THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No: 2010-CP-26-8505
Appellate Case Number: 2013-000107

Carolina First Bank n/k/a TD Bank, NA, ... Petitioner,

v.

BADD, LLC and William M. McKown, ... Respondents.

PETITION FOR REHEARING

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BADD, LLC (the "Debtor") and William M. McKown (the "Guarantor", jointly with Debtor the "Respondents"), by and through their undersigned counsel, do hereby move before the South Carolina Supreme Court, pursuant to Rule 221 of the South Carolina Appellate Court Rules (the "Rules") requesting that the Court rehear and reconsider its Ruling in the above-captioned matter as provided for in its opinion dated January 28, 2015. Respondents believe that the Court overlooked and misapprehended the following items:

1. The Supreme Court, in reliance upon a secondary source, misapprehends the genesis of S.C. Code Ann. § 29-3-660 and in-so-doing reads the statute in a way that renders it unconstitutional.

The Respondents begin with the basic premise that if there is a conflict between a South Carolina Statute and the South Carolina Constitution, the Constitution prevails, not the statute. "Every Act is presumed to be constitutional until the contrary is made plainly to appear, and [...] all doubts on the subject are to be resolved in favor of its validity." *Floyd v. Parker Water & Sewer Sub-Dist.*, 203 S.C. 276, 17 S.E.2d 223, 226 (1941). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 468, 636 S.E.2d 598, 606–07 (2006). Similarly, even the "[s]ubtle [...] construction of statutory words for the purpose of expanding a statute's operation is prohibited. *Walton v. Walton*, 282 S.C. 165, 318 S.E.2d 14 (1984). Here, Article 1, Section 14 of the South Carolina Constitution plainly states "[t]he right of trial by jury shall be preserved inviolate." This Supreme Court has found that part of the purpose, design, and policy of this right as follows;

> "The great right of trial by jury has existed from time immemorial in all those forms of actions at common law which were in use before the adoption of the Code, such as

> assumpsit, **debt**, covenant, trover, trespass vi et armis, to try titles, and case, etc., and no doubt such right exists in the actions provided by the Code as a substitute for these common-law actions [...]"

Frazee v. Bratton, 26 S.C. 348, 2 S.E. 125, 127 (1887)(emphasis added). Further, the Act of 1791 plainly states that "suits in equity shall not be sustained in any case where plain and adequate remedy can be had at common law." The Act of 1791. A suit for breach of contract, regardless of how brought, has the adequate remedy at common law of a monetary judgment by the court of common pleas. Thus, any action for a monetary judgment would have afforded the parties a right to a jury under the Act of 1791, which was effective at the time of the adoption of the Constitution in 1868. See *White v. Kendrick*, 3 S.C.L. 469, 472 (S.C. Const. App. 1805)(stating the summary jurisdiction of the court of common pleas provided either party the right to demand a trial by jury). A suit in equity cannot be sustained where it violates the right of a trial by jury.

The Supreme Court's decision, if not amended, holds that a statute passed in 1954 so as to expand who may be brought into a foreclosure action also had the effect of removing any right to a trial by jury for a guarantor on an obligation if brought within that foreclosure action. In this case, the Supreme Court unnecessarily relies upon a secondary source instead of the law of this State, and in so doing misapprehends the law of this state so as to render it unconstitutional.

A. FORECLOSURE LAW PRIOR TO 1791.

Prior to 1791, South Carolina, with its legal precedents in English law, initially adopted a title theory of mortgages. Under this theory, the borrower legally owns the property during the term of the mortgage. This theory of mortgage law necessarily entailed distinct delineation of the actions against the borrower's rights against the property (his right of redemption) and the actions against the borrower's personal obligation on the note. Under the initial law in South

Carolina, a mortgagor would bring a foreclosure action against the borrower so as to remove the borrower's right of redemption. This action was considered *in rem* as it necessarily effected and only effected the borrower's equitable rights in the real property. Such an action was brought before the Chancery Court, as the order of the Court only effected the equitable rights of the borrower. If the lender wished to have a personal judgment against the borrower, the lender was required to bring a separate action in the court of common law in an *in personam* action on the note. Similarly, any action against a guarantor was necessarily brought in the court of common pleas as it sought a personal judgment. The South Carolina Constitution of 1790 explicitly states in Article 9 Section 6 that "[t]he trial by jury [...] shall be forever inviolably preserved." Prior to the adoption of the constitution in 1790, any action on a debt entitled the defendant to a jury trial. Thus, an action against a guarantor necessarily entitled the guarantor to a trial by jury.

B. FORECLOSURE LAW UNDER THE ACT OF 1791.

In 1791, the South Carolina legislature adopted a radical change in foreclosure and mortgage law in South Carolina. The legislature adopted two laws pertinent to this matter, one relating to the Chancery Court and the other relating to the mortgage foreclosure process. For the Court's convenience, the two sections of the Act of 1791 are attached in their entirety hereto as Exhibits 1 and 2. The radical change in foreclosure and mortgage law in South Carolina had no effect on the remedies and procedure relating to suits against guarantors. The inclusion of guarantors in foreclosure proceedings is conspicuously absent in either of the two sections of the Act of 1791. Simply, the law prior to the adoption of the South Carolina Constitution of 1868 never eliminated the right to a jury trial on a contract cause of action established by the Constitution of 1790.

As correctly noted by the Supreme Court, in 1791 the South Carolina legislature enacted new legislation that changed the mortgage law in South Carolina from one of title theory to one of lien theory. The relevant language is as follows:

> "Whereas mortgages are generally meant merely as securities for debts, and no actual estate is intended to be conveyed by the mortgagor to the mortgagee; but the mortgaged estate is intended, and ought to be considered only as a pledge for the payment of the principal and interest due on the debt meant to be secured. And whereas, the present mode of foreclosing mortgages of real estate is tedious and expensive, and the right of the mortgagor to his equity of redemption is, in the present mode of exercising that rightly, attended with inconvenience: Now for the easier and speedier advancement of justice, in obtaining the payment of debts secured by mortgage, and for ascertaining when the equity of redemption of the mortgagor shall be barred:
> *Be it enacted by the honorable the Senate and House of Representatives, now met and sitting in general assembly, and by the authority of the same*, That **on judgment being obtained in the court of common pleas on any bond, note or debt, secured by mortgage of real estate,** it shall and may be lawful for the judges of the court of common pleas, in case of any judgment having been obtained subsequent to the property's being mortgaged, and prior to obtaining judgment in the action hereby allowed to be commenced, to order the sale of the mortgaged property for the satisfaction of the monies secured by said mortgagee, and to give a reasonable extension of the time when the sale is to take place, not exceeding the term of six months from the judgment; and also to give a reasonable credit on the sale of the mortgaged premises, not exceeding the term of twelve months from the sale; and mortgagor shall be forever barred and foreclosed by such sale from his equity of redemption in as complete a manner as if the same had been foreclosed in a court of chancery."

