.00. Unpaid principal and interest owed to the group of 21 excluded co-lenders exceeds their share of the original mortgage amount, of (\$235,000.00). Voiding the Foreclosure Sale involves return of the \$88,000.00 winning bid.
7. Date and Nature of the Order of Judgment: The Order is dated June 5, 2014. The Order authorizes the Foreclosure Sale of the S17 Runway and closes any

right of 21 of the 24 co-lenders under the applicable Mortgage to a share of the Foreclosure Sale Proceeds or to the possibility of future mortgagee actions against the successful bidder of the Foreclosure Sale.

The dates and descriptions of other orders, judgments and proceedings that may have affected this Appeal, or could explain the issues of this Appeal, are presented above. The Summons and Complaint for this action was filed on November 10, 2009.

### ARGUMENT

#### 1. DID THE COURTS HEARING THIS CASE HAVE JURISDICTION OVER THE PARTIES?

The first paragraph of the Court's 12/09/2013 Order states, "all parties agreed" concerning reference to a Special Referee. The 12/09/2013 Order refers to "the Defendants" in three other statements. In the third to last line of page 3 of the 12/09/2013 Order, the Court states: "As a practical matter, all necessary co-lenders are made a party to this Action".

Although the "Summons and Complaint" for this action was filed on November 10, 2009, on October 5, 2010 an Order of Continuance was filed allowing more time for "Service of Process". SCRCP 3.(a)(2) requires actual service not more than 120 days after filing. The Court allowed the civil action to continue beyond the 120 day allowance for service. However, the case record, even at this date, almost 5 years after the case filing, does not contain the necessary proof of service upon all defendants. In particular, the registered agent of the Corporate Defendant, John L. Avent, had not been served.

During the initial stages of the 5/19/2014 Foreclosure Hearing, the Court performed an evaluation of the representation of the defendants. The Court asked the Plaintiffs' Counsel if Defense Counsel, Marsha Banks, represented all but four defendants. (TP6, L24-P7, L13) The Court asked the individuals in the Court Room if any were not represented by Ms. Banks, and hearing no response proceeded to hear the case. (TP7, L22-L25) The Court had no way to know if every named defendant was within the sound of the voice of the Special Referee, had not sworn in the entire audience, and had not requested any evidence of any attorneys present as to their possession of retainer agreements from the large number of defendants.

Later, Ms. Banks testified that she represented "quite a few defendants in this case". (TP21, L11-L14) There is no testimony from Ms. Banks claiming that she represents all of the defendants, except those represented by Attorneys Medlock and Simmons. Attorney Medlock, representing the Respondents, was responsible for service upon the defendants. However, it seems that rather than referring to Court records as evidence of service, he chose to pass the service responsibility to Atty. Banks, a responsibility she denied.

Paragraph #5 of the Respondents' Complaint uses S.C. Code §15-35-840 to prove the 24 named defendants have designated an attorney as their agent for service. A claim denied in the defendants' Answer. S.C. Code §15-35-840 reads as follows: "Every judgment creditor who enters a judgment in any court of record in this State and does not at the same time enter as part thereof the appointment of an agent upon whom process may be served in any action or proceeding affecting any real estate upon which the judgment may at any time constitute a lien shall be deemed thereby to have constituted the attorney of record making the entry of such judgment as the agent of such judgment

creditor and of his successor in interest for the purpose of accepting service of or being served with process in any such action.” In the unlikely event that the Plaintiffs’ attorney maintained that position as a validation of jurisdiction, it must be pointed out that there has been no filing of a judgment in this action, and the cited code has no application to the Plaintiffs’ search for an agent for service upon the 25 named defendants.

Because of the lack of service on the Corporate Defendant and other defendants, in the category of “lenders/note holders”, the Order filed 12/09/2014 was void due to the Court’s lack of jurisdiction. The Respondents’ decision to proceed to foreclosure was not supported by the affidavits on file in Court Records.

Because of the lack of jurisdiction over all the parties of this action, the Foreclosure Sale held on July 08, 2014 must be held to be void and the \$88,000.00 winning bid proceeds must be returned to the winning bidder.

Finding #4 of the Special Referee’s Order states that all defendants and/or attorneys of record making either an appearance or filing a responsive pleading were notified of the Hearing before the Special Referee. The Hearing Notice did not reach the defendants that were not served and that were not represented by Attorneys Banks, Simmons or Medlock.

