

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM Horry COUNTY  
Court of Common Pleas

**RECEIVED**

The Honorable George C. James, Jr., Circuit Court Judge JUL 21 2016

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Appellate Case No.: 2016-000915

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**S.C. SUPREME COURT**

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.

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**REPLY IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI**

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Petitioner Rosemary Jenrette a/k/a Rosemary Long Jenrette (“Jenrette”) files her Reply to Respondent Horry County State Bank’s (“Respondent”) Return to Petition for Writ of Certiorari in this matter. As detailed herein and as set forth in Jenrette’s Petition, this Court should grant certiorari and reverse the decision of the Court of Appeals affirming the Trial Court’s finding of an equitable lien.

### Introduction

The Court of Appeals’ Opinion (“Opinion”) affirming the Trial Court’s imposition of an equitable lien on the subject insurance proceeds (“Proceeds”) represents a drastic departure from the statutory mechanism by which a real estate mortgagee can enforce a real estate mortgage and obtain payment for a mortgage debt and must be reversed. Each of the cases the Court of Appeals and the Respondent rely upon for the proposition that an equitable lien may be imposed upon the Proceeds due to the existence of a third-party mortgage debt and a purported mortgage covenant involve chattel mortgages where the insured property is personal property, and disputes pertaining to the rights of a mortgagee under an insurance policy where such mortgagee is named as a loss payee under a standard mortgage clause contained in the policy.

**I. An equitable lien cannot be imposed upon insurance proceeds otherwise payable to an insured mortgagor without the real estate mortgagee’s showing of the necessary debt element.**

The cases cited in the Opinion, the February 11, 2014 order of the Trial Court (“Trial Order”), and in the Respondent’s Return do not involve a dispute between a real estate mortgagee and an insured mortgagor where the mortgagee seeks the imposition of an equitable lien upon insurance proceeds to pay a third-party mortgage debt evidenced by a deficiency judgment awarded under S.C. Code Ann. § 29-3-660.

**A. The South Carolina General Assembly has adopted a statutory mechanism by which a real estate mortgagee can obtain payment for a mortgage debt.**

An equitable lien based upon a covenant in a chattel mortgage to insure personal property does not supersede the statutory mechanism by which a mortgagee can seek enforcement of a real estate mortgage and obtain payment for a mortgage debt. The statutory mechanism in South Carolina by which a mortgagee can seek enforcement of a real estate mortgage and obtain payment for a mortgage debt is by foreclosure according to law and an award of a deficiency judgment pursuant to S.C. Code Ann. § 29-3-660. Pursuant to the statutory provisions governing real estate mortgage foreclosure proceedings, “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. v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978). “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 real estate mortgage foreclosure action to issue a deficiency judgment for the residue of the mortgage debt remaining unsatisfied after a judicial sale where a mortgagor or other person is personally liable for the mortgage debt. S.C. Code Ann. § 29-3-660.

Prior to 1791, South Carolina followed the common law whereby a real estate mortgage foreclosure proceeding was strictly *in rem*. *Perpetual Bldg. & Loan Asso.*, 270 S.C. at 341-42, 242 S.E.2d at 409. Under this structure, a mortgagee was required to first bring an action to foreclose a mortgage in an equity court, and thereafter bring a subsequent action at law to obtain a deficiency judgment if a deficiency was sought. *Id.* In *Anderson v. Pilgram*, 30 S.C. 499, 9 S.E. 587 (1889), this Court stated that in South Carolina, a foreclosure action was a proceeding *in personam* as well as *in rem* and, therefore, a deficiency judgment could be granted in a real

estate mortgage foreclosure proceeding. This Court later recognized that a judgment for deficiency is incident to the relief sought in an action for foreclosure. *McConnell v. Barnes*, 142 S.C. 112, 140 S.E. 310 (1927). In *McConnell*, this Court abandoned the distinction between *in rem* and *in personam* proceedings and integrated a real estate mortgage foreclosure action and an action for deficiency judgment following foreclosure and sale. *Id.* The structure of foreclosure proceedings stated in *McConnell* is identical to the structure that exists under the current version of the South Carolina Code. In codifying these rights, the General Assembly established the mechanism—“according to law”—through which a mortgagee can obtain payment for the money lent due under a mortgage contract—by way of foreclosure and sale and a 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 General Assembly further directed that the power of the court to render a deficiency judgment in a foreclosure action can arise at the same time as the issuance of the order of foreclosure and sale. Specifically the General Assembly directed by statute:

*The court may also render judgment against the parties liable for the payment of the debt secured by the mortgage and direct at the same time the sale of the mortgaged premises. Such judgment so rendered may be entered and docketed in the clerk’s office in the same manner as other judgments. Upon the 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 paid to the plaintiff from the proceeds of the sale.*

S.C. Code Ann. § 29-3-650 (emphasis added). The Court of Appeals overlooked the above statutes in its Opinion. In affirming the Trial Court's finding of an equitable lien, the Court of Appeals erroneously relied upon *Blackwell v. State Farm Mut. Auto. Ins. Co.*, 237 S.C. 649, 118 S.E.2d 701 (1961) and summarily concluded that an equitable lien arose in favor of the Respondent due to the Trial Court's erroneous conclusion that Jenrette was bound by a purported covenant in the subject mortgage ("Mortgage") to insure her real property. (App. 525.) Turning to the facts in the *Blackwell* opinion, it is apparent that this Court in that case applied the rule that a mortgagee will have an equitable lien upon money due on an insurance policy taken out by a mortgagor due to a mortgage covenant in an action involving a dispute between the estate of an insured and an insurer on an insurance policy insuring an automobile that was secured by a chattel mortgage. *Id.* at 650-52, 118 S.E.2d at 702-04. The issue in the *Blackwell* case was whether the insurer discharged its liability by paying the proceeds to the holder of the chattel mortgage. *Id.* at 650, 118 S.E.2d at 702. Hence, *Blackwell* is not a case that changes the outcome Jenrette is advocating in the instant action as the *Blackwell* case does not involve a real estate mortgage, the enforcement of which is subject to and governed by statute. *See* S.C. Code Ann. §§ 29-3-650, 29-3-660. The proper procedure to enforce an obligation or contractual duty arising under a real estate mortgage can be summarized as follows:

**Scenario 1; Mortgagor is Maker of the Note:**

- A maker of a promissory note who signs the note and a real estate mortgage securing payment of the note defaults by failing to make payments as required under the terms of the note:
  - The mortgagee brings a foreclosure action against the mortgagor and requests a deficiency judgment against the mortgagor for the residue of the mortgage debt remaining unsatisfied following foreclosure and sale as such mortgagor is

personally liable for the mortgage debt due to such mortgagor's execution of the promissory note;

- Prior to the foreclosure sale, the court determines the sum of the mortgage debt owed under the promissory note and issues a judgment against the mortgagor for the indebtedness owed since such mortgagor executed the note;
- If the mortgaged property is sold at foreclosure and the proceeds do not yield an amount sufficient to satisfy the mortgage debt, the court enters a deficiency judgment against the mortgagor for the amount of the mortgage debt remaining unsatisfied. The amount paid to the plaintiff from the proceeds of sale is credited upon the judgment for the mortgage debt.

**Scenario 2; Mortgagor only signs Mortgage:**

- A mortgagor who owns real property pledges a parcel of real property to secure a loan to a third-party and only signs a mortgage securing the promissory note. The maker of the note defaults by failing to make payments as required under the terms of the note. In this factual scenario, South Carolina law does not permit a court to direct the payment by the mortgagor of any mortgage debt remaining unsatisfied after foreclosure and sale:
  - The mortgagee will bring a foreclosure action against the mortgagor seeking foreclosure of the mortgage and, if the mortgagee requests a deficiency judgment, the maker of the note and any guarantor of the mortgage debt will be joined as defendants in the action;
  - Prior to the foreclosure sale, the court determines the sum of the mortgage debt owed under the promissory note and issues a judgment against the maker of the note and the guarantor of the mortgage debt for the indebtedness owed;
  - If the mortgaged property is sold at foreclosure and the proceeds do not yield an amount sufficient to satisfy the mortgage debt, the court enters a deficiency judgment against the maker of the note and the guarantor for the amount of the mortgage debt remaining unsatisfied, but cannot direct the mortgagor to pay any remainder of the mortgage debt since such mortgagor is not personally liable for the debt. The amount paid to the plaintiff from the proceeds of sale is credited upon the judgment for the mortgage debt.