See Exhibit 2, The Act of 1791, pages 1-2 (Emphasis added). As the statutes wording makes clear, the change from a title theory to a lien theory of mortgages also required a judicial foreclosure in contrast with the then method of a transfer of title as a matter of course. The most pertinent and notable language for purposes of the law relating to this case is the requirement that said foreclosure is predicated on a judgment on the "note or debt" secured by the mortgage. The inclusion of guarantors in the foreclosure proceedings was conspicuously absent in the changes to the Act regarding foreclosures. In fact, there is absolutely no language or indication that a guarantor on a note or obligation is somehow included within the foreclosure process. On the contrary, a Court of Appeals decision in 1830 makes clear that actions for personal judgments

against guarantors were not only still brought through an action in the court of common law, but also carried a trial before the jury. See *Sollee & Warley v. Meugy*, 17 S.C.L. 620 (S.C.Ct. App. 1830).

Additional evidence that guarantors are not included in the change in foreclosure law and is nowhere contemplated in the Act can be found in the language of the Act regarding the powers and jurisdiction of the Court of Chancery. See Exhibit 1. Among other provisions regarding the Court of Chancery's powers, the Act explicitly provides that "suits in equity shall not be sustained in any case where plain and adequate remedy can be had at common law." Exhibit 1, The Act of 1791, page 6. A reading that the Act of 1791 provided a Court of Equity the power to grant money decrees would not only be contrary to the language of the Act but also to the Constitution of 1790, adopted prior to the Acts of 1791. See *White,* supra (holding any powers granted to courts outside of the court of common pleas resulting in the depriving of a party to the right to a trial by jury must be a violation of the constitution).

Such a limitation on the jurisdiction and power of the Court of Chancery under the Act, especially in regards to actions in a foreclosure, is evidence in the Court of Appeals decision in *Gray v. Toomer*, 39 S.C.L. 261, 262 (S.C. App. L. 1852), affirming the circuit court in holding that the Court of Chancery had no jurisdiction in awarding a personal judgment except to order the mortgage to be foreclosed. See also *Dunkley v. Van Buren*, 1818 WL 1908 (N.Y. Ch. 1818) (holding that after foreclosure sale, mortgagee may sue at law on his bond for the deficiency). In *Gray*, where the creditor brought a complaint seeking foreclosure, later referred to the Court of Chancery for a report, the Court of Appeals held that without a prayer of relief for personal judgment from the circuit court, such an award could not be had. The opinion of the Equity Court of Appeals, as cited in the decision by the Court of Appeals, echoed the ruling that when

the mortgagee seeks a deficiency judgment, he may apply for judgment from the Law Court after the foreclosure. *Id.* at 266. As of 1852, the date of the decision in *Gray*, a mortgagee was unable to have a judgment rendered by the Court of Equity as to a personal obligation, but instead had to seek a judgment on a personal obligation from the Circuit Court. While the report of the Chancery Court was for foreclosure and included a finding of deficiency, the Court of Appeals held that such a decree could be for foreclosure only and not a money decree. *Id.*

This decision and interpretation of the Act of 1791 was later affirmed and relied upon in *Anderson v. Pilgram*, 30 S.C. 499, 9 S.E. 587, 588 (1889). In the decision by the Supreme Court, the development of bringing actions against a mortgagor was thoroughly discussed. The Supreme Court, initially recognizing a slow development in the process, lays out the process by which a Mortgagee may seek to foreclose on a property and seek a deficiency judgment against the debtor. *Id.* While the common practice was to be able to bring separate causes of action before the Court of Common Pleas, the practice of bringing both remedies before the same Court became common practice. *Id.* at 588. This process can also be seen in the opinion of the Supreme Court in *Hall v. Young*, 29 S.C. 64 (1888). The process necessarily entailed the action first being brought to the circuit court. If the Court determined any relief demanded to be equitable, it had the jurisdiction to either try the issues in open court, order a reference, or to ask the aid of a jury, all according to its discretion. Upon referring the matter, a report by the Chancery Court could be issued for the sale of the property. If the pleadings also prayed for a deficiency judgment, the Circuit Court could then hold a trial on whether to award the personal judgment against the debtor. *Id.* At all times, the Court in Equity was unable to award the deficiency judgment. *Id.* at 942 ("no personal judgment for any specific sum of money can be rendered, even against the mortgagor, until the mortgaged premises have been sold, and the proceeds applied to the

mortgage debt; for he can only be called upon, in such an action, to pay any deficiency in the proceeds of the sale of the property pledged by him for payment of the debt"); See also *Gray*, 39 S.C.L. at 266 ("the plaintiff may, after foreclosure, apply to the [Circuit Court] where his bill is filed for further decree"); *Williams v. Beard*, 1 S.C. 309, 324 (1870)("When, however, [the mortgagee] comes into a Court of Equity, for a foreclosure, he does not proceed under his legal title for a recovery of the land, but to enforce the security for his debt; and **the relief which he thus seeks he can obtain only by an order for the sale of the property**, that the equity of redemption may be barred, and all the rights which attach to both the parties will vest in the purchaser under such sale")(emphasis added).[1] It was always within the province of the Circuit Court to issue the personal judgment. A reading of these cases and the law would make clear that guarantors were neither considered in foreclosure proceedings, nor was there jurisdiction for such a proceeding to consider the claims against a guarantor. Thus, not only does the foreclosure law of 1791 not contemplate the inclusion of guarantors, it explicitly prevents courts in equity from hearing such matters.

