

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity for Richland County

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Appellate Case No. 2016-000958

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Wells Fargo Bank, N.A., Plaintiff,

v.

William R. Hudspeth, Marcia E. Hudspeth; TD Bank, N.A. s/b/m to Carolina First Bank; The Lender Group, Inc.; Business Carolina, Inc.; South Carolina Department of Revenue; Carapace, LLC; Wurth Wood Group, Inc.; The Estate of Harry William Boyd, by Joan L. Boyd, Personal Representative; Adecco USA, Inc., Defendants,

Of Whom TD Bank, N.A. successor by merger to Carolina First Bank is the Appellant,

and Of Whom The Lender Group, Inc. is the Respondent.

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FINAL BRIEF OF RESPONDENT, THE LENDER GROUP, INC.

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## STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred when it provided surplus proceeds from a foreclosure sale to Respondent, a judgment lien holder, before providing them to Appellant, the holder of a second position mortgage and the successful bidder at the foreclosure sale.

## STATEMENT OF THE CASE

The issue presented to this Court by the Appellant, TD Bank, N.A., successor by merger to Carolina First Bank (hereinafter, “**TD Bank**” or “**Appellant**”), relates to the distribution of surplus funds to the Respondent, The Lender Group, Inc. (hereinafter, “**The Lender Group**” or “**Respondent**”), following the sale of the property located at 222 Treyburn Circle, Irmo, South Carolina, (hereinafter, the “**Subject Property**”).

The parties do not dispute the foreclosure and sale of the Subject Property. On July 17, 2015, the Richland County Circuit Court entered the Order of Foreclosure and Sale in favor of Wells Fargo Bank, N.A., (hereinafter, “**Wells Fargo**”), and ordered that the Subject Property be sold. Thereafter, on August 3, 2015, TD Bank purchased the Subject Property at the foreclosure sale for \$350,000.00. On September 2, 2015, the Master-in-Equity for Richland County executed a Deed conveying the Subject Property to TD Bank, this deed being recorded in the Official Records of Richland County, South Carolina in Book 2058, at Page 374, on September 15, 2015. This sale satisfied the debt owed to Wells Fargo and resulted in a surplus of \$224,956.01. On September 17, 2015, the Circuit Court filed a final statement of receipt and disbursements and a hearing on the surplus funds was set for October 23, 2015.

As a result of the surplus funds, several junior lienholders submitted claims for these funds, Appellant and Respondent included. On April 1, 2016, Richland County Master-in-Equity Judge Joseph Strickland held a hearing and by Order dated April 29, 2016, awarded \$224,921.01 of the surplus funds (setting aside \$35.00 for court costs) to the Respondent.

On May 5, 2016, TD Bank filed a Notice of Appeal of the Order disbursing the surplus funds and served the same on Respondent. TD Bank additionally filed a Motion for Order to stop payment on the surplus funds pursuant to Rule 241(a) on May 11, 2016. This Motion was denied by the Circuit Court and a Supplemental Disbursement Order was issued, again awarding the surplus funds to the Respondent. Thereafter, on May 19, 2016, TD Bank filed a second Notice of Appeal regarding the May 29, 2016 Order. These two appeals were consolidated into the present action on June 6, 2016.

TD Bank served the Respondent with its Designation of Matter to be Included On Appeal and its Initial Brief of Appellant on July 1, 2016.

#### **STATEMENT OF THE FACTS**

As stated above, the Parties to this proceeding do not dispute the facts leading up to the disbursement of surplus funds. For that reason, the statement of facts largely mirrors those as described by TD Bank in its Initial Brief submitted to this Court on July 1, 2016, up through the events of April 1, 2016.

On February 27, 2014, Wells Fargo filed a complaint in foreclosure in the Court of Common Pleas for Richland County. (R. p. 1). Wells Fargo was the assignee of a first-position, purchase money mortgage on the Subject Property, (hereinafter, the “**First Mortgage**”). The First Mortgage secured the original principal amount of \$120,800.00 and was recorded on July 14, 2004 in the Official Records of Richland County, South Carolina. (R. p. 2).