## 2. DID THE SPECIAL REFEREE IMPROPERLY IGNORE THE EQUITY ASPECTS OF THIS CASE?

The 1988 Case, *Pee Dee State Bank v. Prosser*, 295 S.C.229 (Ct. App. 1989), the Court stated: “An action to foreclose a mortgage is an action in equity.” The 2011 Case, *Matrix Financial Services Corp. v. Frazer*, 394 S.C. 134 (S.C. 2011), in a holding

involving equitable subrogation, explained the need to accomplish substantial justice and discussed the maxim that no one should be enriched by another's loss.

In the current case, all the 24 individual co-lenders have the same position in a foreclosure suit against the Corporate Defendant, S17 Owners. The two Respondents, Bernard and Sherry Loyer, each hold a note that possesses the same position as all the other 22 notes, that is, all notes are first position liens. The two Loyer Respondents added the other 22 note holders as defendants only for the purpose of increasing the Loyer share at the pain of eliminating the share of the non-Corporate defendants. Clearly, the Loyer Respondents seek to be enriched by the loss of the other co-lender's/note holders. The fairness principle of this equity case requires all co-lenders to be treated equally at the time of distribution of the Foreclosure Sale bid amount.

In Finding #14 of the Special Referee's Order, the Court gives high evidentiary significance to the absence of "testimony from any other Defendants who were named in this action to compel them to come forward to prove their Notes and/or debt." There is no equitable principle that required the Plaintiffs to name all of their co-lenders to be "defendants". The single mortgage issued to identify the security for all the notes, lists 24 notes having an aggregate borrowed amount of \$300,000.00. Semi-annual payments made under the notes to each note holder were exactly proportional to the note value, for example, the payment to the holder of a \$10,000.00 Note was exactly twice the amount paid to a holder of a \$5,000.00 Note. There was no uncertainty over the amount owed to each co-lender.

Fairness to all note holders requires the proceeds from the Foreclosure Sale to be paid to all co-lenders in an amount proportional to the amount of the applicable note. The Plaintiffs' addition of all co-lenders to the foreclosure action as "defendants" serves no

equitable purpose of fairness. The purpose of the addition of “defendants”, was to increase the share of the Plaintiffs in the Foreclosure Sale Proceeds by decreasing the share of other co-lenders.

Another equitable doctrine that applies to the current action is “Unjust Enrichment”. Similar to the situation in *Barrett v. Miller*, 283 S.C. 262 (CT. App. 1984), in the current case the taking of a larger share of the foreclosure sale proceeds, by decreasing the share of all other co-lenders, is an unjust enrichment wherein the Respondents have been unjustly enriched at the expense of other co-lenders.

It is entirely proper that the Special Referee’s decision on sale proceeds distribution be analyzed by the Appellant Court via a complete review of the case as presented to the lower court. The Court of Appeals in 1988 held that an independent review is mandatory - not optional: “In an appeal of an equitable action tried before a Master authorized to enter final judgment, this court must review the entire record and make its own findings of fact in accordance with the preponderance of the evidence.” *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470 (Ct. App. 1988).

The Mortgage that is the subject of this action, (Plaintiffs’ Exhibit #4 from the June, 2014 Hearing), contains the following provisions relevant to this case:

- a) Uniform Covenant #4 allows any lender to initiate an action against the Corporate Defendant to preserve the runway, e.g. repair the runway.
- b) Non-Uniform Covenant #9, in the event of Corporate Defendants’ failure to make a semi-annual payment, allows any of the 26 co-lenders (individuals) to initiate and complete a Foreclosure Sale. The third provision of this Covenant #9 sale proceeds distribution applies after satisfaction of sale expenses and a number of other expenses incurred since the Mortgage Date of 5/02/2006.

This 3<sup>rd</sup> provision is the “payment in full of the principal indebtedness and interest thereon”. “Payment in full of the principal” means the entire original \$300,000.00 principal – not the partial \$50,000.00 principal of the two Respondents.

The terms of the mortgage make the Respondents’ addition of 24 defendants useless and a hindrance to the efficient operation of the Court.

The second major error of the Special Referee’s Finding #17 is the complete oversight of the second Provision of the above described Covenant #9, Sale Proceeds Distribution. This second provision requires the payment of “insurance, taxes and other encumbrances”. This calculation was omitted by the Special Referee.