C. FORECLOSURE LAW AFTER THE ACT OF 1894

The inclusion of guarantors in foreclosure proceedings was, similarly, absent in the law as revised in 1894. The Act of 1894 brought about a codification of foreclosure law that has largely remained intact since. Between it and the Act of 1902, many of the foreclosure statutes today can find its progeny. The most radical change brought about by the Act of 1894 in relation to foreclosure law was the change in the civil process required by the necessity for a mortgagor to recover judgment for a specific sum against the mortgagor before the mortgaged property

[1] Contrary to the assertions made in the secondary source relied upon by the Supreme Court, a **report** that provided for a money judgment were found improper by the Courts of South Carolina. A money **judgment** was always within the providence of the circuit court as a court of law.

could be sold. A copy of the Act of 1902 is attached as Exhibit 3. The relevant language, as cited by the Supreme Court in *Simon v. Sabb*, 56 S.C. 38, 33 S.E. 799 (1899), is as follows:

> "That from and after the passage of this act no sale under or by virtue of any mortgage or other instrument in writing intended as security for a debt shall be valid to pass the title of the land mortgaged unless the debt for which the security was given shall be first established by the judgment of some court of competent jurisdiction or unless the amount of the debt shall be consented to in writing by the debtor"

Id. The Supreme Court, in *Sabb*, summarized the new provision as "depriv[ing] the mortgagee of the right to subject the mortgaged property to the payment of the debt before establishing the debt secured by the mortgage by the judgment of a court of competent jurisdiction." *Id.* 33 S.E. at 801. Thus, the impact of the Act was to require a mortgagee to not only bring an action on the underlying note and one for foreclosure on the mortgage prior to the foreclosure taking place, but to also have the hearing on the action on the note heard prior to the Court of Equity ordering the sale of the property.[2]

In the reformed statutes regarding foreclosure during the time just after the constitutional convention of 1868, there was also included what most would consider to be the language from which S.C. Code Ann. § 29-3-660 finds its genesis. In the final section under Article Three of the Act of 1902 the following language is found:

> "In actions of foreclosure, the Courts shall have the power to render judgment against **the parties liable for the payment of the debt secured by the mortgage** and to direct at the same time the sale of the mortgaged premises. The said judgment so rendered may be entered and docketed in the Clerk's office in the same manner as other judgment. Upon sale of the mortgaged premises, the officer making the sale under the order of the Court shall credit upon the judgment so rendered for the debt the amount or amounts paid to the plaintiff from the proceeds of the sale."

[2] Again, the opinions of the Courts of South Carolina and the law as written stand in direct contrast to the statements in the secondary source relied upon by the Supreme Court. The language cited from the Act of 1894 "**required**" a mortgagor establish personal liability under the note in the Circuit Court before the court in equity could issue a report for the sale of the property.

Exhibit 3, The Act of 1902, page 4. No statute with language similar to this existed prior to its passage in 1894. In light of the changes accompanying this provision, this would make logical sense. Prior to 1894, a Court would not have a hearing on the liabilities of the parties to the debt until after the foreclosure sale. Such a provision would run counter to the foreclosure procedure prior to that time. What becomes abundantly apparent from a reading of the Act of 1894, is that the Act in no way makes reference to or provides for the bringing of an action on a guarantee into the foreclosure action.

The Supreme Court's interpretation in its present order renders the present statute unconstitutional. The Supreme Court's interpretation of the statutes use of the phrase "the court may adjudge," previously phrased "the Court shall have the power to render judgment", to somehow grant the judge alone the power to render the personal judgment against the party, removes the right to a trial by jury afforded under the Constitution. Prior to the passing of the 1894 statute, South Carolina adopted the Constitution which provided that the right to a jury trial shall be preserved inviolate. As just reviewed in great depth, the law as codified and as interpreted by the Supreme Court and the Appellant Courts of the State of South Carolina all held that a personal judgment rendered by the Circuit Court against a debtor was one in which the right to a jury existed in 1868. As such, the language of this statute cannot be interpreted as in any way providing or removing rights protected under the Constitution passed in 1868. Nor can the statute which makes absolutely no mention of third party guarantors to an obligation, suddenly be read to allow such an occurrence for a third party guarantor.

A reading of the statute so as to allow the Circuit Court, through its usual process, to render a judgment, whether through use of a jury or not, is the only way of reading said statutes so as to have it conform with the Constitution. This is, in-fact, the way the Supreme Court of

South Carolina read the statute enacted in 1894 prior to the holding in this case. In *McLaurin v. Hodges*, 43 S.C. 187, 20 S.E. 991 (1895), the Supreme Court had the opportunity to consider the rights of a defendant in a foreclosure action to have a matter heard by the jury. The action was brought against the mortgagee and debtor under the note before the Circuit Court. After a request to have the matter referred to the Equity Court by the Plaintiff, the Defendant demanded a Jury trial as to her counterclaims and defenses as a matter of right and as a matter of the Judge's discretion. The defenses and counterclaims all related to the newly enacted laws of usury and the ability for the Defendant to obtain a judgment against the Plaintiff for the collection of usury interest. In answering the question regarding whether the Defendant was entitled to a jury trial on the matters of law regarding the usury charges, the Supreme Court held:

> "'So that it is apparent that a trial by jury of any question of fact that arises in the progress of any proceeding cannot be demanded as a matter of right, but only where an issue of fact for the recovery of money only, or of specific real or personal property, arises.' The principle which must enter into a defense to an equitable cause of action **to give the defendant *the right* to demand a trial before a jury** is that it exists as a separate and distinct matter from plaintiff's equitable cause of action. If it is not separate and distinct therefrom, it must for its trial be subject to the same forum in which the plaintiff's cause of action is triable."

Id. 20 S.E. at 993. Using this precedent, the analysis for a circuit judge should be whether the action on the guaranty and the accompanying defenses to that action are separate and distinct from the equitable causes of action for foreclosure of the secured property.

The interpretation proposed by the Respondents in their briefs is the same as the interpretation of the Supreme Court in *Hodges*. The Respondents' interpretation does not remove the Circuit Court's ability to render a personal judgment against the defendant, but does require in those instances where a right to demand a trial before a jury is afforded, a jury trial is required. Simply, in the case before this Supreme Court, the Court interprets the language "the Court" as being something other than what was common practice, i.e. the right to have the trial,

whether before a jury or before judge, in a Court of Law where the judgment is entered by the Court.

