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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No.: 2016-000915

National Security Fire and Casualty Company..... Plaintiff,

v.

Rosemary Jenrette, a/k/a Rosemary Long Jenrette,
and Horry County State Bank..... Defendants,

of whom

Rosemary Jenrette, a/k/a Rosemary Long Jenrette..... Petitioner,

Horry County State Bank Respondent.

PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rule 242, SCACR, Petitioner Rosemary Jenrette a/k/a Rosemary Long Jenrette (“Jenrette”) hereby files her petition for writ of certiorari in connection with the Court of Appeals’ February 17, 2016 Opinion No. 2016-UP-067 (“the Opinion”) in the above-captioned matter. *See National Security Fire and Casualty Company v. Rosemary Jenrette a/k/a Rosemary Long Jenrette, et. al.*, Op. No. 2016-UP-067 (S.C. Ct. App. filed February 17, 2016). The Court of Appeals affirmed the circuit court’s finding of an equitable lien even though the debt relied upon by the circuit court in imposing an equitable lien upon the subject insurance proceeds was not a debt or obligation of the insured mortgagor. The Opinion conflicts with prior decisions pertaining to equitable liens, and is inconsistent with statutory provisions governing real estate mortgage foreclosure actions and deficiency judgments. This Court should grant the petition and reverse the Court of Appeals’ decision based on the grounds set forth below.

Certification of Counsel

The undersigned hereby certifies that Jenrette filed a petition for rehearing with the Court of Appeals and the Court of Appeals ruled upon the petition with finality on April 22, 2016. (App. 526, 541.)

Questions Presented for Review

1. Does an equitable lien arise upon insurance proceeds paid under a policy previously purchased by an insured mortgagor for her sole benefit when the claimed debt is a deficiency judgment against third-parties for the amount of the mortgage debt remaining unsatisfied after the foreclosure and sale of the insured mortgagor’s real property?
2. Can a deficiency judgment entered against third-parties pursuant to S.C. Code Ann. § 29-3-660 attach to insurance proceeds otherwise payable to an insured mortgagor when the outstanding mortgage debt is not a debt or obligation of the insured mortgagor?

Statement of the Case

The Court of Appeals affirmed the circuit court's finding (1) of the existence of an equitable lien in favor of Horry County State Bank ("Respondent") on the subject insurance proceeds; (2) that Jenrette was bound by a covenant in the subject mortgage to insure the subject real property; and (3) that the assignment provision in the subject mortgage survived cancellation of the mortgage. (App. 525.)

This interpleader action was commenced by National Security Fire & Casualty Company ("Insurer") as a result of Jenrette and the Respondent claiming entitlement to the \$105,000.00 sum of insurance proceeds ("Proceeds") that were paid by the Insurer and deposited into an escrow account. (App. 7, 43.) The Insurer was released as a party after the commencement of the instant action and its payment of the Proceeds into the Horry County Clerk of Court. (App. 40.) Jenrette and the Respondent both answered the Insurer's complaint and asserted claims of entitlement to the entire sum of the Proceeds on deposit. (App. 7.) Jenrette, by way of a cross-claim for declaratory judgment, sought an order declaring that she was solely entitled to the Proceeds as the named-insured under the insurance policy ("Policy") that she purchased on March 9, 2009 to insure her real property located at 104 Country Club Drive in Horry County, South Carolina ("Subject Real Property") for her own benefit. (App. 7, 8, 9.) The Subject Real Property was conveyed to Jenrette on September 11, 2007, and was insured under the Policy for coverage against loss or damage for fire and other hazards. (App. 8, 9.)