The trial court in an equity action may determine the reasonableness of attorney fees. *Book of Enoree v. Yarborough*, 120 S.C. 385 (1922) In light of the shortcomings of the service procedure of this case, as set forth under Issue #1 above, it is questionable if a \$5,000.00 attorney fee is justified for the Respondents’ attorney. The deficiencies in the basic proper service requirement, suggests review of the fee award is justified.

Second, the \$400.00 Bankruptcy fee relates to a relief sought by the corporate Defendant, which did not require the involvement of the Respondents’ attorney, and should not be allowed.

Last, is the \$2,000.00 attorney fee of Defendant Charles Wilmot Miller’s attorney. The Non-Uniform Covenant #9 of the mortgage of this case requires that the proceeds of the Foreclosure Sale are applied first, “to the expense of advertising, selling and conveying said property, including a reasonable attorney’s fee;” the attorney of Defendant Miller was not involved in the advertising/selling/conveying process. Instead he advised and assisted his client in a scheme to obtain a portion of the Sale Proceeds.

His efforts did not aid the sale procedure, instead his efforts were directed toward the distribution of proceeds to a single individual. The result of his efforts were realized after the Sale took place, and hence, his fees should be paid solely by his client. In view of the attempt to avoid the fairness principles of this equity case, it is difficult to identify any value added by Defendant Miller's counsel; additional support for this billing is needed.

Applying equitable principles of fairness, prevention of unjust distribution of funds, and the need to revisit the attorney fee award, this case should be remanded to the lower court for a recalculation of the proper distribution of the Foreclosure Sale Proceeds.

3. DID THE SPECIAL REFEREE IMPROPERLY BAR 21 CO-LENDERS FROM THEIR SHARE OF THE SALE PROCEEDS?

Finding #20 of the Special Referee's Order bars 22 named individuals, (comprising 21 Co-Lenders) from receiving any recovery under the mortgage of this Action. The bases for this bar are the lack of a crossclaim for foreclosure and not proving the existence of any debt. As explained above, the specific foreclosure provision of the mortgage only requires a single lender to file, however Sale Proceeds are applying against the entire principle amount. Also, as shown, the amount of debt owed to each lender is a straight forward calculation; there is no need for each defendant to individually prove the existence of debt.

Also, a crossclaim by each of the 21 Co-Lenders has no meaning for the following reasons:

- a) Complaint Paragraph #9 states all of the sums secured by the Mortgage are accelerated; and,

- b) Complaint Paragraph #11 states the conditions of the Mortgage have been broken and the entire balance is due and payable; and,
- c) Complaint Paragraph #12 does not apply; there are no known subordinate liens or claims. The lien of each of the 21 defendants is equal in position to that of the Respondents; and,
- d) Complaint Paragraph #17 admits the 21 lenders, (22 individuals), are “under the Mortgage”. There is no equitable reason for the 21 lenders to assert their claim, because their claim is clearly stated on the face of the Mortgage. The quantification of the amount owed to each lender was established by the Respondents’ claim.
- e) Charles Miller was accepted by the Special Referee to be eligible for satisfaction of his Note; yet, he did not enter a crossclaim.
- f) During the direct examination of Mr. Miller, his \$15,000.00 Note was entered into evidence with total principal and interest owed of \$23,346.01. (TP17, L12-P20, L12) Plaintiff Sherry Loyer presented her \$10,000.00 Note with total principal and interest owed of \$14,846.88. (TP14, L3-P15, L10)
- g)  $\$22,346.01 \div 3 = \$7,448.67$   
 $\$14,846.88 \div 2 = \$7,423.44$   
 This gives an average of \$7,436.00 debt for each \$5,000.00 increment of Note value. There is no practical need for each individual Co-Lender to complete the same debt calculation.
- h) In his closing statement, the Counsel for Mr. Miller stated he only had to prove two things, i.e. a debt owed and the existence of a Mortgage securing that debt. (TP34, L20-P35, L6)

- i) Mr. Miller did not counterclaim, he only offered evidence of a debt and a Mortgage. Yet, the Special Referee held that Mr. Miller “placed the Note and Mortgage in the hands of “Plaintiffs’ Attorney for collection. (Finding #14 of the Order)
- j) The transcript does not contain evidence of Mr. Miller’s debt being placed into a relationship with other claims.

As described above, the Special Referee did not require a crossclaim from Mr. Miller. The only requirement for payment to Mr. Miller was proof of a debt and an associated Mortgage. This is the same evidence before the Court and which, under equity, should have been applied to all other 21 Co-Lenders.