D. THE CURRENT LANGUAGE OF S.C. CODE ANN. § 29-3-660

The relevant language of the present statute relied upon by Appellants and the Supreme Court in its finding is as follows:

> "In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage **and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases.**

S.C. Code Ann. § 29-3-660(emphasis added). As previously noted, the genesis of S.C. Code Ann. § 29-3-660 is located in the Civil Code of 1894. The most notable difference in the law is the explicit language relied upon by the Supreme Court in its finding that the law is applied to guarantors or third parties to the note and mortgage. **This language was not added to the statute until 1952**. Prior to this amendment, there was no provision within South Carolina law providing for a guarantor to be made part of a foreclosure proceeding.

In the Respondents' brief, the Respondents encouraged the court to interpret this 1952 amendment so that it would not violate the constitution. Simply, by reading the phrase "the Court" and the phrase "as in other cases" as preserving the constitutional right to a jury trial, one avoids the conclusion that the amendment in 1952 is unconstitutional.

While the change in law in 1791 did create a change in practice so as to allow for it to be proper to include in a decree of foreclosure a direction to report the deficiency, it was not until the act of 1894 was passed that a mortgagee was permitted in an action of foreclosure to include in the decree a personal judgment against the mortgager for the amount of the mortgaged debt.

There was clear language within the 1791 act that provided that courts in equity had only the power to enroll a judgment and that the power to adjudge a foreclosure sale was predicated on a prior judgment. It was not until 1952, that the Court hearing the matter for foreclosure had the opportunity to also hear the matters regarding a "covenant or obligation of any person other than the mortgagor." There certainly was never an overt law or ruling by the State of South Carolina so as to remove a guarantor's right to demand a trial by jury simply by bringing the guarantor into the foreclosure process. This Supreme Court's reading of the statute so as to eliminate any right to a jury for a third party brought into the foreclosure action through what South Carolina law holds to be a separate and distinct obligation relies upon a misguided secondary source and misapplies the laws of the State of South Carolina.

2. The Supreme Court overlooked the implication of ruling that a Guarantor and his obligation is part and parcel to a "[party] liable for the payment of the debt secured by the mortgage."

The holding of the Supreme Court necessarily requires a reading that the law which provided for foreclosure actions against "parties liable for the payment of the debt secured by the mortgage" includes non-parties to the mortgage. In so holding the Supreme Court radically changes the jurisprudence as elucidated in *Citizens and Southern Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 543-45, 443 S.E.2d 549, 551 (1994). In *Lanford*, the Supreme Court explicitly held that the "rule in South Carolina [...] is that a guaranty of payment is an obligation **separate and distinct** from the original note." *Id.* emphasis added. Citing 38 Am.Jur.2d, Guaranty, § 4, the Supreme Court went on to state:

> "The debtor is not a party to the guaranty, and the **guarantor is not a party to the principal obligation**. The undertaking of the former is independent of the promise of the latter; and the responsibilities which are imposed by the contract of guaranty differ from those which are created by the contract to which the guaranty is collateral."

Id. emphasis added. The Supreme Court's holding that an action against a guarantor is now an action against "a party liable for the payment of debt secured by the mortgage" overturns and rejects *Lanford* and all of the cases that rely upon or suggest that guarantees are separate and distinct from the primary obligation.

3. The Supreme Court misapprehended the implications of its ruling that the defenses raised by the Respondents did not bear a logical relationship to the enforceability of the guaranty agreements.

Each of these counterclaims relates to the administration of the debt, and whether the Bank had the right to foreclose on the property and bring actions under the note and guaranty. The view that a claim against the enforceability of a note must entail an argument as to an event contemporaneous with the execution of the note is not in accord with South Carolina law. In this case, the counterclaims allege breaches beginning in 2009 and the Petitioner's complaint alleges a right to remedy based upon a breach in September of 2010. Under South Carolina law, a party seeking redress under a contract must first show that they have fulfilled their duties under that same contract. *Hyder v. Metro. Life Ins. Co.*, 183 S.C. 98, 190 S.E. 239, 244 (1937)("in order for one party to recover of another party upon a mutual, dependent contract, the plaintiff must allege performance of all conditions precedent on his part"). So, as alleged in the counterclaims, the breach of the Debtor was chronologically after the breach by the Bank and therefore "logically related." Simply, because the Plaintiff Petitioner breached the contract first, it no longer has the right to enforce the contracts.

4. The approach taken by the Supreme Court in asserting that the right to foreclose arose upon execution of the guarantee is either incorrect or should allow for the statute of limitations to run from the date of execution.

In considering Rule 13(a), SCRCP, the Supreme Court's order states "the execution of the guaranty agreements was the 'transaction or occurrence' that gave rise to McKown's inclusion in the Bank's foreclosure complaint." See the Opinion. Such a ruling disregards that while the action may be predicated on the existence of a contract, the action accrues or "arises" upon the breach of the contract and not upon the execution. Under long established law in South Carolina, the mere fact that a person has entered into a contract with another does not give a right to a cause of action. *Tillinghast v. Boston & Port Royal Lumber Co.*, 39 S.C. 484, 18 S.E. 120 (1893) overruled on other grounds by *Hendrix v. Hendrix*, 296 S.C. 200, 371 S.E.2d 528 (1988). The Supreme Court in *Tillinghast* explained the nature of when an action arises as follows;

> "The mere fact that a person has entered into a contract with another can give no cause of action, and none can arise until there is some breach of such contract, which, therefore, must be regarded as the cause of action. The contract may give a party the right to demand its performance according to its terms, but there is no delict, and no cause of action, until the other party refuses or neglects to perform some duty required of him by the terms of the contract."

Id. at 123. The Supreme Court's conflating when an action arises not only overturns long standing precedent, but also creates a conflicting use of the term "arises." A legal practitioner is left with having the definition of arise for purposes of the statute of limitations and the definition of arise for purposes of whether the claim is compulsory being two distinct definitions of the same word.

5. The Supreme Court overlooks the implication of its ruling that the counterclaims raised by Respondents are not logically related.

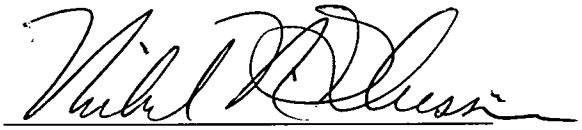
If the Supreme Court's opinion is allowed to become part of South Carolina jurisprudence, similar actions involving the construction of the underlying guarantee and other contractual understandings between the parties will be heard by two courts. A guarantor will be forced to bring the claims in a separate action in order to have its claims heard by a jury.

