

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2015-001060

Cenlar FSB.....Respondent,

vs.

Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie; GSH  
Properties, LLC; L.A. Yates; and Briargate Condominium  
Association, Inc.....Defendants,

Of whom

Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie and  
L.A. Yates, are ..... Appellants.

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**INITIAL BRIEF OF RESPONDENT**

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**STATEMENT OF ISSUES ON APPEAL**

- I. **DID APPELLANT YATES RECEIVE PROPER NOTICE OF THE FINAL FORECLOSURE TRIAL HELD ON APRIL 1, 2015?**
- II. **DID THE MASTER IN EQUITY PROPERLY DENY APPELLANT YATES' MOTION FOR CONTINUANCE AND MOTION TO BIFURCATE COUNTERCLAIM?**
- III. **DID APPELLANT YATES PRESERVE ALL OF THE ISSUES FOR APPELLATE REVIEW?**
- IV. **DID APPELLANT YATES ABANDON SEVERAL OF THE ISSUES RAISED IN HIS APPEAL BY FAILING TO CITE ANY AUTHORITY IN SUPPORT OF THEM?**
- V. **DID APPELLANT YATES FAIL TO REFUTE THE MASTER'S LEGAL CONCLUSIONS?**
- VI. **HAS APPELLANT SCOBIE ABANDONED HER ISSUES ON APPEAL?**

## STATEMENT OF THE CASE

This lawsuit arises out of the foreclosure of a residential real estate mortgage. Respondent, Cenlar FSB (“Respondent”) filed its Lis Pendens, Summons, and Complaint on September 9, 2013.<sup>1</sup> (Complaint). Appellants, Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie (“Scobie”) and L.A. Yates (“Yates”) (collectively “Appellants”) filed a Motion to Dismiss on October 10, 2013. (Motion to Dismiss). By Order filed on January 6, 2014 the case was referred to the Honorable Joseph M. Strickland, Master-in-Equity for Richland County. (Order of Reference). By Order signed by the Honorable Deandrea G. Benjamin and filed on January 27, 2014, Appellants’ Motion to Dismiss was denied. (Order filed January 27, 2014). A Form 4 Order also denying Appellants’ Motion to Dismiss was filed on February 5, 2014. (Form 4 Order)

Appellants filed an Answer to the Complaint on February 20, 2014. (Answer). Appellant Yates filed a First Amended Answer and Affirmative Defenses to the Complaint on June 16, 2014. (First Amended Answer).

Respondent filed a Motion for Summary Judgment on July 7, 2014. (Motion for Summary Judgment). Appellants filed a Counterclaim to the Complaint on July 22, 2014 and asserted a counterclaim for unjust enrichment. (Counterclaim). Respondent filed a Motion to Strike Appellants’ Answer and Counterclaim on August 15, 2014. (Motion to Strike). Appellant Yates filed a Motion for Continuance on September 8, 2014 seeking a jury trial. (Motion for Continuance)

By Order signed by the Honorable Joseph M. Strickland and filed on September 22, 2014, the Court denied Respondent’s Motion to Strike Appellants’ Answer and

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<sup>1</sup> Upon information and belief, the Lis Pendens, Summons, and Complaint were incorrectly clocked by the Richland County Clerk of Court’s office, reflecting a September 9, 2014 filing date instead of the correct September 9, 2013 filing date.

Counterclaims and Appellants' Motion for Continuance and to Bifurcate Counterclaims and Remand for Jury Trial. (Order filed September 22, 2014). Respondent filed a Reply to Appellants' Answer and Counterclaims on October 9, 2014. (Reply).

On or about January 21, 2015 the Court issued a Notice of Roster Scheduling for a "Final Foreclosure Hearing" to be held in this case on Wednesday, April 1, 2015 at 3:00 P.M. (Notice of Roster Scheduling). Respondent filed a Notice of Hearing on January 26, 2015 notifying all parties of a "hearing on the merits" for April 1, 2015 at 3:00 P.M. (Notice of Hearing).

Appellant Yates filed a Motion for Continuance of Hearing and Request to Bifurcate Counterclaim for Jury Trial in Circuit Court on March 26, 2015. (Yates Motion for Continuance).

At a hearing on April 1, 2015, the Honorable Joseph M. Strickland as Master-in-Equity for Richland County conducted a non-jury final foreclosure trial. (Transcript of Trial). The Judgment of Foreclosure and Sale was entered on April 16, 2015. (Judgment of Foreclosure and Sale). Appellant did not file a Rule 59(e), SCRPC motion to alter or amend the Judgment of Foreclosure and Sale.