The Respondent claimed an equitable lien on the Proceeds because it was awarded judgment of foreclosure on April 22, 2011 and a deficiency judgment against Cajun Carolina, LLC ("Cajun") and Michael Brooks Quickel ("Quickel") in a prior mortgage foreclosure proceeding, Civil Action Number: 2010-CP-26-04456 ("Foreclosure Action"), that was disposed

prior to the November 3, 2011 filing of the complaint in the instant action. (App. 7, 12, 43, 53.) The mortgage (“Mortgage”) that was the subject of the Foreclosure Action secured a \$350,000.00 loan (“Cajun Loan”) made by the Respondent to Cajun. (App. 10.) The promissory note (“Note”) evidencing the Cajun Loan was executed by Quickel on May 1, 2009. (App. 3.) The Mortgage securing the Note was executed by Quickel on May 1, 2009 as Jenrette’s attorney-in-fact pursuant to a power of attorney (“POA”) that Jenrette executed on April 27, 2010. (App. 9-10.) The POA authorized Quickel to obtain a loan using the Subject Real Property as security, but Quickel did not execute any document under the POA obligating Jenrette to pay the indebtedness created by the Note. (App. 5.) Cajun, as maker of the Note, was joined as a defendant in the Foreclosure Action and Quickel was joined as a defendant by virtue of his guarantee of the Cajun Loan. (App. 11.) Jenrette was joined as a defendant in the Foreclosure Action by virtue of her ownership of the Subject Real Property and her other four lots that were encumbered by the Mortgage. (App. 11.) Jenrette was not a maker of the Note and did not have any liability to the Respondent under the Note. (App. 10.) During the pendency of the Foreclosure Action the dwelling on the Subject Real Property was destroyed by fire on January 15, 2011. (App. 11.) The Respondent became aware at some point during the Foreclosure Action that it was not named as a loss payee on the Policy. (App. 11.) On April 18, 2011, a hearing for foreclosure and sale was held and an Order of Foreclosure and Sale was filed on April 25, 2011. (App. 11-12.) The Subject Real Property was sold at public auction on August 1, 2011 with the Respondent being the successful bidder, and an Order of Deficiency Judgment in the amount of \$117,546.89 (“Mortgage Debt”) was entered against Cajun and Quickel on September 6, 2011. (App. 12.) A Release of Lien Mortgage Satisfaction which released, cancelled, and satisfied the Mortgage was filed on September 8, 2011. (App. 12.)

On December 17, 2013, the instant action was tried as a non-jury trial before the Honorable George C. James, Jr. (App. 7.) The Respondent claimed that it was entitled to the entire sum of the Proceeds since the Mortgage Debt was greater than the Proceeds on deposit. (App. 12.) Jenrette claimed that the provisions of S.C. Code Ann. § 29-3-660 limit a deficiency judgment to those who are personally liable for a debt secured by a mortgage. (App. 19.) On February 11, 2014, the circuit court issued an order (“Trial Order”) which found that the Respondent held an equitable lien on the Proceeds since the successful bid of the Respondent in the Foreclosure Action was in an amount less than the residue of the mortgage debt remaining unsatisfied after the foreclosure sale of the Subject Real Property. (App. 7, 18.) The Trial Order also found that Jenrette’s reliance upon S.C. Code Ann. § 29-3-660 was misplaced as the Respondent did not seek a deficiency judgment against Jenrette, but claimed an equitable lien on the Proceeds to which Jenrette would otherwise be entitled. (App. 19.) Thereafter, Jenrette timely filed a motion to reconsider the Trial Order. (App. 2.) The circuit court issued an order on June 3, 2014 (“Final Order”) denying Jenrette’s motion to reconsider. (App. 2.) The circuit court amended the Trial Order in part and found that the Note was executed by Quickel on May 1, 2009, and that it erred in finding that the POA granted authority to Quickel to execute the Note in Jenrette’s name. (App. 2-3.)

Jenrette appealed and argued that the circuit court erred in finding the existence of an equitable lien in favor of the Respondent because she was a non-borrower who was not obligated to pay the Mortgage Debt. (App. 443-445.) The Court of Appeals disagreed and affirmed the circuit court’s finding of an equitable lien on the Proceeds. (App. 525.)