In the foreclosure complaint, Wells Fargo named all junior lienholders of record as defendants. TD Bank was the holder of a second mortgage on the Subject Property, which secured the original principal amount of \$345,000.00 and was recorded on July 14, 2004 in the Official Records of Richland County, South Carolina (hereinafter, the “**Second Mortgage**”). (R. p. 4). The

Respondent, The Lender Group, was the holder of a judgment lien in the original amount of \$1,075,923.50, filed in the Official Records of Richland County, South Carolina on December 12, 2008 (hereinafter, "**The Lender Group Judgment**").

On July 17, 2015, the trial court entered the Order of Judgment of Foreclosure and Sale in favor of Wells Fargo. (R. pp. 1-9). This Order provided that the Subject Property was to be sold at public auction. (R. p. 6). The Order additionally provided that the winning bidder's payment was directed to be applied first to satisfy the amount due on the First Mortgage, \$121,581.11 as of the date of the judgment. (R. pp. 6, 8). Furthermore, the Order provided that "in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c)." (R. pp. 4, 8). All junior lienholders were entitled to file a claim to such funds. (R. pp. 4-6).

On August 3, 2015, the Subject Property was sold by the Master-in-Equity to TD Bank for the price of \$350,000.00. (R. p. 19). This purchase price satisfied the First Mortgage and resulted in \$224,956.01 in surplus funds. (R. p. 14). On September 2, 2015, the Master-in-Equity for Richland County executed a Deed conveying the Subject Property to TD Bank, this deed being recorded in the Official Records of Richland County, South Carolina in Book 2058, at Page 374, on September 15, 2015. On September 17, 2015, the trial court filed its final statement of receipt and disbursements and set a hearing on the surplus funds for October 23, 2015. (R. p. 19).

Multiple junior lienholders submitted claims for the surplus funds. TD Bank filed its Notice of Claim on October 22, 2015, stating it was owed \$224,956.01 (the entire amount of the surplus), by virtue of the Second Mortgage. (R. p. 33-34). On October 30, 2015, The Lender Group submitted its Notice of Claim to Surplus Funds seeking to recover a portion of the balance owed pursuant to The Lender Group Judgment. (R. p. 48-49). While other claims were also filed, the

claims of TD Bank and The Lender Group were the only claims at issue during the April 1, 2016 hearing, and thus the only claims relevant to this appeal. (R. p. 78, lines 27:24 – 28:6).

The hearing for disbursement of surplus funds was held on April 1, 2016. (R. p. 1). Prior to the hearing, TD Bank submitted a Brief in Support of TD Bank’s Claim on Surplus Funds, filed in the Circuit Court on March 10, 2016. (R. pp. 52-55). TD Bank based the majority of its arguments as to its entitlement of the surplus funds off this brief. (R. pp. 52-55).

At the April 1, 2016 hearing, counsel for TD Bank, The Lender Group, and the South Carolina Department of Revenue appeared in support of their previously filed claims. (R. p. 75, lines 3:1-25). At the hearing, counsel for TD Bank presented the argument that a “lien is extinguished during the foreclosure—at the foreclosure sale, and the surplus funds that are created stand in place of that real estate to satisfy the creditors in the order of priority that they [] enjoyed at the time that the foreclosure was filed” (R. p. 76, lines 9:22-10:3). TD Bank relied on the case of BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 731 S.E.2d 547 (2012), (hereinafter “**Kinder**”).

After hearing argument from counsel for TD Bank, Judge Strickland determined that TD Bank no longer held a valid lien that entitled it to surplus funds, in that TD Bank had purchased the Subject Property at the foreclosure sale. (R. p. 76, lines 10:4-10:8). Judge Strickland further determined that, per South Carolina Rules of Civil Procedure: Rule 71, and the absence of any South Carolina statute or case law that would support TD Bank’s argument, TD Bank was not entitled to any of the surplus funds. (R. p. 77, lines 13:12-15:8). At the conclusion of the hearing, TD Bank requested that the trial court hold the surplus funds until TD Bank had exhausted its right to appeal the disbursement order. (R. p. 79, lines 35:4-7).