*See, e.g., Am. Gen. Fin. Servs.*, 376 S.C. 580, 658 S.E.2d 99 (explaining the procedures of a foreclosure action wherein a deficiency judgment is requested and the amount of the deficiency judgment is determined by the court); S.C. Code Ann. §§ 29-3-650, 29-3-660.

In the instant action, the prior foreclosure proceeding involving the Mortgage is identical to the illustration described above in Scenario 2. The Master-in-Equity found that the \$390,951.97 sum evidenced by the promissory note ("Note") executed by Cajun Carolina, LLC ("Cajun"), as maker, was the amount due to the Respondent on the obligation and the Mortgage, and that Cajun and Michael Brooks Quickel ("Quickel") were liable for the aforesaid mortgage debt. (App. 12, 317, 318.) In the Order of Foreclosure and Sale filed on April 26, 2011, the Master-in-Equity determined that judgment was to be rendered against Cajun and Quickel for any amounts outstanding if the foreclosure sale did not yield a sum sufficient to satisfy the mortgage debt. (App. 4, 12.) No such findings were made as to Jenrette because she was neither an obligor of the Note secured by the Mortgage nor a guarantor thereof. (App. 12.) On September 6, 2011, an Order of Deficiency Judgment in the amount of \$117,546.89 was entered against Cajun and Quickel. (App. 12.) Pursuant to S.C. Code Ann. § 29-3-650, the \$390,951.97 judgment against Cajun and Quickel for the mortgage debt was reduced by the amount paid to the Respondent, as the plaintiff, from the foreclosure sales proceeds, thereby reducing the amount of the aforesaid judgment for the mortgage debt to \$117,546.89.<sup>1</sup> However, the Court of Appeals in the instant action affirmed the Trial Court's conclusion that the Respondent held an equitable lien on the Proceeds up to the \$117,546.89 balance of the mortgage debt remaining unsatisfied after the foreclosure sale since the Respondent's winning bid at foreclosure was less than the balance due on the mortgage debt. (App. 18, 20, 525.)

The Court of Appeals and the Trial Court disregarded the statutory mechanism by which a real estate mortgagee can enforce and obtain payment of a mortgage debt, and directed Jenrette, by imposing an equitable lien upon the Proceeds, to pay a majority of the \$117,546.89

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<sup>1</sup> The Respondent was the successful bidder at the foreclosure sale involving the Mortgage (App. 12.) and its bid amount is considered as proceeds paid to the plaintiff under the laws and procedures applicable to foreclosure proceedings in the State of South Carolina.

mortgage debt balance remaining unsatisfied after the foreclosure sale. Accordingly, none of the other cases noted by the Respondent in its Return or cited by the Court of Appeals in its Opinion involve the imposition of an equitable lien upon insurance proceeds otherwise payable to an insured mortgagor to pay a third-party mortgage debt that is evidenced by a deficiency judgment awarded pursuant to S.C. Code Ann. § 29-3-660. Thus, the Opinion's omission of the statutory mechanism by which a mortgagee can obtain payment of a mortgage debt shows why the granting of Jenrette's Petition is necessary, and no equitable lien can be imposed upon Jenrette's Proceeds to pay the \$117,546.89 deficiency judgment sum owed by Cajun and Quickel.

**B. A covenant to insure real property in a real estate mortgage does not evidence a debt between a mortgagor and a mortgagee.**

South Carolina law requires that a debt or obligation must exist between the parties before such debt or obligation can be attached to a specific property under an equitable lien claim. The Trial Court specifically found that Jenrette was not liable under the Note since she was neither a maker nor a guarantor. The Court of Appeals affirmed the Trial Court's finding that the mortgage debt which attached to the Proceeds was the \$117,546.89 sum owed by Cajun and Quickel that remained unsatisfied after the foreclosure sale. (App. 18-20.) Thus, the debt or obligation which the Court of Appeals and the Trial Court found to exist was not a debt or obligation of Jenrette.

