

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Kennedy Funding, Inc., as predecessor-in-interest, and
BNP Paribas, Respondents,

v.

Pawleys Island North, LLC, Will Darwin Wheeler,
Peggy Wheeler-Cribb, and J. Mars Sapp, Defendants,

Of Whom Pawleys Island North, LLC, Will Darwin
Wheeler, and Peggy Wheeler-Cribb are Respondents,

and J. Mars Sapp is Petitioner.

Appellate Case No. 2015-001125

**ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

Appeal From Georgetown County
Joe M. Crosby, Master-in-Equity

Memorandum Opinion No. 2015-MO-061
Submitted October 8, 2015 – Filed October 14, 2015

VACATED AND REMANDED

Daniel T. Brailsford, Thomas Whatley Bunch, II and Paul Hamilton Hoefer, all of Robinson McFadden & Moore, PC, of Columbia, for Petitioner.

Robert Hope Jordan and Merritt Gordon Abney, both of Nelson Mullins Riley & Scarborough, LLP, of Charleston; for Respondents.

PER CURIAM: Petitioner seeks a writ of certiorari to review the decision of the court of appeals in *Kennedy Funding, Inc. v. Pawleys Island N., LLC*, Op. No. 2015-UP-138 (S.C. Ct. App. filed March 11, 2015). We grant the petition, dispense with further briefing, vacate the holding of the Court of Appeals that the mortgage between Pawleys Island North, LLC, and Kennedy Funding, Inc. was not fraudulent and petitioner's lien, therefore, did not have priority, and remand this matter to the court of appeals to rule on the issue raised by petitioner.

The court of appeals erroneously based its holding as to lien priority on an irrelevant ruling that the mortgage between Pawleys Island North, LLC, and Kennedy Funding, Inc. was not fraudulent, an argument not raised to it. Accordingly, we vacate sections II and III of the court of appeals' opinion. *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003) (an issue that was not preserved for review should not be addressed by the court of appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved). On remand, the court of appeals shall rule on petitioner's argument that *the fraudulent conveyance between Will Darwin Wheeler and Pawley's Island North, LLC*, rendered the mortgage void and, therefore, petitioner's lien is superior to Kennedy Funding, Inc. and BNP Paribas' lien.

VACATED AND REMANDED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.