Whenever two courts look at the same contract, differing interpretations are possible, even if not likely. Even if both courts read the contract in the same way, one of them will have spent its time doing so unnecessarily. This is the sort of exercise that the compulsory counterclaim rule seeks to avoid, just as it also seeks to prevent inconsistent outcomes. The result of the Supreme Court's opinion will be to have guarantors bring a second action to have the issues of fact determined by a jury and move to stay the foreclosure action pending a determination of these issues of act. Thus, the existence of issues of fact required to be determined by a jury will still preclude the Master in Equity ruling on the legal matters regarding the underlying contract.

CONCLUSION

In finding that a guarantor has never had a right to a jury trial under the South Carolina constitution, the Supreme Court radically changes the jurisprudence in South Carolina. In 1790, under the South Carolina Constitution of 1790, a guarantor on a note retained the right to demand a trial by jury. In 1791, after the passing of the Act of 1791, a guarantor on a note retained the right to demand a trial by jury. In 1868, under the South Carolina Constitution of 1868, a guarantor on a note retained the right to demand a trial by jury. In 1894, after the adoption of the Act of 1894, a guarantor on a note retained the right to demand a trial by jury. In 1954, after the passage of the statute providing the language currently relied upon by the Supreme Court, a guarantor on a note retained the right to demand a trial by jury. As of January 27, 2015, the day before the order of this Supreme Court, a guarantor on a note retained the right to demand a trial by jury. By interpreting the statute of 1954 to change the constitution, the Supreme Court is amending the constitution to read ""[t]he right of trial by jury shall be violated at the request the Plaintiff." Such an amendment cannot stand.

Respectfully submitted,

By: 

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February 12, 2015

EXHIBIT 1

And be it further enacted by the authority aforesaid, That the judges of the respective courts shall be, and they are hereby authorized from time to time to make such rules and orders as may be necessary for the purpose of carrying the foregoing clause into effect. Judges of the respective courts to make rules and orders.

And be it further enacted by the authority aforesaid, That this act shall commence its operation on the first day of May next, but not sooner.

In the Senate House, the nineteenth day of February, in the year of our Lord one thousand seven hundred and ninety-one, and in the fifteenth year of the Independence of the United States of America.

DAVID RAMSAY,
President of the Senate.

JACOB READ,
Speaker of the House of Representatives.

An ACT *to establish a Court of Equity within this State.*

WHEREAS by the constitution of this state it is declared, that the judicial power shall be vested in such superior and inferior courts of law and equity as the legislature shall, from time to time, direct and establish: And whereas it is expedient that a court of equity, with adequate powers, be established in this state:

1. *Be it therefore enacted by the honorable the Senate and House of Representatives, now met and sitting in general assembly, and by the authority of the same*, That the laws now of force for establishing and regulating the court of chancery within this state, be and they are hereby declared to be and continue of force in this state, until altered or repealed by the legislature thereof; Laws respecting the court of chancery, to continue of force.

subject, nevertheless, to such alterations, amendments and restrictions as are herein after directed.

And whereas great inconveniencies have been experienced in the remote parts of the state, on account of the court of chancery having been hitherto held in one part of the state only: in remedy thereof,

2. Future sittings of the court of equity.

Be it enacted, That all future sittings of the court of equity for the full and solemn hearing of causes, shall be held at the times and places herein after directed; that is to say, at Columbia, for all causes wherein the defendant shall reside in Camden, Orangeburgh or Cheraw districts, on the fifteenth days of May and December; at Cambridge, for all causes wherein the defendant shall reside in the district of Ninety-Six, on the fifth days of May and December; and at Charleston for all causes wherein the defendant shall reside in either of the districts of Charleston, Beaufort or Georgetown, on the second Monday in March, the second Monday in June, and the third Monday in September; and the same days in every succeeding year; and that the court shall continue to sit from day to day (Sundays excepted) at Columbia and Cambridge respectively, until all the causes which shall be brought before them shall be heard; provided the time of their sitting shall not exceed six days at each place; and at Charleston till all the business ready for the said court shall be heard.

And whereas it will be conducive to the more perfect investigation of the truth that the testimony of witnesses be taken in open court, in presence of the parties:

3 Witnesses to be examined in open court.

Be it therefore enacted by the authority aforesaid, That the examination of all witnesses who may be called upon to give evidence in the said

court, shall be taken by word of mouth, and in open court, subject to such regulations and exceptions as the said court may, from time to time, order and direct.

4 *And be it further enacted by the authority aforesaid*, That the master of the court of equity for the district of Charleston, Georgetown and Beaufort, shall give good and sufficient security, to be approved of by the governor or commander in chief for the time being, for the faithful discharge of his duty, in the sum of five thousand pounds sterling; which said bond, and any other bond, to be given by the commissioners to be appointed by virtue of this act, shall be deposited in the office of the secretary of the state, and be liable to be sued on by any party aggrieved by the misfeasance or default of the said master or any of the said commissioners respectively.

Master of the court of equity to give security, &c.

5 *And be it enacted by the authority aforesaid*, That there shall be, in each and every of the districts aforesaid, one commissioner, who shall be commissioned and appointed by the governor or commander in chief for the time being, during good behaviour, and who shall give security, to be approved by the governor, in the sum of one thousand pounds, well and faithfully to administer his office; whose business it shall be to file and keep all bills, answers and papers whatever, relating to any cause depending in any of the said districts respectively; swear and examine all witnesses, where necessary or ordered by the court, upon interrogatories and cross interrogatories, who may be brought before any of them, touching any matter or thing depending, or to be commenced in any of the said several and respective districts; swear defendants to answers; take recognizances and affidavits,

Commissioners, to be appointed in the circuit districts, to do all matters and things usually performed by the master or register in chancery before the operation of this act.

a. a. 1812 h.

and to do and perform all other matters and things, which are usually done either by the master or register of said court, previous to the hearing of any cause. *Provided always*, That where it may be necessary to examine aged, sick or infirm persons, or witnesses out of the state, then and in every such case it shall and may be lawful for the said court to issue out one or more commission or commissions to examine the said witnesses upon interrogatories, whose depositions, when taken, shall be read in evidence in any of the districts within this state.

6. *And be it further enacted by the authority aforesaid*, That the said commissioners in their said several and respective districts, shall attend at the sitting of every court to be held in and for the said several districts, and shall there take and enter down the decrees, orders and minutes thereof, and make up and report upon all matters and things referred to them in the said court; and shall also make all sales under the decree of said court.