The Respondent asserts that Paragraph 17 (I) of the Mortgage establishes a debt between Jenrette and the Respondent. (Return at p. 24.) However, the Respondent also concedes that Jenrette is not obligated on the mortgage debt. (Return at p. 22.) The Respondent claims that Jenrette acknowledges in Paragraph 17 (I) of the Mortgage that she is bound by the terms and conditions of the Note. (Return at p. 24.) A mortgage represents a security instrument for a debt or obligation, but not the full payment thereof. *Perpetual Bldg. & Loan Asso.*, 270 S.C. at 340,

242 S.E.2d at 408. "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). A promissory note that is secured by a real estate mortgage is subject to the version of the *Uniform Commercial Code* adopted by the State of South Carolina and codified by statute. *Swindler v. Swindler*, 355 S.C. 245, 251, 548 S.E.2d 438, 441 (Ct. App. 2003). *Article 9*, which governs secured transactions, does not apply to the creation of a lien on real property. S.C. Code Ann. § 36-9-109(d)(11). A maker of a promissory note is defined by statute as a person undertaking to pay. *Id.* § 36-3-103(a)(7). A person is not obligated or liable on a promissory note unless such person signs the note. *Id.* §§ 36-3-401(a), 36-9-102(65). Under South Carolina law, Jenrette cannot be bound by the terms and conditions of the Note which evidenced the mortgage debt prior to foreclosure since she did not sign the note.

Even though the Trial Court specifically found that Jenrette was not obligated or liable on the Note, the Court of Appeals affirmed the Trial Court's conclusion that the \$117,546.89 mortgage debt sum owed by Cajun and Quickel satisfied the requisite debt element required for the imposition of an equitable lien. "For an equitable lien or charge to arise as to specific property, there must be: 1) a debt, duty, or obligation between the parties; 2) specific property or res to which the debt or obligation attaches; and 3) an intent, express or implied, that the property serve as security for the payment or obligation." *First Union Commer. Corp. v. Nelson, Mullins, Riley, & Scarborough (In re Varat Enters.)*, 81 F.3d 1310, 1319 (4th Cir. 1996). Although the *First Union Commercial Corporation* case is factually distinguishable from the instant action, the opinion of United States Court of Appeals for the Fourth Circuit specifically sets forth the elements that must be established to impose an equitable lien under South Carolina law. *Id.* The

Court in that case found that the required debt element was satisfied because the debtor admitted that he owed the claimed debt. *Id.* In the instant action, the Trial Court concluded that the \$117,546.89 mortgage debt owed by Cajun and Quickel satisfied the requisite debt element, and that the aforesaid \$117,546.89 mortgage debt was the debt or obligation which attached to the Proceeds. The Opinion affirming the Trial Court's finding of an equitable lien based on a debt that never existed between Jenrette and the Respondent fails to satisfy the criteria that must be established to impose an equitable lien under South Carolina law.

Regardless of the specific language contained in Paragraph 17 (I) of the Mortgage and any purported acknowledgments which Respondent alleges may be contained therein, an individual must sign a promissory note to be liable or obligated on the note. The Opinion affirming the Trial Court's conclusion that the Respondent was entitled to the Proceeds because the \$117,546.89 mortgage debt owed by Cajun and Quickel could attach to the Proceeds under an equitable lien theory fails to satisfy the requisite elements articulated by the United States Court of Appeals for the Fourth Circuit. Thus, the Petition must be granted and review of this matter is necessary.

**II. The \$117,546.89 deficiency judgment sum remaining unsatisfied after foreclosure and sale is the debt on which the Trial Court and the Court of Appeals erroneously concluded attached to the subject insurance proceeds.**

The Respondent contends that the Court of Appeals and the Trial Court did not find that the \$117,546.89 deficiency judgment owed by Cajun and Quickel attached to the Proceeds, but instead that it attached pursuant to a purported covenant contained in the Mortgage. (Return at p. 17.) The Respondent's interpretation of the Trial Order misconstrues the Trial Court's analysis and conclusion pertaining to its finding of an equitable lien as the Trial Court erroneously concluded that the Respondent held an equitable lien on the Proceeds up to the \$117,546.89