On May 29, 2015 Appellants filed their Amended Notice of Appeal. On September 23, 2015 Appellant Yates filed his Initial Brief and on November 13, 2015 Appellant Yates filed his Designation of Matter to be included in the Record on Appeal.

## STATEMENT OF THE FACTS

This appeal involves the outcome of the non-jury trial held on April 1, 2015 on the Respondent's foreclosure action and Appellants' counterclaim for Unjust Enrichment.

On or about March 31, 2000, Appellant Scobie made, executed, and delivered a Note and real estate Mortgage promising to pay \$46,050.00. (Complaint, Par. 7-8). This Mortgage was recorded on April 6, 2000, and is of record in the Office of Register of Deeds for Richland County in Book R 398 at Page 1296. (Complaint, Par. 9). This Mortgage was assigned to Respondent by a recorded Assignment of Mortgage on August 30, 2013. (Judgment of Foreclosure and Sale, Par. 16). Respondent is in possession of the original Note. (Trial Transcript, page 29, lines 17-18).

Due to Appellant Scobie's default and failure to make her monthly mortgage payment, Respondent sought the usual foreclosure of the mortgage. (Complaint, Par. 7-12). On September 9, 2013, Respondent filed its foreclosure action against Appellants. (Complaint). Appellant Yates was named as a Defendant in the Respondent's foreclosure action because he had an interest in the property at the time the action was filed by virtue of a deed from Appellant Scobie to GSH Properties, LLC and L.A. Yates dated March 27, 2013 and recorded April 19, 2013 in Book R1853 a page 2898. (Lis Pendens).

At the trial on April 1, 2015, the witness for the Respondent was Clifford Priest. (Trial Transcript, page 27, lines 18-25). At the trial, Mr. Priest identified the loan documents, established the default by Appellant Scobie, and testified to the judgment figures that established the amounts due and owing under the terms of the Note and Mortgage. (Trial Transcript, page 27, line 24 to page 33 line 12). Appellant Scobie did

not attend the trial on April 1, 2015. (Trial Transcript, page 6, line 24 to page 7 line 12). Appellant Yates is not a licensed South Carolina attorney.

Appellant Yates did attend the trial on April 1, 2015 but did not present any evidence in his case. (Trial Transcript, page 45, line 23 to page 46 line 2). Appellant Yates did cross examine the Respondent's witness and asked questions related to Respondent's standing to persecute the foreclosure and any short sale offers on the property. (Trial Transcript, page 33, line 18 to page 42 line 5).

In the Judgment of Foreclosure and Sale filed on April 16, 2015, the Court denied Appellant Yates' Motion for Continuance of Hearing and Request to Bifurcate Counterclaim for Jury Trial in Circuit Court and found that the motion was filed purely for delay purposes. (Judgment of Foreclosure and Sale, Par 13). Additionally, the Master ruled that all parties were properly notified that the April 1, 2015 hearing would be a hearing on the merits of the case through a Notice of Hearing filed with the Court on January 26, 2015. (Judgment of Foreclosure and Sale, Par 13).

## STANDARD OF REVIEW

The Court may affirm for any ground appearing in the record. Rule 220(c), SCAR; see also I'On v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

“A mortgage foreclosure is an action in equity.” Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). In an appeal from an action in equity, tried by a judge alone, the Court may find facts in accordance with its own view of the preponderance of the evidence. Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). “However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses.” Pinckney v. Warren, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). “Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings.” Id. at 387-88, 544 S.E.2d at 623.

“It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court.” Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 510-511, 598 S.E.2d 712, 715 (2004). When an issue is raised to but not ruled upon by the trial court, the issue is preserved for appeal only if the party raises the same issue in a Rule 59(e) motion. See Wilder Corp. v. Wilkie, 330 S.C. 71, 76-77, 497 S.E.2d 731, 734 (1998)(noting the proper use of a Rule 59(e) motion is to preserve issues raised but not ruled upon by the trial court).