Jenrette filed a petition for rehearing. (App. 526.) Jenrette in her rehearing petition argued that the Court of Appeals’ decision erred in utilizing the *Blackwell* case to affirm the Trial

Order, and in not determining whether the Respondent was required to show a debt between it and Jenrette to establish an equitable lien. (App. 527, 528.) Further, Jenrette argued that the Opinion conflicted with prior decisions pertaining to equitable liens and the statutory provisions governing foreclosure proceedings and deficiency judgments. (App. 533, 534.) The Court of Appeals denied the petition for rehearing. (App. 541.) This petition followed.

Summary of Arguments in Support of Petition for Writ of Certiorari

First, the Court erred in applying the general rule espoused in *Blackwell v. State Farm Mut. Auto. Ins. Co.*, 237 S.C. 649, 118 S.E.2d 701 (1961), to affirm the circuit court's order awarding the Proceeds to the Respondent mortgagee because the \$117,546.89 Mortgage Debt sum due to Respondent was not a debt or obligation of the insured mortgagor, Jenrette. (App. 463-465.) The Trial Order did not substantively address the issue of whether the Respondent was required to show a debt between it and Jenrette, but summarily concluded that an equitable lien arose under a covenant in the Mortgage. (App. 18, 19.) The Mortgage Debt owed by Cajun and Quickel represents the residue of the Cajun Loan debt remaining unsatisfied after the foreclosure sale of the mortgaged real property, including the Subject Real Property that was insured and owned by Jenrette. (App. 12.) The issue of whether the imposition of an equitable lien requires the showing of a debt between parties was not addressed or analyzed in the Court of Appeal's Opinion. (App. 525.) "For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for the payment of the debt." *Chase Home Fin., L.L.C. v. Risher*, 405 S.C. 202, 209, 746 S.E.2d 471, 475 (Ct. App. 2013) (quoting *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011)). The debt claimed must exist between the parties for an equitable lien to be imposed. *First Union Commer. Corp. v. Nelson, Mullins,*

Riley, & Scarborough (In re Varat Enters.), 81 F.3d 1310, 1315 (4th Cir. 1996). A mortgage represents a security instrument for a debt or obligation, but not the full payment thereof. *Perpetual Bldg. & Loan Asso. v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978). The Court of Appeals' decision is in conflict with these authorities.

Second, the Court erred in utilizing *Jones v. Equicredit Corp.*, 347 S.C. 535, 556 S.E.2d 713 (Ct. App. 2001) to affirm the circuit court's conclusion that that the Mortgage Debt owed by Cajun and Quickel attached to the Proceeds. (App. 18, 19, 525.) The Trial Order identifies the elements required for the imposition of an equitable lien, but did not substantively address the issue of whether a deficiency judgment awarded against a third-party in a real estate mortgage foreclosure action is sufficient to satisfy the required attachment element of an equitable lien. (App. 12, 18-19.) The Court of Appeals failed to address the issue of whether S.C. Code Ann. § 29-3-660 allows a court to direct payment by a non-borrower mortgagor of the residue of a mortgage debt remaining unsatisfied after foreclosure and sale by attaching a third-party debt to the mortgagor's insurance proceeds. The statutory mechanism by which a mortgagee can obtain payment for the money due under a mortgage contract is by foreclosure and sale and deficiency judgment. "If the creditors have a lien by mortgage, judgment, or execution, they can insure their own interest, but they can have no right to attach insurance money due to anyone but their own debtor." *Steinmeyer v. Steinmeyer*, 64 S.C. 413, 421, 42 S.E. 184, 186 (1902). The Deficiency Statute, S.C. Code Ann. § 29-3-660, does not authorize or permit the attachment of a third-party deficiency judgment to property belonging to a mortgagor who is not obligated to pay the mortgage debt. The Court of Appeals' decision is in conflict with these authorities.