By Order dated April 29, 2016, the trial court awarded \$224,921.01 of the surplus funds to The Lender Group, designating \$35.00 to cover court costs. (R. p. 14). The trial court further stated that “[a]n award of surplus funds to TD Bank would prejudice other claimants and require a change in South Carolina law.” (R. p. 14). The court further denied TD Bank’s request that the trial court hold the funds until after TD Bank’s appeal. (R. p. 14).

On May 5, 2016, TD Bank filed a Notice of Appeal of the surplus funds disbursement order. (R. p. 59). Thereafter, on May 11, 2016, TD Bank filed a motion for order to stop payment on the surplus funds pursuant to Rule 241(a). (R. p. 61).

On May 17, 2016, the trial court denied TD Bank’s motion and issued a supplemental disbursement order again awarding the surplus funds to The Lender Group, but recognizing that TD Bank and The Lender Group had agreed that the funds would not be disbursed until there was a ruling on TD Bank’s appeal. (R. p. 16).

On May 19, 2016, TD Bank filed a Notice of Appeal of the Supplemental Distribution Order. (R. p. 65). On May 25, 2016, a Consent Motion to Consolidate Appeals was filed by TD Bank, which was granted by this Court on June 6, 2016. (R. p. 17).

## ARGUMENTS

TD Bank contends that the trial court erred in not properly applying South Carolina Rules of Civil Procedure: Rule 71 in regard to the award of surplus funds. (TD Bank’s Brief p. 5). TD Bank further states that it has an “unequivocal right to recover surplus funds” and that its “purchase of the property during the sale has no bearing on its entitlement to the surplus proceeds.” (*Id.* pp. 6-7). TD Bank further states that upholding the trial court’s decision “would disincentivize junior lienholders from bidding at foreclosure sales and contradict South Carolina public policy.” (*Id.* p. 7). For the reasons stated further herein, these assertions by TD Bank are incorrect or without

merit, and this Court should affirm the decision of the lower court, awarding the surplus funds to The Lender Group pursuant to the Order Disposing of Surplus Funds filed April 29, 2016.

**Standard of Review**

An action to foreclose a real estate mortgage is one in equity. Dockside Ass'n v. Detyens, 294 S.C. 86, 88, 362 S.E. 2d 874, 875 (1987). In an equitable action, the reviewing court may view evidence to determine facts in accordance with its own view of preponderance of evidence, though it is not required to disregard findings of the master-in-equity. Freeman v. Freeman, 323 S.C. 95, 98, 473 S.E.2d 467, 469 (Ct. App. 1996). “In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each.” South Carolina Rules of Civil Procedure: Rule 71(a) “In the event of a surplus fund resulting from the sale, the master or other office conducting the sale shall at the time he makes his report to the court on the sale and disbursements, cause to be furnished to all parties appearing in the action a notice advising of the surplus fund.” South Carolina Rules of Civil Procedure: Rule 71(c).

i. **SCRCP 71(c) allows a Master-in-Equity to determine how any surplus funds are to be distributed.**

TD Bank’s contention that the South Carolina Rules of Civil Procedure recognize “that a junior lienholder’s interest attaches to the sale proceeds based on its priority *at the beginning* of the foreclosure sale . . .” is misplaced and is not the meaning contemplated by the Rules. (TD Bank’s Brief p. 8 (emphasis original)).

The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Durham v. United Cos. Fin. Corp., 331 S.C. 600, 503 S.E.2d 465 (1998). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