7 Fees to commissioners the same as heretofore to master or register in chancery.

And be it further enacted by the authority aforesaid, That the said commissioners respectively shall be entitled to receive for their services aforesaid, the same fees, perquisites and emoluments as are or may be fixed and established by law for the master or register of said court for similar services.

Parties may proceed by petition in certain cases.

And whereas, in cases under the value of one hundred pounds, and in cases which may not be litigated, it may be unnecessary to proceed by bill and answer in the said court:

8. Copy of petition to be served 30 days before court.

Be it therefore enacted by the authority aforesaid, That in all such cases it shall and may be lawful for the parties complaining to present his or their petition to the said court, on oath, setting forth the true nature of the case, or sum re-

ally due; a copy of which said petition shall be served on the opposite party, at least thirty days before the sitting of the court, with notice thereon to appear at a certain day in court, in order to answer, if necessary, the contents of said petition: And if the party so served with a copy of said petition, shall not appear at the time and place in the said notice mentioned, or if appearing, shall not offer some substantial defence, then the said court shall proceed to make such order or decree therein as to justice and equity shall appertain. *Provided always*, That if the defendant or defendants should appear at the return of said petition, and shew sufficient reasons to the said court, on oath, for going into a more ample investigation of the case, then and in every such case, the said parties shall and may be at liberty to go into the examination of witnesses to prove and substantiate their respective allegations, as in other cases.

9 *And be it further enacted by the authority aforesaid*, That the judges of the said court are hereby authorized and required to make and establish all such rules, orders and regulations as may be necessary for the better and more effectually carrying into execution the terms of this act, for the benefit of the citizens of this state. —Judge to establish necessary rules.

10 *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for any one of the judges of the said court to hear all motions, and to make all orders necessary in any cause previous to the hearing and making the final decree. —to hear motions and make orders.

11 *And be it further enacted by the authority aforesaid*, That the judges shall cause the principal facts and reasons on which they found their decree in each cause to appear upon record. —shall record reasons.

What suits shall not be sustained in equity.

And be it further enacted by the authority aforesaid, That suits in equity shall not be sustained in any case where plain and adequate remedy can be had at common law.

Parties may do their own business.

And be it further enacted by the authority aforesaid, That all suitors and defendants in the court of equity may do their own business without application to any counsellor or solicitor of the court.

Judges shall ride the circuit.

And be it further enacted by the authority aforesaid, That each and every of the judges of the court of equity shall ride the circuit, unless prevented by sickness or unavoidable accident.

In the Senate House, the nineteenth day of February, in the year of our Lord one thousand seven hundred and ninety-one, and in the fifteenth year of the independence of the United States of America.

DAVID RAMSAY
President of the Senate.

JACOB READ,
Speaker of the House of Representatives.

An ACT *to amend the several Acts for establishing and regulating the Circuit Courts throughout this State.*

WHEREAS the several acts establishing and regulating circuit courts within this state, require amendment: therefore,

Powers of the superior courts of law throughout this state.

Be it enacted by the honorable the Senate and House of Representatives, now met and sitting in general assembly, and by the authority of the same, That the superior courts of law throughout this state, shall have, hold, use and exercise such jurisdictions and powers as are vested and lodged in them respectively by virtue of the acts of assembly framing and constituting

EXHIBIT 2

And be it further enacted by the authority aforesaid, That this act shall not be considered to be of force so as to enable any survey whereon to found a grant under and by virtue of this act, nor any application to relapse any survey already made, be effectual 'till after the first day of April next; but that all and every person or persons who have already made surveys of any land, or shall make surveys of any land before the first day of April, may be at liberty to carry the same into a grant, on the payment of one dollar per hundred acres, as prescribed in the second enacting clause of this act. When surveys may be elapsed.

In the Senate House, the nineteenth day of February, in the year of our Lord one thousand seven hundred and ninety-one, and in the fifteenth year of the Independence of the United States of America.

DAVID RAMSAY,
President of the Senate.

JACOB READ,
Speaker of the House of Representatives.

An ACT *for establishing an easier and cheaper mode of recovering Money secured by Mortgage on Real Estates, and barring the Equity of Redemption; and for abolishing the fictitious proceedings in the action of Ejectment.*

WHEREAS mortgages are generally meant merely as securities for debts, and no actual estate is intended to be conveyed by the mortgagor to the mortgagee; but the mortgaged estate is intended, and ought to be considered only as a pledge for the payment of the principal and interest due on the debt meant to be secured. And whereas, the present mode of foreclosing mortgages of real estates is tedious

and expensive, and the right of the mortgager to his equity of redemption is, in the present mode of exercising that right, attended with inconvenience: Now for the easier and speedier advancement of justice, in obtaining the payment of debts secured by mortgage, and for ascertaining when the equity of redemption of the mortgagor shall be barred:

Be it enacted by the honorable the Senate and House of Representatives, now met and sitting in general assembly, and by the authority of the same, That on judgment being obtained in the court of common pleas on any bond, note or debt, secured by mortgage of real estate, it shall and may be lawful for the judges of the court of common pleas, in case of any judgment having been obtained subsequent to the property's being mortgaged, and prior to the obtaining judgment in the action hereby allowed to be commenced, to order the sale of the mortgaged property for the satisfaction of the monies secured by the said mortgagee, and to give a reasonable extension of the time when the sale is to take place, not exceeding the term of six months from the judgment; and also to give a reasonable credit on the sale of the mortgaged premises, not exceeding the term of twelve months from the sale; and the mortgagor shall be for ever barred and foreclosed by such sale from his equity of redemption in as compleat a manner as if the same had been foreclosed in a court of chancery; any law, usage or custom to the contrary thereof in anywise notwithstanding: *Provided always*, That if at any time before such sale, the mortgagor shall tender to, or pay into the hands of the plaintiff, or his agent or attorney, or to the sheriff, all the principal money and interest meant to be secured by such mortgage, and also all the

Judges at law may order sales of lands mortgaged.

Equity of redemption foreclosed.

~ But notice of the 1st mortgage tho' not recorded will destroy the preference of the 2d — even tho' it be recorded —

costs of the suit, the sale shall not take place, but the mortgagee shall enter satisfaction on the said mortgage, and the mortgaged premises shall be for ever exempt from the said mortgage.