#### 4. DID THE SPECIAL REFEREE ERR IN BARRING 21 CO-LENDERS FROM RECOVER UNDER THE MORTGAGE?

In its 12/04/2013 Order, the Court referred this action to the Special Referee with authority to enter a final judgment and to sell the subject property at public sale. The Special Referee was also ordered to hear on the merits matters such as “marketability of title and/or matters relating to omitted lienholders or claimants”.

In her Finding #19, the Special Referee considers the mortgage default provision that any Lender may declare all sums secured by the mortgage to be due and payable. However, the Respondents did not declare all sums secured by the mortgage to be due. The first prayer of the Respondents’ Complaint is for the Court to determine the amount due upon the Notes held by the Respondents. In particular, the Respondents did not include the notes totaling \$250,000.00 held by the other 22 Lenders whose notes were secured by the single mortgage of this action.

The testimony of Respondent, Bernard Loyer, Jr., only addresses his note and claim of \$59,714.70 and he asks the Court to foreclose on the mortgage. (TP8, L23-P13, L5) Similarly, the testimony of Plaintiff, Sherry Loyer, only addresses her note and a claim of \$15,078.66. (TP14, L3-P15, L22) Lastly, the testimony of Defendant, Charles Wilmot Miller addressed his note and a claim for \$22,346.01 secured by the mortgage (TP17, L13-P20, L7)

The only testimony given at the hearing leading to the 12/04/2013 Order was directed to the claims of 3 mortgagees. No claims were presented to the Court by the remaining 21 mortgagees.

In its discussion of *Pioneer Savings & Loan Association of Whiteville v. Horry Coastal Enterprises, Inc.*, 275 S.C. 469 (1980), the Courts' 12/04/2013 Order held that this action could not be dismissed because all co-lenders/co-mortgagees have been named. The Court does not rule on the status of the mortgage if the co-lenders/co-mortgagees decline to come forward to assist their interest in the property.

In the case, *Bartles v. Livingston*, 282 S.C. 448 (S.C. App. 1984), the Court stated; "we hold that a mortgagee whose debt remains unsatisfied after sale of the property is entitled to a deficiency judgment, unless the right to a deficiency has been waived." In the current action, the Respondents waived the right to a deficiency. However, the Respondents could only waive for themselves. The remaining 21 co-mortgagees did not waive and their standing as first position lien holders is equal to that of the Respondents.

As discussed in Issue #1 above, the Judgment and resulting Foreclosure Sale are void because of a lack of service upon all parties. However, the following Issue #4 Argument applies, notwithstanding any holding on the lack of service issue.

S.C. Code §29-3-630 requires that sale under a mortgage, with a mortgagee's power to sell, must have the debt, for which the security given, be established by a judgment of some court of competent jurisdiction. Setting aside the lack of jurisdiction issue, the criteria of S.C. Code §29-3-630 is satisfied in the current action. The Foreclosure Sale is valid and title may pass.

However, in the current case, the entire debt of the mortgagor was not claimed. Only the Respondents' \$50,000.00 notes and Mr. Miller's \$15,000.00 note were claimed. The 21 remaining note holders under the mortgage were offered the opportunity to claim their debt to be due, but there was no requirement that they do so.

SCRCF Rule 19(a) provides the Court with the authority to join an action, if required for complete relief among parties and in particular Rule 19(a)(2)(i) requires joinder of a person needing to protect an interest relating to the subject of the action. To satisfy the Rule 19 requirements, the 22 Defendants had to be made a plaintiff, not a defendant. A plaintiff could present his/her note and the amount of the associated claim. A defendant would disclaim any responsibility for payment of the Plaintiffs' claims. Obviously, if the Plaintiffs had properly joined the 22 defendants as plaintiffs, they would have had to include the joined plaintiffs in the distribution of Foreclosure Sale Proceeds. The Special Referee did not require the joinder of 22 Plaintiffs.

Lacking the joinder of all required co-lenders/co-mortgagees, the 21 notes associated with \$250,000.00 of the \$300,000.00 mortgage amount remain and the mortgage is not satisfied by the Foreclosure Sale. Instead the successful bidder at the sale receives title to the S17 Runway collateral, but encumbered by the mortgage securing payment of the 21 outstanding notes.