Despite the contention of TD Bank's counsel otherwise, SCRC 71(c) does not specifically state that a lienholder's interest attaches to the sale proceeds based on its priority *at the beginning* of the sale. (TD Bank's Brief p. 8). In fact, this contention is illogical, as it assumes that every judicial foreclosure sale would result in a surplus. Furthermore, SCRC 71(c) specifically outlines additional steps that a lien holder must take, post-sale, to perfect its claim to any resulting surplus, thus indicating that a right to any surplus is not automatic. *See* SCRC 71(c). This rationale has been supported by this Court in Ex parte Johnson, 371 S.C. 614, 640 S.E.2d 887 (Ct. App. 2006). In Johnson, this Court found that the disbursement of sale proceeds provided by Section 12-49-60 of the South Carolina Code is not self-executing. *Id.* at 619. Accordingly, a lienholder's failure to follow certain steps will be construed as an abandonment and waiver of any right to such a claim of surplus funds. *Id.* Only once these steps have been complied with may a lienholder be considered to receive proceeds from the surplus, and even still it is within the discretion of the officer conducting the sale to determine each claimant's entitlement to these funds. *Id.* Therefore, the priority of a junior lienholder's position could change after the foreclosure sale as a result of other lienholder's actions or inactions. As such, to say that a lienholder's interest will attach to any surplus funds *at the beginning* of a foreclosure sale does not follow the intent of SCRC 71(c).

TD Bank then attempts to support its argument by citing to Matrix Fin. Servs. Corp. v. Frazer, the Restatement (Third) of Property, and case law from other jurisdictions. Matrix Fin. Servs. Corp. v. Frazer, 394 S.C. 134, 138, 714 S.E.2d 532, 534 (2011). Matrix dealt, in part, with the issue of equitable subrogation. *Id.* While Matrix did cite the Restatement (Third) of Property, the citation used by TD Bank in its Brief is not that of which was referred to in Matrix. (*See* TD Bank's Brief p. 8). While Matrix may establish that South Carolina *would* follow the reasoning of the Restatement (Third) of Property in regard to subrogation, TD Bank has provided no support to

show that South Carolina should follow the rationale for the disposition of surplus funds as outlined by the Restatement (Third) of Property: Mortgages § 7.4. Furthermore, the two cases cited by TD Bank from other jurisdictions are factually different in that they do not deal with a claim of surplus funds by the winning bidder of the property, when the winning bidder was also a junior mortgagor. Michael's Const., Inc. v. American Nat. Bank, 278 P.3d 701, 2012 WY 76 (Wyo. 2012) (discussing lien priority in regard to a construction lien<sup>1</sup>); Bank of America, N.A. v. BA Mortgage, LLC, 137 N.M. 368, 111 P.3d 226 (N.M. Ct. App. 2005) (the court making no indication who the winning bidder was, but only addressing liens on the property).

Simply put, it is unreasonable to conclude that SCRCF 71(c) provides that a lienholder's interest in any surplus funds would attach *prior* to the foreclosure sale. SCRCF 71(c) states that the officer holding the hearing for the allocation of the surplus *must determine how the funds will be allocated* and makes no reference to any rights attaching presale. Finally, there is no indication that the intent of SCRCF 71(c) is to mandatorily or automatically distribute any surplus with regard *only* to the priority of other lienholders, and TD Bank has provided no South Carolina law to support this contention.

In this instance, it is proper for this Court to uphold the ruling of the Master, which follows the language of SCRCF 71(c), allowing him to determine how any surplus should be allocated. See Hodges, 341 S.C. 79. Thus, in accord with the intent and plain meaning of SCRCF 71, this Court should uphold the Master-in-Equity's award of the surplus funds to The Lender Group.

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<sup>1</sup> While the winning bidder in *Michael's Const.* was a junior lienholder, the nature of the lien was that of a construction lien and not a purchase money mortgage.

ii. **The Master-In-Equity may consider the successful bidder's status when distributing surplus funds.**

Here, the Master-In-Equity was correct, and it was in his discretion to determine, that TD Bank should be treated solely as purchaser, instead of as a purchaser *and* a lienholder.

(Transcript p. 16:9-15<sup>2</sup>).