And be it further enacted by the authority aforesaid, That no mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed, but the mortgagor shall be still deemed owner of the land, and the mortgagee as owner of the money lent or due, and shall be entitled to recover satisfaction for the same out of the land in the manner above set forth. *Provided always*, That nothing herein contained shall extend to any suit or action now pending, or when the mortgagor shall be out of possession, nor to contravene in any way, the ordinance, entitled, "An ordinance to encourage subjects of foreign states to lend money at interest on real estates within this state, nor to deprive any person or persons of any right which he, she or they may have at the time of passing this act.

Mortgagee not entitled to possessory action.

~ *And be it further enacted by the authority aforesaid*, That where the same lands are mortgaged at divers times, the debts meant to be secured by such mortgages shall be paid in the order the same are recorded agreeably to law, and in no other order; any law, usage or custom to the contrary thereof in anywise notwithstanding.

Mortgages to be paid in the order they are recorded.

And whereas, Since the disuse of real actions, the common method of trying the title to lands has been by action of ejectment, which, depending upon a variety of legal fictions, is rarely understood but by professors of the law: in order to render more plain the mode of trying the title to lands in this state,

Be it enacted by the authority aforesaid, That

To try Title & Damages must be endorsed on the back — p 168

Method of trying the title to lands.

the method of trying the title to lands or tenements within this state, shall be henceforward by action of trespass, wherein the real name of the plaintiff and defendant shall be used, and not fictitious names; and if the jury shall find for the plaintiff, they are also hereby empowered in the same verdict to award damages for mesne profits, and the judgment shall be entered on such verdict as well for the damages as for the recovery of the land. And the plaintiff on such judgment shall be entitled to a writ of possession for the land, and to an execution for his damages.

Hab. fac. poss.
Hab. fac. fais.

Acts of assembly respecting ejectment, shall relate to trespass.

And be it further enacted by the authority aforesaid, That every act of assembly, relative to actions of ejectment, shall henceforward be construed to relate to such actions of trespass where the title to lands shall come in question.

In the Senate House, the nineteenth day of February, in the year of our Lord one thousand seven hundred and ninety-one, and in the fifteenth year of the Independence of the United States of America.

DAVID RAMSAY,
President of the Senate.

JACOB READ,
Speaker of the House of Representatives.

An ACT *to provide for the final settlement of the accounts of the former Commissioners of the Treasury, and other Public Departments, and of all other persons having accounts with the State.*

WHEREAS it is ordained in and by the fifth of the additional articles of the constitution of this state, passed at Columbia, the third day of June, in the year of our Lord, one thousand

EXHIBIT 3

ARTICLE III.

MORTGAGES OF LAND AND SATISFACTION THEREOF.

Mortgagor remains legal owner even after condition broken: mortgagee's only right is to satisfaction by foreclosure and sale: proviso as to releases of equity of redemption.

G. S. 2229; R. S. 1860; 1791, V., 170, § 2; 1707, V., 311, § 1; 1879, XVII., 19.

Section 2374. No mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed; but the mortgagor shall be deemed owner of the land, and the mortgagee as owner of the money lent or due, and shall be entitled to recover satisfaction for the same out of the land by foreclosure and sale according to law: *Provided*, That notwithstanding the foregoing provision all releases of the equity of redemption shall be binding and effectual in law.

Before Act of 1791 legal title passed to mortgagee upon defeasance and he could maintain action for the land.—Veree v. Veree, 2 Brev., 211; State v. Laval, 4 McC., 336; Stoney v. Shultz, 1 Hill Ch., 465; Drayton v. Marshall, Rice Eq., 373; Mitchell v. Bogan, 11 Rich., 686; Laffan v. Kennedy, 15 Rich., 246; Reeder v. Dargan, 15 S. C., 173. Under this Statute a mortgage is not a conveyance.—Burkett v. Whittemore, 36 S. C., 478; 15 S. E., 618.

Since, mortgage does not convey any estate, even after time for redemption has passed.—Thayer v. Cramer, 1 McC. Ch., 395; Lowndes v. Chisolm, 2 McC. Ch., 455; Simons v. Bryce, 10 S. C., 354; Warren v. Raymond, 12 S. C., 9; Annely v. DeSaussure, 12 S. C., 488; Reeder v. Dargan, 15 S. C., 175; Warren v. Raymond, 17 S. C., 163; Hendrix v. Seaborn, 25 S. C., 481; Johnson v. Johnson, 27 S. C., 309; 3 S. E., 606; Seignious v. Pate, 33 S. C., 134; 10 S. E., 880; Hardin v. Hardin, 34 S. C., 77; 12 S. E., 936. Unless, as provided in original Act, the mortgagor went out of possession, which proviso was stricken out in 1879.—Durand v. Lanaes, 4 McC., 54; Stoney v. Shultz, 1 Hill Ch., 465; Mitchell v. Bogan, 11 Rich., 686; Laffan v. Kennedy, 15 Rich., 246; Williams v. Beard, 1 S. C., 309; Warren v. Raymond, 12 S. C., 22.

Release of the equity of redemption operates under the Section as a conveyance of land.—Mitchell v. Bogan, 11 Rich., 704; Simons v. Bryce, 10 S. C., 372; Navassa Guano Co. v. Richardson, 26 S. C., 201; 2 S. E., 307; Tant v. Guess, 37 S. C., 489; 16 S. E., 477.

Satisfaction to be entered when mortgage debts are paid.

G. S. 1791; R. S. 1894; 1817, VI., 61, § 1.

Sec. 2375. Any person who shall have received full payment or satisfaction, or to whom a legal tender shall have been made, of his debts, damages, costs, and charges, secured by mortgage of real estate, shall, at the request of the mortgagor,

A. D. 1902.

or of his legal representative, or of any other person being a creditor of the said debtor, or a purchaser under him, or having an interest in any estate bound by such mortgage, and on tender of the fees of office for entering such satisfaction, within three months after such request made, enter satisfaction in the proper office, on such mortgage, which shall forever thereafter discharge and satisfy the same.

An endorsement on mortgage that its lien is released is not the satisfaction required.—Lynch v. Hancock, 14 S. C., 56. The satisfaction does not require two witnesses.—Charleston v. Ryan, 22 S. C., 339. If fraudulent the rights of subsequent purchaser without notice of fraud will be secure.—Charleston v. Ryan, 22 S. C., 339. Tender of debt, though past due, discharges lien of the mortgage.—Salinas v. Ellis, 26 S. C., 337; 2 S. E., 121.