Concise Arguments in Support of the Petition for Writ of Certiorari

I. For an equitable lien to arise there must be a debt between Jenrette and the Respondent.

The Court of Appeals erred in affirming the circuit court's finding of the existence of an equitable lien in favor of the Respondent on the Proceeds. In affirming the circuit court, the Court of Appeals summarily concluded that an equitable lien arose in favor of the Respondent because Jenrette was bound by a covenant in the Mortgage. (App. 525.) However, the Court of Appeals did not address the issue of whether the Respondent was required to show a debt between it and Jenrette to establish an equitable lien. The Court of Appeals reached its erroneous conclusion by incorrectly utilizing the general rule espoused in the *Blackwell* case to affirm the Trial Order even though the Mortgage Debt owed by Cajun and Quickel was not a debt or obligation of the insured mortgagor, Jenrette.

In affirming the Trial Order, the Court of Appeals extrapolated the rule espoused in *Blackwell*, 237 S.C. at 653, 118 S.E.2d at 704, which concerned a chattel mortgage situation, to a situation involving a non-debtor mortgagor of a real estate mortgage to find that a mortgagee will have an equitable lien upon money due on a policy taken out by a mortgagor due to a covenant in a mortgage requiring insurance on the property. (App. 525.) The Court of Appeals erred in applying the rule espoused in the *Blackwell* case to the instant action as the *Blackwell* case involved an insured who was obligated on a promissory note that was secured by a chattel mortgage. In *Blackwell*, the insured purchased an automobile and borrowed money to pay the unpaid portion of the purchase price and the insurance premium. *Id.* at 650, 118 S.E.2d at 702. The loan was evidenced by a note that was secured by a chattel mortgage on an automobile. *Id.* at 651, 118 S.E.2d at 702. An equitable lien in favor of the bank was imposed upon the insurance proceeds to the extent of the chattel mortgage debt. *Id.* at 653, 118 S.E.2d at 704.

However, the South Carolina Supreme Court did not discuss or analyze the elements required to impose an equitable lien in rendering its decision. The Trial Order cited *First Fed. Sav. & Loan v. Finn*, 300 S.C. 228, 387 S.E.2d 253 (1989) in its equitable lien analysis and found that the \$117,546.89 Mortgage Debt owed by Cajun and Quickel satisfied the requisite debt element. (App. 12, 18-20.) However, the *First Fed. Sav. & Loan* case involved an appeal from a grant of summary judgment which dismissed a counterclaim for an equitable lien. *First Fed. Sav. & Loan*, 300 S.C. at 230, 387 S.E.2d at 253. The equitable lien counterclaim was asserted by a title holder of a parcel of real property against the mortgagee who commenced the action seeking foreclosure of the mortgage encumbering the property. *Id.* The Court did not substantively address the requisite elements of an equitable lien in affirming the grant of summary judgment. *Id.* at 232, 387 S.E.2d at 254.

The rule that an equitable lien may arise upon proceeds paid under an insurance policy obtained by a mortgagor in her own name where the mortgagor has covenanted to insure the mortgaged property for the mortgagee's benefit is predicated upon an express contract by which the property owner agrees to give a lien upon the particular proceeds. *Planters' Bank v. Globe & Rutgers Fire Ins. Co.*, 156 S.C. 453, 460, 153 S.E. 385, 387 (1930) (citing *Farmers' Loan & Tr. Co. v. Penn Plate-Glass Co.*, 103 F. 132 (3d Cir. 1900), *aff'd sub nom. Farmers' Loan & Tr. Co. v. Penn Plate Glass Co.*, 186 U.S. at 434 (1902)). In *Farmers' Loan & Tr. Co. v. Penn Plate Glass Co.*, 186 U.S. 434, 453 (1902), the United States Supreme Court assumed that a covenant to insure on the part of the mortgagor existed under the terms of the real estate mortgage at issue. However, the Court found that the mortgagor had no liability to pay the mortgage debt, and that the covenant to insure was of no materiality because the mortgagor was under no personal liability. *Id.* at 454, 457. "For an equitable lien to arise, there must be a debt, specific property