TD Bank alleges that South Carolina law does not look to the identity of the purchaser when awarding surplus funds. However, TD Bank has provided no authority to substantially support this allegation. TD Bank looks to the concurring opinion of Judge Cureton in Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Ret. Grp., Inc. in an attempt to provide backing for the rationale that “post-foreclosure proceedings are the same regardless of whether the purchaser was a third-party or a mortgagee”. (TD Bank’s Brief p. 10); Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Ret. Grp., Inc., 302 S.C. 223, 394 S.E.2d 849 (Ct. App. 1990). An issue discussed in Myrtle Beach Ret. Grp., Inc. was in regard to the appraisal and judgment following a foreclosure action, as found in Section 29-3-660 through Section 29-3-760, South Carolina Code. 302 S.C. at 228. The concurring of opinion of Judge Cureton, cited by TD Bank, is a discussion of this deficiency statute, and was as follows: “[u]nlike some other **deficiency statutes**, our Act contains no penalties if a lender is the purchaser at the foreclosure sale.” Id. at 232 (emphasis added). Judge Cureton goes on to discuss the Pennsylvania appraisal statute, which makes a distinction between a lender as purchaser versus others as purchasers, and then, in the context of the *appraisal* statute, summarizes that “nothing in the South Carolina case or statutory law [ ] would require us to treat a mortgagee who purchases at a foreclosure sale differently from a nonparty purchaser.” Id. at 233.

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<sup>2</sup> This page of the transcript was omitted from the copy provided by Appellant in the Record on Appeal filed with this Court.

Thus, it is clear that Judge Cureton is discussing a scenario that contemplates the aforementioned appraisal statute, and not the distribution of surplus funds.

As discussed further herein, SCRCP 71(c) states that the officer holding the hearing for the allocation of the surplus must determine how the funds will be allocated. As such, and for the reasons regarding merger discussed further below, it is appropriate for a Master-In-Equity to consider the successful bidder's status as a purchaser and a lien holder, and make a determination of how to distribute the surplus as he may deem most equitable.

iii. **TD Bank's lien merged with the Subject Property upon the Master's execution of the Deed for the Subject Property to TD Bank.**

Here, TD Bank's purchase of the Subject Property satisfied the Second Mortgage (held by TD Bank), and TD Bank's lien therefore merged into the Subject Property upon the Master's execution of the Deed<sup>3</sup>. This rule was correctly articulated by the trial court, and, as stated further below, any interest in the surplus that TD Bank might have had was extinguished by its purchase and subsequent receipt of the Subject Property. (R. p. 76, lines 10:4-10:8).

In this context and under the facts of the present case, it is important to note that TD Bank's Mortgage was not the subject of the foreclosure sale, instead the First Mortgage on the Subject Property, held by Wells Fargo, was the lien which was the subject of the foreclosure action. In regard to merger, South Carolina courts have held as follows: "In this State the legal doctrine of merger has been applied to the case of a mortgagee purchasing from the mortgagor, or under legal process against him, the interest known as the equity of redemption." Agnew v. Charlotte, C. & A.R. Co., 24 S.C. 18, 22 (1885). "In short, where the legal ownership of the land and the absolute ownership of the encumbrance become vested in the same person, the intention governs the merger

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<sup>3</sup> The Deed conveying the Subject Property to TD Bank, this deed being recorded in the Official Records of Richland County, South Carolina in Book 2058, at Page 374, on September 15, 2015 (R. p. 83).

in equity.” *Id.* at 23; *accord* McCreary v. Coggeshall, 74 S.C. 42, 53 S.E. 978 (1906) (discussing merger as cited in Agnew); Peoples Fed. Sav. & Loan Ass’n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 164, 425 S.E.2d 764, 783 (Ct. App. 1992) (citing Agnew for the proposition that when a mortgagee purchases mortgaged property, the mortgage interest is merged within the field of the estate and the mortgage debt is extinguished).

In an effort to defeat the fact that TD Bank’s lien was extinguished, TD Bank attempts to use the aforementioned argument of lien priority occurring *prior* to the foreclosure sale to establish that its status as a purchaser did not extinguish the Second Mortgage. (TD Bank’s Brief p. 10). TD Bank seeks to support this theory with a number of methods, the first by looking to Kinder. 398 S.C. 619 (2012). Kinder focuses on the rights of an *assignee* in regard to surplus funds (such a scenario is not directly at issue here) and establishes that an assignee is entitled to make a claim for the surplus resulting from the foreclosure sale. Kinder, 398 S.C. at 624. There is no contention here that TD Bank did not have the same rights as Carolina First Bank did with regard to the Second Mortgage on the Subject Property. As such, the reliance on the arguments found in Kinder, based largely on an examination of the rights of an assignee, are misplaced.