Penalty for not doing so.

G. S. 1702; R. S. 1806; *Ib.*

Sec. 2376. Any person having received such payment, satisfaction, or tender, as aforesaid, who shall not, within three months, by himself or his attorney, after request and tender of fees of office, repair to the said office, and enter satisfaction as aforesaid, shall forfeit and pay to the party aggrieved a sum of money not exceeding one-half of the amount of the debt secured by mortgage as aforesaid, to be recovered by action in any Court of competent jurisdiction within the State; and on judgment being rendered for the plaintiff in any such action, it shall be the duty of the presiding Judge to order satisfaction to be entered on the judgment or mortgage aforesaid, by the Clerk or Register, or other proper officer, whose duty it shall be, on receiving such order, to record the same, and to enter satisfaction accordingly.

Ryan v. Kaphan, 16 S. C., 154.

Mortgagor may apply for rule, &c.

G. S. 1703; R. S. 1806; *Ib.*, § 2.

Sec. 2377. Any person who shall be indebted by mortgage shall be, and he is hereby, authorized to apply to the presiding Judge of any Court of General Sessions and Common Pleas, to be held in the County in which such mortgage shall be recorded, for a rule to show cause why satisfaction should not be entered thereon.

Proceedings where rule is issued.

G. S. 1704; R. S. 1807; *Ib.*

Sec. 2378. It shall be the duty of such Judge to grant such rule, returnable on a day to be fixed by him; which rule shall be served on the mortgagee, his legal representative, or assignee, or their attorney: and if the party so served shall not attend to show cause, or, attending, shall show insufficient cause, and the Judge shall be satisfied that the mortgage aforesaid has been fully paid, it shall be his duty to order the proper officer to enter satisfaction on the said mortgage.

Sec. 2379. If, on the return of the said rule, it shall appear to the presiding Judge that matters proper for the decision

A. D. 1902.

When a jury may decide whether mortgage is paid.

C. S. 1736; R. S. 1908; 1917, VI., 81, 1 a.

of a jury are involved in the case, he may, at the request of either party, submit the same to the jury, to be decided immediately, in a summary manner; and if the jury shall decide that the mortgage has been paid, satisfaction shall be ordered accordingly.

Debts secured by mortgages of real estate to be proven before order of sale for foreclosure or sale under power.

1894, XXI., 1909, XXIII.

Sec. 2380. No sale under or by virtue of any mortgage or other instrument in writing intended as security for a debt, conferring a power upon the mortgagee or creditor to sell the mortgaged or pledged property while said power remains of force, or has not been revoked by the death of the party or parties executing such mortgage or instrument, shall be valid to pass the title of the land mortgaged, unless the debt for which the security is given shall be first established by the judgment of some Court of competent jurisdiction, or unless the amount of the debt be consented to in writing by the debtor subsequently to the maturity of the debt, such consent in writing to be recorded in the office of the Register of Mesne Conveyance, or Clerk of the Court, where the mortgage or other instrument in writing given to secure such debt is, or ought to be, recorded: *Provided, however,* That nothing herein contained shall render it necessary, nor shall it be necessary, to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding; nor in any foreclosure proceeding (if the mortgagor be dead) shall it be necessary to first establish the debt by the judgment of some Court of competent jurisdiction in order to obtain a decree of foreclosure and sale; nor shall it be necessary to make the mortgagor who may have conveyed the mortgaged premises a party to any action for foreclosure where no judgment for any deficiency is demanded: *Provided, further,* That no sale heretofore made under foreclosure proceedings, to which the personal representatives of deceased mortgagors were not parties, shall be invalid by reason of the absence of such personal representatives.

Effect explained and provisos.

This Act applies to statutes executed prior to, as well as to those executed since its date, and relates to the remedy only.—Slocum v. Sale, 56 S. C., 355; 33 S. E., 801; Stoddard v. Owings, 42 S. C., 88; 20 S. E., 23.

Date of consent of mortgagor.

1896, XXII.

Sec. 2381. The consent of the mortgagor to the amount of the debt shall bear date not more than twelve months prior to any sale under any power contained in any such mortgage as referred to in Section 2380; and when any sale of land is made, or to be made, under and according to the provisions of said Section, any balance of the mortgage debt over the purchase price of the land at such sale shall not be extinguished

A. D. [illegible]

by reason of the mortgagee or his or her assigns becoming the purchaser at such sale, whether the mortgage contain a provision to that effect or not.

Court may render judgment and order sale at same time.

1894, XXI.

Sec. 2382. In actions of foreclosure, the Courts shall have the power to render judgment against the parties liable for the payment of the debt secured by the mortgage and to direct at the same time the sale of the mortgaged premises. The said judgment so rendered may be entered and docketed in the Clerk's office in the same manner as other judgments. Upon sale of the mortgaged premises, the officer making the sale under the order of the Court shall credit upon the judgment so rendered for the debt the amount or amounts paid to the plaintiff from the proceeds of the sale.

Judgment to be credited.

CHAPTER LXIII.

Dower and Allotment Thereof.

ARTICLE I.

Renunciation of Dower, and When the Right Shall be Barred or Forfeited.

Who may take renunciation of dower.

G. S. 1872; R. S. 1882; 1893, XXI., 333; 1880, XX., [illegible]; [illegible] XVIII., 460; 1895, XXI., 706.

Section 2383. When any *femme covert* shall relinquish her right of dower in any real estate and acknowledge the same in writing, if she be within this State, in open Court or before any Judge of the Court of Common Pleas, Justice of the Supreme Court, Judge of Probate, Clerk of the Court of Common Pleas,

THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No: 2010-CP-26-8505
Appellate Case Number: 2013-000107

Carolina First Bank n/k/a TD Bank, NA, Petitioner,

v.

BADD, LLC and William M. McKown, and Charles A. Christenson, Defendants,

of whom BADD, L.L.C. and William McKown are Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Respondents' Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on February 12, 2015, addressed to the attorneys of record as follows:

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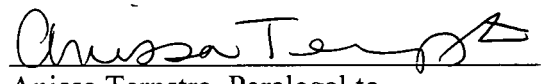
By: 

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February 12, 2015