## ARGUMENTS

### **I. APPELLANT YATES DID RECEIVE PROPER NOTICE OF THE FINAL FORECLOSURE TRIAL HELD ON APRIL 1, 2015**

Respondent filed a Notice of Hearing on January 26, 2015 putting all parties on notice of the hearing on the merits in this case. (Notice of Hearing). Additionally, the Court mailed out a separate Notice of Roster Scheduling with the date and time of the “Final Foreclosure Hearing.” (Notice of Roster Scheduling). Appellant Yates did not dispute receiving these documents and did appear at the correct time and place as indicated in the two notices. Additionally, in his Motion for Continuance filed on March 26, 2015, Appellant Yates stated that a “Final Foreclosure Hearing” would be “premature.” (Yates Motion for Continuance).

Appellant Yates Motion for Continuance clearly shows he had actual notice of the purpose of the April 1, 2015 hearing and had several months to prepare his case for the final hearing. The fact that Appellant Yates wanted the April 1, 2015 hearing to serve as a motions hearing on Plaintiff’s Motion for Summary Judgment does not change the fact that he had actual notice of the purpose of the April 1, 2015 hearing. Additionally, Appellant Yates failed to identify any testimony, witnesses to call, or further evidence he was unable to present at the April 1, 2015 hearing that he would have presented at a hearing date in the future. The Maters-in-Equity did not err in denying Appellant Yates’ Motion for Continuance and finding the motion as filed only for delay purposes.

**II. THE MASTER IN EQUITY PROPERLY DENIED APPELLANT YATES' MOTION FOR CONTINUANCE AND MOTION TO BIFURCATE COUNTERCLAIM**

On March 26, 2015, on the eve of trial, and after several months of notice, Appellant Yates filed a Motion for Continuance of Hearing and Request to Bifurcate Counterclaim for Jury Trial in Circuit Court. (Yates Motion for Continuance). Appellant Yates' sole counterclaim in this action is for Unjust Enrichment. (Counterclaim). "Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." Dema v. Tenet Physician Services-Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009).

Prior to Appellant Yates' motion filed on March 26, 2015, he previously attempted to bifurcate his counterclaims from the foreclosure action and seek a jury trial. By Order signed by the Honorable Joseph M. Strickland and filed on September 22, 2014, the Court denied Appellant Yates' motion to bifurcate Counterclaims and remand for Jury trial. (Order filed September 22, 2014). Appellant Yates failed to file a 59(e) motion to the September 22, 2014 Order and failed to file an appeal of that order. "Orders affecting the right to jury trial are immediately appealable and must be raised in court at the first opportunity. If the order is not immediately appealed, the trial by jury issue is waived for purposes of appeal." Mortgage Electronic Systems, Inc. v. White, 384 S.C. 606, 612, 682 S.E.2d 498, 501 (Ct.App.2009). Appellant Yates failed to file an appeal of the courts' September 22, 2014 Order "at the first opportunity" and therefore has waived that issue for the purposes of this appeal.

Additionally, since the Respondent's foreclosure case is an equitable action and Appellant Yates' counterclaim is an equitable cause of action, Appellant Yates is not

entitled to a jury trial. ‘In equity the parties are not entitled, as a matter of right, to a trial by jury.’ Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014) (quoting Williford v. Downs, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975). “If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.” Id. at 328, 755 S.E.2d at 441.

**III. EXCEPT FOR THE ISSUES ADDRESSED IN SECTIONS I AND II ABOVE, APPELLANT YATES DID NOT PRESERVE ANY OF THE ISSUES RAISED IN HIS APPEAL FOR APPELLATE REVIEW**

Other than the notice of final foreclosure hearing and motion for continuance issues, Appellant Yates failed to preserve any of the remaining issues raised in his appeal for review by this Court. “It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.” Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006). “If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” ’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also* Rule 59(e), SCRPC. This preservation requirement “prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” Id.

Appellant Yates’ argument that the trial court improperly allowed the final trial to proceed while a pending motion for summary judgment was unresolved was not ruled on

or even addressed in the Judgment of Foreclosure and Sale, and Appellant Yates failed to file a Rule 59(e) motion to preserve it.

Additionally, Appellant Yates' Rule 60(b)(3) and 60 (b)(4) arguments were not raised prior to the filing of his initial appellate brief and are not preserved for review by this Court.

**IV. APPELLANT YATES ABANDON SEVERAL OF THE ISSUES RAISED IN HIS APPEAL BY FAILING TO CITE ANY AUTHORITY IN SUPPORT OF THEM**

Appellant Yates abandoned several of the issues raised in his appeal by failing to cite any authority in support of them. When an appellant fails to cite any supporting authority for his or her position and makes only conclusory arguments, the appellant abandons the issue on appeal. Bennett v. Investors Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006).