to which the debt attaches, and an expressed or implied intent that the property serve as security for the payment of the debt.” *Chase Home Fin.*, 405 S.C. at 209, 746 S.E.2d at 475 (quoting *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011)). The debt required to give rise to an equitable lien must be between the parties. *First Union Commer. Corp.*, 81 F.3d at 1315. On appeal, the issue in *Chase Home Fin.*, was whether any deficiency remaining after foreclosure of the mortgage encumbering the defendant’s husband’s one-half interest in their real property would attach to the defendant’s one-half interest. *Chase Home Fin.*, 405 S.C. at 210, 746 S.E.2d at 475. The Master-in-Equity required the plaintiff to show a specific debt owed from the defendant, and found that a showing of a debt from the defendant was necessary for the claimed equitable lien to attach. *Id.* at 208-09, 746 S.E.2d at 475. The Court of Appeals held that the Master-in-Equity was correct in determining that the plaintiff failed to establish an equitable lien. *Id.*

In the instant action, the Court of Appeals’ reliance upon the *Blackwell* case to affirm the trial court’s conclusion that an equitable lien in favor of the Respondent arose under a covenant in the Mortgage is erroneously based on a released contractual obligation. The Mortgage was released, cancelled, and satisfied on September 8, 2011 after the Respondent became aware of the fire loss. (App. 11, 12.) The circuit court found that Jenrette did not have any liability to the Respondent under the Note, and nothing in the POA referenced an obligation to obtain insurance on the Subject Real Property. (App. 9, 12.) The circuit court determined that the POA authorized Quickel to pledge the Subject Real Property as security for the Cajun Loan, and the instrument which created the security was the Mortgage. (App. 5.) However, the circuit court concluded that the insurance provision in paragraph 3A of the Mortgage required Jenrette to obtain insurance coverage on the Subject Real Property for the benefit of the

Respondent even though coverage under the Policy existed before the Mortgage was executed pursuant to the POA and the Respondent did not require that it be listed as a loss payee in its pre-loan procedures. (App. 10-14.) The \$117,546.89 Mortgage Debt sum owed by Cajun and Quickel is the debt upon which the circuit court relied in awarding an equitable lien to the Respondent on the Proceeds. (App. 12, 18-20.) The Mortgage did not represent the full payment of the residue of the debt or obligation created by the Cajun Loan that remained unsatisfied after the foreclosure and sale of the Subject Real Property. Jenrette did not have any liability to the Respondent under the Note, and nothing in the POA referenced an obligation to obtain insurance on the Subject Real Property. (App. 9, 12.) Therefore, the insurance provision in paragraph 3A of the Mortgage not only did not survive the satisfaction of the Mortgage but also was of no materiality because Jenrette was under no personal liability to pay any indebtedness created by the Cajun Loan, including the Mortgage Debt.

The Opinion's use of the *Blackwell* case to affirm the circuit court's finding of an equitable lien was improper as the *Blackwell* case involved a chattel mortgage that was executed by a borrower and which secured money paid for the purchase of an automobile. Unlike *Blackwell*, the instant action involves a real estate mortgage wherein the indebtedness is not a debt or obligation of the insured. The Court of Appeals failed to address the issue of whether the Respondent was required to establish a debt between it and Jenrette due to its incorrect application of the rule espoused in *Blackwell* to affirm the erroneous conclusion of the circuit court that an equitable lien arose out of a covenant under paragraph 3A of the Mortgage. The Court of Appeals' oversight and failure to substantively address the required debt element of an equitable lien necessitates the granting of the petition.

II. The deficiency judgment awarded to Respondent pursuant to S.C. Code Ann. § 29-3-660 cannot attach to the Proceeds through the imposition of an equitable lien.