TD Bank then relies on Peoples Fed. Sav. & Loan Ass’n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 425 S.E.2d 764 (Ct. App. 1992)<sup>4</sup> for its argument that merger of title only applies when a mortgagee obtains the property outside of the context of a foreclosure sale. (TD Bank’s Brief p. 11). However, Myrtle Beach Golf & Yacht, does not explicitly state the reasoning set forth by TD Bank, but only cites to Agnew as guidance. *Id.* at 164. A review of Agnew shows that it supports the doctrine that “a mortgagee, who buys the estate under process of foreclosure of

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<sup>4</sup> TD Bank’s Brief cites to two cases with Peoples Federal Savings & Loan Association as the Plaintiff. The second, cited here, does not appear in TD Bank’s list of authorities. The undersigned wishes to clarify the two separate opinions to avoid confusion.

his lien, extinguishes the debt or claim with lien on the land.” Agnew, 24 S.C. at 22 (emphasis added), *citing* Allen v. Richardson, 30 S.C.Eq. (9 Rich. Eq.) 53 (1856); *see also* Bleckley v. Branyan, 26 S.C. 242, 2 S.E. 319, 321 (1887) (“So far as the mortgage debt is concerned . . . after the purchase of the equity of redemption, the mortgagee cannot enforce it against himself, and therefore the purchase may be regarded as payment or extinguishment of the mortgage debt . . .”) Thus, it is clear that, in the context were a mortgagee purchases a property under foreclosure of a lien other than his own, merger of title would occur and extinguish that mortgagee-purchaser’s lien. Here, these cases establish that the mortgage of TD Bank was in fact extinguished when TD Bank became the owner of the Subject Property.

TD Bank then cites Mississippi case law in an attempt to establish that when a surplus remains after satisfying a senior mortgage, a junior mortgagee, even if the purchaser, is entitled to surplus. *See* Great Southern Land Co. v. Valley Securities Co., 162 Miss. 120, 137 So. 510 (Miss. 1930). However, TD Bank has not provided any rational or citations as to why South Carolina would support this view. TD Bank then provides the following citation from the same case: “A merger will not take place if it be apparent that the junior mortgagee, in purchasing, did not so intend, or that a merger is against his manifest interest.” Id. at 514; (TD Bank’s Brief p. 11). This citation provided by TD Bank, however, does not mirror the law established in South Carolina. In South Carolina, in order to prevent merger, the parties must have intended *and* agreed that the mortgage would remain. Bleckley, 2 S.E. at 321-22. Here, The Lender Group is aware of no such agreement between that parties.

In short, TD Bank has failed to provide any support as to why, upon it’s receipt of the Subject Property subsequent to foreclosure, its lien should remain. To argue that TD Bank’s lien existed after foreclosure would be in contravention of the law regarding merger established in

South Carolina. As such, this Court should uphold the ruling of the Master-in-Equity and confirm that TD Bank's Mortgage was extinguished upon its receipt of the Subject Property.

iv. **Equity demands that the Surplus Funds be distributed to the lien holder with the next existing lien of record.**

Public Policy is not advanced by allowing a successful bidder to receive surplus when other judgment creditors exist.

Here, TD Bank asserts that it is highly prejudiced by its purchase of the Subject Property in light of the award of the surplus funds to The Lender Group. (TD Bank's Brief pp. 12, 13). TD Bank presents the argument that it is not in a position to profit from its acquisition of the Subject Property. While The Lender Group does not dispute the estimated figures presented in TD Bank's Brief, it is not the function of this Court to justify TD Bank's decision to bid on the Subject Property as they did at the foreclosure sale. There is certainly no guarantee that any party bidding at a foreclosure sale will be able to recover their purchase price at a subsequent sale, and The Lender Group is aware of no relevant statute providing relief for the same.