mortgage debt sum owed by Cajun and Quickel that remained unsatisfied after the foreclosure sale. The Master-in-Equity in the prior foreclosure proceeding involving the Mortgage found that the sum due on the obligation and mortgage was in the amount of \$390,951.97, and entered judgment against Cajun and Quickel for the aforesaid mortgage debt. (App. 318.) At that time, the \$390,951.97 mortgage debt was reduced to a judgment against Cajun and Quickel pursuant to the Master-in-Equity's Order of Foreclosure and Sale. (App. 4, 12, 317.) After the conclusion of the foreclosure sale in the prior foreclosure proceeding with the Respondent being the successful bidder, the judgment for the balance of the mortgage debt was reduced to \$117,546.89 pursuant to S.C. Code Ann. § 29-3-650 when the \$117,546.89 deficiency judgment was entered against Cajun and Quickel on September 6, 2011. (App. 4, 12.) In the instant action, the Trial Court specifically found that the Respondent's recovery of the Proceeds was in the amount of the aforesaid mortgage debt less the amount of the Respondent's bid at foreclosure. (App. 18.)

The Respondent correctly asserts that the sum of the residue of the mortgage debt remaining unsatisfied after the foreclosure sale was in the amount of \$117,546.89, and that the \$117,546.89 sum exceeded the amount of the Proceeds at issue. (Return at pp. 21-22.) The only mortgage debt evidenced in the record is the \$117,546.89 mortgage debt sum owed by Cajun and Quickel that remained unsatisfied after the foreclosure sale and entry of the release which cancelled and satisfied the Mortgage. The aforesaid \$117,546.89 mortgage debt sum is solely evidenced by the \$117,546.89 deficiency judgment that was awarded to the Respondent pursuant to S.C. Code Ann. § 29-3-660. Thus, the decisions of the Trial Court and the Court of Appeals, through the imposition of an equitable lien on the Proceeds otherwise payable to Jenrette, directed Jenrette to pay a majority of the \$117,546.89 deficiency judgment sum even though no mortgage debt ever existed between Jenrette and the Respondent.

**III. The cases cited by the Trial Court and relied upon by the Respondent which pertain to the determination of a mortgagee's rights under an insurance policy were applied to the instant action even though no debt existed between the parties.**

The Respondent asserts that the principle contained in the case *Jones v. Equicredit Corp.*, 347 S.C. 535, 556 S.E.2d 713 (Ct. App. 2001) pertaining to a mortgagee's rights under an insurance policy following foreclosure and sale were applied in the instant action by both the Trial Court and the Court of Appeals.<sup>2</sup> (Return at p. 19.) The issue in the *Jones* case was whether the insurable interest of a loan servicer arising from its obligation under a servicing agreement with a mortgagee survived foreclosure. *Jones*, 347 S.C. at 542-43, 556 S.E.2d at 717. In *Jones*, the Court of Appeals distinguished the insurable interest of a loan servicer from that of a mortgagee, and found that the insurable interest of the loan servicer arose from its obligation under a servicing agreement with the mortgagee to maintain insurance. *Id.* The loan servicer in the *Jones* case was listed as the named-insured on endorsements to the insurance policy, and the declarations provided that a loss be payable to the loan servicer. *Id.* at 541-42, 556 S.E.2d at 716. In the instant action, the Trial Court and the Respondent also rely upon other decisions which do not involve a claim for an equitable lien but pertain to the rights of mortgagee named as a loss-payee under an insurance policy and its assignee following foreclosure and sale. (App. 16-17.) *See, e.g., Whitestone Sav. & Loan Asso. v. Allstate Ins. Co.*, 28 N.Y.2d 332, 270 N.E.2d 694 (1971) (action brought by a mortgagee to recover for a fire loss under a mortgagee loss payable clause contained in the fire insurance policy); *Allstate Ins. Co. v. James*, 779 F.2d 1536 (11th Cir. 1986) (action where the mortgagors defaulted on a promissory note and the insurance policy contained a loss-payee clause which provided for the mortgagee to receive loss proceeds);

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<sup>2</sup> Respondent's Return at p. 19 states: "'Ordinarily, the rights of a mortgagee to insurance proceeds are determined at the time of a fire loss.' *Singletary v. Aetna Cas. & Sur. Co.*, 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct. App. 1994). 'However, **a mortgagee's rights under an insurance policy** are terminated, if after a fire loss, the underlying debt is satisfied at a foreclosure sale.'" *Singletary*, 316 S.C. at 200-01, 447 S.E.2d at 870; *Jones*, 347 S.C. at 543, 556 S.E.2d 713.