The imposition of an equitable lien in favor of the Respondent on the Proceeds directly conflicts with S.C. Code Ann. § 29-3-660 as Jenrette was not personally liable for the Mortgage Debt. The Court of Appeals erred in utilizing the *Jones* case to affirm the circuit court's erroneous conclusion that the Mortgage Debt owed by Cajun and Quickel attached to the Proceeds. In affirming the circuit court, the Court of Appeals applied the rule espoused in the *Jones* case to the instant action and summarily concluded that the Respondent was entitled to the Proceeds since the unpaid amount of the Mortgage Debt exceeded the \$105,000.00 sum of the Proceeds on deposit. (App. 525.) The circuit court concluded that the Mortgage Debt attached to the Proceeds under paragraph 3B of the Mortgage, and that the Respondent was entitled to all of the Proceeds since the difference between the successful bid of the Respondent in the Foreclosure Action and the Mortgage Debt was greater than the sum of the Proceeds on deposit. (App. 18, 19.) However, the circuit court determined that Jenrette's reliance on S.C. Code Ann. § 29-3-660 was misplaced because the Respondent was not seeking a deficiency judgment against her, but claimed an equitable lien on the Proceeds to which Jenrette would otherwise be entitled. (App. 19.) The Court of Appeals' Opinion failed to address the issue of whether a deficiency judgment entered against a third-party pursuant to S.C. Code Ann. § 29-3-660 can attach to an insured mortgagor's proceeds when the mortgagor is not personally liable for the mortgage debt. (App. 525.)

In affirming the Trial Order, the Court of Appeals applied the rule espoused in *Jones*, 347 S.C. at 543-44, 556 S.E.2d at 717-18, that a mortgagee is entitled to collect insurance proceeds if the sum of the mortgage debt remaining unsatisfied following foreclosure and sale exceeds the insurance proceeds sum. The Court of Appeals erred in utilizing the *Jones* case to affirm the

Trial Order because the rule espoused in *Jones* was applied by the Court of Appeals in that case to an action which involved a determination of whether the insurable interest of a loan servicer of a mortgagee arising from its obligation under a servicing agreement with a mortgagee survived foreclosure. *Id.* at 542-43, 556 S.E.2d at 717. In *Jones*, the loan servicer was listed as the named insured on endorsements to the insurance policy, and the declarations provided that a loss shall be payable to the loan servicer. *Id.* at 541-42, 556 S.E.2d at 716. The insurable interest of the loan servicer arose from its obligation under a servicing agreement with the mortgagee to maintain insurance, and the loan servicer's contractual liability could be triggered upon its failure to obtain the disputed insurance proceeds. *Id.* at 542-43, 556 S.E.2d at 717. The Court of Appeals found that the loan servicer had an insurable interest in the mortgaged property because it was exposed to liability to the mortgagee for any losses incurred on the mortgage, and that, unlike a mortgagee's interest, the loan servicer's insurable interest "would not be extinguished even if the mortgage indebtedness is satisfied." *Id.*

In the instant action, the Court of Appeals applied the rule espoused in the *Jones* case even though Jenrette did not owe a debt to the Respondent, and the Respondent was not a named insured or loss payee under the Policy. A deficiency judgment was not entered against Jenrette in the Foreclosure Action because she was not an obligor or guarantor of the Mortgage Debt. (App. 12.) Unlike *Jones*, the instant action does not involve the issue of whether the Respondent has an insurable interest under the Policy following foreclosure and sale. Rather, the Respondent claims an equitable lien in the Proceeds otherwise payable to Jenrette. (App. 19.) In South Carolina, "a mortgagee's rights under a fire insurance policy are dependent upon the existence of a secured debt owed [to] the mortgagee by the mortgagor-insured." *Ft. Hill Fed. Sav. & Loan Asso. v. S.C. Farm Bureau Ins. Co.*, 281 S.C. 532, 537, 316 S.E.2d 684, 687 (Ct.

App. 1984). Hence, there is no need for application of the rule espoused in *Jones* to determine whether the Respondent held an equitable lien in the subject insurance proceeds.