TD Bank further argues that, if it is denied the funds, such a decision would dissuade "any junior lienholder[s] from bidding at any future foreclosure sale . . ." (TD Bank's Brief p. 13). Here again, however, TD Bank relies on a variety of jurisdictions in an attempt to support its conclusion, but has provided no relevant South Carolina law. In regard to a junior lienholder bidding at a foreclosure sale, The Lender Group does not disagree with TD Bank's assertion that a junior lienholder may bid at a foreclosure sale to protect its interest in the property being foreclosed. Nor does The Lender Group disagree with the rationale that public interest is protected by competitive bidding in the foreclosure process, as stated in Hamrick v. Summey, 282 S.C. 424, 427, 320 S.E.2d 703, 705 (1984).

The Lender Group, however, disagrees with the position taken by TD Bank that a junior lienholder would be dissuaded from bidding on a property if, upon a successful bid, it would waive any rights to a resulting surplus. Certainly a junior lienholder, in the scenario of a foreclosure of a senior mortgage, would not reasonably expect to receive the property *and* any surplus funds upon its successful bid of that property. A mortgage holder in TD Bank's scenario would be hopeful that the foreclosure of the senior mortgage would result in a sale that would satisfy all or a portion of its junior lien. Had TD Bank not bid on the Subject Property, assuming a sale price similar to the \$350,000.00 that TD Bank bid, the proceeds of the surplus could have gone to satisfy TD Bank's Mortgage, further assuming that the Master-In-Equity determined that TD Bank satisfied the requirements of SCRCF 71(c). It is not this Court's function to alleviate TD Bank from its chosen method of bidding at the foreclosure sale and TD Bank has failed to provide any support as to why, upon its receipt of the Subject Property subsequent to foreclosure, its lien should remain.

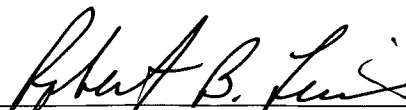
Accordingly, this Court should uphold the ruling of the Master-in-Equity and confirm the ruling that TD Bank was not entitled to the surplus funds resulting from the sale of the Subject Property.

### **CONCLUSION**

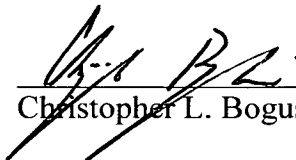
For the reasons stated above, this Court should deny TD Bank's request to vacate the trial court's April 29, 2016 Disbursement Order and the May 17, 2016 Supplemental Order, affirm the award of the surplus funds as stated in the aforementioned Orders, and should not remand this action for further proceeding.

*[Signature Page to Follow]*

Respectfully Submitted,



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September 20, 2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SEP 22 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity for Richland County

Appellate Case No. 2016-000958

Wells Fargo Bank, N.A., Plaintiff,

v.

William R. Hudspeth, Marcia E. Hudspeth; TD Bank, N.A. s/b/m to Carolina First Bank; The Lender Group, Inc.; Business Carolina, Inc.; South Carolina Department of Revenue; Carapace, LLC; Wurth Wood Group, Inc.; The Estate of Harry William Boyd, by Joan L. Boyd, Personal Representative; Adecco USA, Inc., Defendants,

Of Whom TD Bank, N.A. successor by merger to Carolina First Bank is the Appellant,

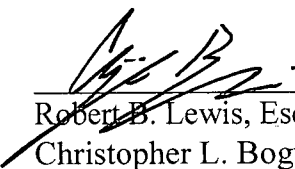
and Of Whom The Lender Group, Inc. is the Respondent.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

  
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Of Whom TD Bank, N.A. successor by merger to Carolina First Bank is the Appellant,

and Of Whom The Lender Group, Inc. is the Respondent.

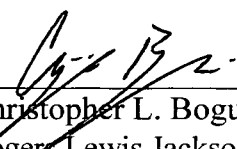
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**CERTIFICATE OF SERVICE**

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I certify that I have served the *Final Brief of Respondent* and *Certificate of Counsel* by depositing a copy of the same in United States Mail, postage prepaid, on September 22, 2016, to Appellant's Attorney of record, listed herein:

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September 22, 2016