*Nationwide Mut. Fire Ins. Co. v. Wilborn*, 291 Ala. 193, 279 So. 2d 460 (1973) (issue was whether a mortgagee insured could recover under a standard mortgage clause contained in an insurance policy naming the mortgagee as a loss-payee after the mortgage debt has been fully satisfied by foreclosure or otherwise); *Certain Underwriters of Lloyds v. US Indus. Servs., L.L.C.*, 825 F. Supp. 2d 882 (E.D. Mich. 2011) (holding that the assignment of the mortgage survived the foreclosure sale because the loss payable provision in the insurance policy was a standard mortgage clause and the mortgagee's rights under the policy were not dependent on the property owner's rights).

In the instant action, Jenrette obtained the insurance policy under which the Proceeds were paid for her sole benefit. (App. 9.) The Respondent was never named as a loss-payee or an additional insured in the aforesaid insurance policy. (App. 11.) However, the Trial Court cited cases from other jurisdictions that applied the majority rule pertaining to a standard mortgage clause in an insurance policy where the mortgagee is named in the policy as a loss-payee to justify its conclusion that the purported assignment in paragraph 3B of the Mortgage survived foreclosure and sale.<sup>3</sup> (App. 16-18.) (See *Whitestone Sav. & Loan Assn.*, 28 N.Y.2d 332, 270 N.E.2d 694 (1971); *Nationwide Mut. Fire Ins. Co.*, 291 Ala. 193, 279 So. 2d 460 (1973); *Certain Underwriters of Lloyds, London*, 825 F. Supp. 2d 882 (E.D. Mich. 2011)). Even if the principles and rules pertaining to the rights of a named loss-payee mortgagee under an insurance policy were deemed applicable to the instant action, the Opinion must be reversed as South Carolina declined to fully accept the majority rule adopted by the jurisdictions of the cases relied upon by the Trial Court. The South Carolina rule's distinction from the aforesaid majority rule is that a

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<sup>3</sup> The Trial Order cites the above-cited cases from other jurisdictions and discusses the full credit bid rule that was applied in those cases when determining whether paragraph 3B of the Mortgage survived foreclosure, and erroneously determined that the decisions in the referenced cases are consistent with the decisions of South Carolina appellate courts without considering the modified-majority rule adopted in South Carolina discussed herein. (App. 16-18.)

mortgagee's rights under a fire insurance policy are dependent upon the existence of a secured debt between the mortgagee and the insured mortgagor. *Ft. Hill Fed. Sav. & Loan Assoc. v. S.C. Farm Bureau Ins. Co.*, 281 S.C. 532, 537, 316 S.E.2d 684, 687 (Ct. App. 1984). Thus, the Opinion affirming the Trial Court's extrapolation of the majority rule pertaining to a standard mortgage clause contained in an insurance policy to determine whether the provisions of paragraph 3B of the Mortgage survived the foreclosure sale, and ultimately to determine the existence of an equitable lien, directly conflicts with the modified rule adopted by this Court.

### **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 to render a decision that is consistent with the statutory provisions governing the mechanism by which a mortgagee can obtain payment of a mortgage debt, and the proper analysis of the requisite elements that must be established to impose an equitable lien under South Carolina law.

Respectfully submitted,

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Horry County State Bank .....Respondent.

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PROOF OF SERVICE

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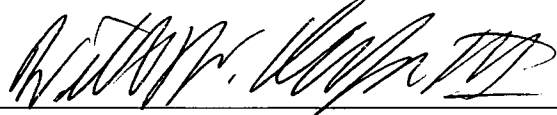
I certify that I have served one (1) copy of the Petitioner's Reply in Support of the Petition for Writ of Certiorari upon counsel for Respondent Horry County State Bank by depositing a copy of the same in the United States Mail, postage prepaid, on July 18, 2016, to the following address:

Randall K. Mullins, Esquire  
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1312 Madison Drive,  
N. Myrtle Beach, SC 29582

**[SIGNATURE ON THE FOLLOWING PAGE]**

Dated: July 18, 2016

**DESCHAMPS LAW FIRM**

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

William W. DesChamps, III.

*Attorney for Petitioner Rosemary Jenrette*

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