The Court of Appeals and the circuit court relied upon the *Jones* case to find that the Respondent was entitled to the Proceeds since the successful bid of the Respondent submitted in the Foreclosure Action was less than the balance due on the debt secured by the Mortgage. (App. 18.) The \$117,546.89 Mortgage Debt sum owed by Cajun and Quickel represents the residue of the debt in favor of the Respondent remaining unsatisfied after the foreclosure and sale of the Subject Real Property. This unpaid amount of the debt owed to the Respondent by Cajun and Quickel is the debt to which the circuit court concluded attached to the Proceeds under paragraph 3B of the Mortgage. (App. 18, 19.) The statutory mechanism in South Carolina by which a mortgagee can obtain payment for a mortgage debt is by foreclosure according to law and a deficiency judgment pursuant to S.C. Code Ann. § 29-3-660 (“Deficiency Statute”).

South Carolina courts have found “that if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency.” *Perpetual Bldg. & Loan Asso.*, 270 S.C. at 340, 242 S.E.2d at 408. Prior to 1791, South Carolina adhered to the common law principle of mortgages whereby an action to foreclose a mortgage was regarding strictly *in rem*. *Id.* at 341-42, 242 S.E.2d at 409. This Court has held that a real estate mortgage foreclosure proceeding was a proceeding *in personam* as well as *in rem*, meaning that a deficiency judgment could be awarded in a foreclosure action. *See, e.g., Anderson v. Pilgram*, 30 S.C. 499, 9 S.E. 587 (1889) (holding that an action for foreclosure was a proceeding *in personam* as well as *in rem*). “The right to a deficiency judgment is provided by statute,” *Am. Gen. Fin. Servs. v. Brown*, 376 S.C. 580, 583, 658 S.E.2d 99, 100

(2008), and permits a court in a mortgage foreclosure action to issue a deficiency judgment for the residue of the mortgage debt remaining unsatisfied after judicial sale in cases in which a mortgagor or other person is personally liable for the mortgage debt. S.C. Code Ann. § 29-3-660. This structure exists under the current version of the South Carolina Code and provides that a mortgagee:

shall be deemed the . . . owner of the money lent or due and the mortgagee shall be entitled to recover satisfaction for such money out of the land by *foreclosure and sale according to law*.

S.C. Code Ann. § 29-3-10 (emphasis added). In codifying these rights, the General Assembly then established the mechanism—“according to law”—through which a mortgagee can obtain payment for the money lent or due under a mortgage contract—foreclosure sale and deficiency judgment. The General Assembly empowered the court with the duty to determine whether payment for any remaining indebtedness is owed by a mortgagor or guarantor. The Code states:

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).

The Court of Appeals overlooked the above statutes in its Opinion and affirmed the circuit court’s decision attaching the deficiency judgment owed by Cajun and Quickel to the Proceeds under a paragraph 3B of the Mortgage. The South Carolina Supreme Court has “explained that a mortgage represents security for an obligation, [but] not full payment thereof.” *Am. Gen. Fin. Servs.*, 376 S.C. at 583, 658 S.E.2d at 100. As a result, the deficiency judgment

becomes an incident to the foreclosure to ensure full payment of the debt obligation. *Perpetual Bldg. & Loan Asso.*, 270 S.C. at 340, 242 S.E.2d at 408. In the instant action, the Respondent was unable to obtain a deficiency judgment against Jenrette following the foreclosure and sale of the Subject Real Property since she was neither the maker of the Note nor the guarantor of the payment of the indebtedness created by the Cajun Loan. (App. 12.) Jenrette did not have any liability to the Respondent under the Note, and the instrument which created the security was the Mortgage. (App. 5, 12.) The Deficiency Statute does not permit a court to adjudge and direct the payment by Jenrette of the residue of the mortgage debt remaining unsatisfied after the foreclosure sale since she is not personally liable for the debt secured by the Mortgage. Thus, the statutory remedy available to the Respondent was by foreclosure of the Mortgage and judicial sale of the Subject Real Property. The Mortgage did not represent the full payment of the residue of the debt or obligation created by the Cajun Loan that remained unsatisfied after the foreclosure and sale of the Subject Real Property. The foreclosure and sale of the Subject Real Property and subsequent deficiency judgment against Cajun and Quickel for the \$117,546.89 Mortgage Debt sum was awarded to the Respondent under the statutory mechanism through which the Respondent, as mortgagee, could obtain payment for the money lent or due under the Mortgage. By finding the existence of an equitable lien in favor of the Respondent, the Court of Appeals and the circuit court utilized the deficiency judgment against Cajun and Quickel for the \$117,546.89 Mortgage Debt sum to direct payment of the Proceeds that were payable to Jenrette under the Policy she previously obtained for her sole benefit.