Appellant Yates cites no authorities in support of the following arguments and has thereby abandoned these issues:

- Was the equity court judge negligent, for over a year, in not scheduling a status conference or issuing a scheduling order, for how the case was to proceed? (Appellant's Brief, p. 1, 5);
- Did the equity court judge err in granting plaintiff permission to withdraw plaintiff's motion for summary judgment without first hearing plaintiff's outstanding motion for summary judgment? (Appellant's Brief, p. 1, 6);
- Did the equity court judge err in suggesting and granting plaintiff permission to renew plaintiff's motion for summary judgment, after determining that it would indeed be improper to have a final foreclosure hearing without first hearing plaintiff's motion for summary judgment? (Appellant's Brief, p. 1, 6);
- Did the equity court judge err, by denying defendants due process in overriding defendants' objection to having a summary judgment hearing on the liability of

defendants for breach of the note and mortgage without any notice whatsoever? (Appellant's Brief, p. 1, 6-7);

- Did the equity court judge err, without affording defendants due process by ruling in favor of Plaintiff based on a phantom bench trial, held in the judge's mind, without notice, without a jury, without opportunity for witness testimony, or opportunity for the introduction of other evidence, and without an actual trial, whatsoever? (Appellant's Brief, p. 2, 7-8);
- Should the judgment of foreclosure and sale be set aside under rule 60(b)(4) of the South Carolina rules of Civil Procedure? (Appellant's Brief, p. 2, 10); and
- Should the judgment of foreclosure and sale be set aside under rule 60(b)(3) of the South Carolina rules of Civil Procedure? (Appellant's Brief, p. 2, 10-11);

**V. APPELLANT YATES HAS FAILED TO REFUTE THE MASTER'S LEGAL CONCLUSIONS**

Appellant Yates failed to refute or counter any of the Master's legal conclusions in the Judgment of Foreclosure and Sale with citation to authorities. As further grounds for affirmance, Respondent hereby incorporates by reference all of the Master's legal conclusions and legal authorities set forth in the Judgment of Foreclosure and Sale.

**VI. APPELLANT SCOBIE ABANDONED HER ISSUES ON APPEAL BY NOT FILING AN INITIAL BRIEF**

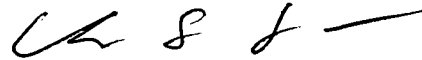
Appellant Scobie has failed to file an initial brief and therefore should be deemed to have abandoned her appeal and should be dismissed as an Appellant in this appeal.

**CONCLUSION**

Based on the foregoing and any additional sustaining grounds appearing in the record, Respondent respectfully requests that the Court affirm the Master's Judgment of Foreclosure and Sale filed on April 16, 2015.

Respectfully submitted,

December 14, 2015



---

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
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Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2015-001060

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**SC Court of Appeals**

Cenlar FSB.....Respondent,

vs.

Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie; GSH  
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Association, Inc.....Defendants,

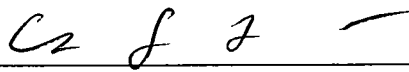
Of whom

Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie and  
L.A. Yates, are ..... Appellants.

**PROOF OF SERVICE**

I HEREBY CERTIFY that I have served the **INITIAL BRIEF OF RESPONDENT** on Appellants Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie and L.A. Yates and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on December 14, 2015, addressed to the parties and attorneys of record shown on the attachment listing Other Parties and Counsel of Record.

December 14, 2015

  
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December 14, 2015

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SC Court of Appeals

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals Clerk of Court  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Cenlar FSB, v. Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie,  
GSH Properties, L.A. Yates, and Briarsgate Condominium Association, Inc.  
Case No.: 2013-CP-40-05367  
RTT File No: 506951-00892  
Appellate Case # 2015-001060

Dear Ms. Kitchings:

Enclosed are the original and one copy of the Initial Brief of Respondent and the original and one copy of Respondent's Designation of Matter to be Included in the Record on Appeal, along with Proofs of Service. Please return a filed copy of the documents to me.

By copy of this letter, I am serving a copy of the Initial Brief of Respondent and a copy of Respondent's Designation of Matter to be Included in the Record on Appeal and Proofs of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Charles", written in black ink.

Charles S. Gwynne Jr.

/ow  
Enclosures as stated

cc:

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