## CONCLUSION

The Respondents were unable to complete service upon all the defendants. Attorney Marsha Banks obtained a signed retainer agreement from some defendants, but not all. Therefore, the Court lacked jurisdiction over all parties. The involved Courts relied upon the statements of Counsel for parties, however said statements do not over rule the requirements for written evidence of service. Therefore the final Judgment and Foreclosure Sale should be held to be void, the sale funds should be returned to the successful bidder, and leave to initiate a new action should granted.

This Foreclosure action is a proceeding in equity. If this action is not void for a lack of jurisdiction, then the exclusion of 21 co-lenders from the proceeds of the Foreclosure Sale is not fair. This action should be remanded to the lower court to re-allocate the sale proceeds, evaluate the proper payments for fees and expenses, and determine the effect of the Respondents' waiver of a right to a deficiency from the Foreclosure Sale.

If it is determined that the courts in this case did have jurisdiction, and that the lower Courts properly ruled upon the equity aspects of this case, then, the case should be remanded to re-evaluate the distribution of the Foreclosure Sale Proceeds.

The Respondents were required by the terms of the Mortgage to pay the full amount of the Mortgage's principal indebtedness, not solely a part of the principal. The Appellants were improperly denied the right to a deficiency judgment. There was no legal requirement for Defendants to crossclaim.


It was not accurate for opposing counsel to claim that the amount owed to the Defendants that did not crossclaim was unknown. All co-lenders had a share in the total

Mortgage indebtedness proportionate to the Note values clearly set forth in the Mortgage, and all notes were treated equally.

In the event the Court is determined to have jurisdiction, and the equity principles are properly followed, and the 21 co-lenders were properly barred from a share of the Foreclosure Sale Proceeds, then, it is proper that the portion of the \$300,000.00 mortgage held by the 21 individual co-lenders should remain on record. The mortgage in this action secures the debt of 24 co-lenders. The security of 21 co-lenders under a single mortgage cannot be removed by a debt collection of a minority of co-lenders.

The Order of the Special Referee should be remanded for a determination of the allocation of foreclosure sale proceeds to all Mortgagees, the judgment amount each Defendant owns against the winning bidder at the foreclosure sale, and reconsideration of the allowed attorney fees.

Respectfully submitted,

  
Philip H. Woolhiser

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM EDGEFIELD COUNTY  
Court of Common Pleas

Kathy Ouzts Rushton, Special Referee

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Case No. 2014-001742

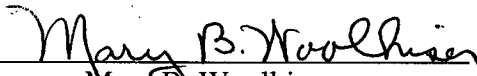
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**CERTIFICATE OF SERVICE**

---

I, Mary B. Woolhiser, Secretary for Attorney Philip H. Woolhiser, certify that I have caused Appellants' Initial Brief, Designation of Matter and this Certificate of Service, in the above-referenced matter to be served, via U.S. Mail on September 24, 2014, to applicable Counsel and parties as addressed below:

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September 24, 2014

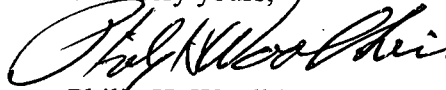
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Post Office Box 11629  
Columbia, South Carolina 29211-1629

Subject: Bernard and Sherry Loyer v. S17 Owners Association, Inc. et. al.  
Case No.: 2014-001742

Dear Ms. Kitchings,

A copy of the Initial Brief of the Appellants, the Designation of Matter and the original Proof of Service are enclosed, in compliance with Rule 208 (a)(1).

Sincerely yours,



Philip H. Woolhiser

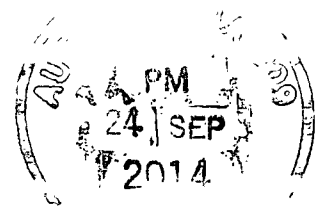
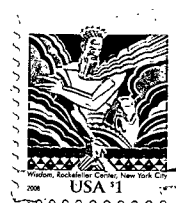
Enclosures  
PW/mw

cc: Michael S. Medlock, Esquire  
Paul Knapp Simons, Esquire  
Marsha M. Banks, Esquire  
S-17 Owners Association, Inc.  
Robert J. Berning

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SEP 29 2014

**SC Court of Appeals**



**PHILIP H. WOOLHISER**  
**ATTORNEY AT LAW**

112 Trafalgar St., S.W.  
 Aiken, South Carolina 29801

To:  
 The Honorable Jenny Abbott Kitchings  
 Clerk of the SC Court of Appeals  
 Post Office Box 11629  
 Columbia, South Carolina 29211-1629

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