The Court of Appeals and the circuit court's conclusion that an equitable lien in favor of the Respondent arose under a covenant in the Mortgage is based on a contractual obligation. This conclusion defies the long-standing statutory provisions governing foreclosure proceedings. The Court of Appeals relied on the *Jones* case to affirm the circuit court's conclusion that the Mortgage Debt attached to the Proceeds under paragraph 3B of the Mortgage. However, the *Jones* case involved an analysis and determination of a loan servicer's rights under an insurance policy and the distinguishing of the insurable interest of a loan servicer and a mortgagee. The imposition of an equitable lien in favor of the Respondent on the Proceeds in the sum of \$105,000.00 directly conflicts with the Deficiency Statute as Jenrette was not personally liable for the Mortgage Debt. As established by the General Assembly and this Court, S.C. Code Ann. § 29-3-660 provides a South Carolina court with the authority to determine whether payment for any mortgage indebtedness remaining unsatisfied after foreclosure and sale is owed by a mortgagor. The Mortgage Debt owed by Cajun and Quickel represents the residue of the Cajun Loan debt remaining unsatisfied after foreclosure and sale. By attaching Jenrette's insurance proceeds in the sum of \$105,000.00 as payment of the deficiency judgment entered against Cajun and Quickel, the Court of Appeals and the circuit court directed Jenrette to pay the residue of the Cajun Loan debt remaining unsatisfied after foreclosure and sale through the imposition of an equitable lien upon her property, the Proceeds, even though she was not personally liable for the debt secured by the Mortgage. Thus, the Court of Appeals' Opinion transforms Jenrette into a deficiency judgment debtor even though a deficiency judgment cannot be rendered against her under South Carolina law.

Conclusion

Review of this matter is necessary. Based on the above, the Court should grant the petition and reverse the Opinion of the Court of Appeals affirming the Trial Order in order to render a decision that is consistent with the prior decisions pertaining to equitable liens and the statutory provisions governing real estate mortgage foreclosure actions and deficiency judgments.

Respectfully submitted,

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May 24, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No. 2016-000915

National Security Fire and Casualty Company.....Plaintiff,

v.

Rosemary Jenrette, a/k/a Rosemary Long Jenrette,
and Horry County State Bank.....Defendants,

of whom

Rosemary Jenrette, a/k/a Rosemary Long Jenrette,Appellant,

v.

Horry County State Bank.....Respondent.

PROOF OF SERVICE

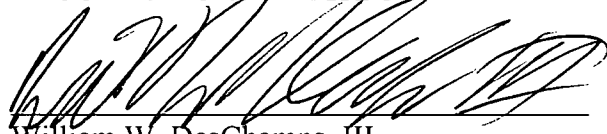
I certify that I have served one (1) copy of the Appellant's Petition for Writ of Certiorari, Appendix Book 1 of 2, and Appendix Book 2 of 2 upon counsel for Respondent Horry County State Bank by depositing a copy of the same in the United States Mail, postage prepaid, on May 31, 2016, to the following address:

Randall K. Mullins, Esquire
Jarrod E. Ownbey, Esquire
Mullins Law Firm
1312 Madison Drive,
N. Myrtle Beach, SC 29582

[SIGNATURE ON THE FOLLOWING PAGE]

Dated: June 1, 2016

DESCHAMPS LAW FIRM

A handwritten signature in black ink, appearing to read 'William W. DesChamps, III', written over a horizontal line.

William W. DesChamps, III
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