

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joseph M. Strickland, Master-In-Equity

Appellate Case No. 2016-00958

RECEIVED

SEP 27 2016

SC Court of Appeals

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.

SUPPLEMENTAL RECORD

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Transcript of the Testimony of
**WELLS FARGO BANK V. WILLIAM R.
HUDSPETH, ET AL.**

Date: April 1, 2016



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Condensed Transcript and Word Index

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) C/A No. 14-CP-40-1233
 3 Wells Fargo Bank, N.A.,)

4 Plaintiffs,)
 5 v.)
 6)

6 William R. Hudspeth, Marcia E. Hudspeth,)
 7 TD Bank, N.A., s/b/m to Carolina First)
 8 Bank; The Lender Group, Inc.; Business)
 9 Carolina, Inc.; South Carolina)
 10 Department of Revenue; Carapace, LLC;)
 11 Wurth Wood Group, Inc.; The Estate of)
 12 Harry William Boyd, by Joan L. Boyd,)
 13 Personal Representative; Adecco)
 14 USA, Inc.,)

15 Defendants.)
 16)

17 HEARING
 18 *****

19 Friday, April 1, 2016
 20 9:35 a.m. - 10:13 a.m.

21 The hearing before the Honorable Joseph M.
 22 Strickland, Master-In-Equity for Richland County, was
 23 taken at 1701 Main Street, Courtroom D, Columbia,
 24 South Carolina on the 1st day of April, 2016 before
 25 Carla S. Dominick, Court Reporter and Notary Public
 in and for the State of South Carolina.

1 THE COURT: Thank you very much. Please be seated.
 2 All right. Now before we get started, I'd like
 3 to go from left to right and all the attorneys
 4 identify themselves. Oh, Jim, I'm sorry.

5 MR. KOUTRAKOS: Jim Koutrakos here co-counsel for
 6 Defendant, surplus funds and TD Bank.

7 THE COURT: Okay.

8 MR. SOWELL: I represent my wife, Marcia Hudspeth
 9 Sowell.

10 THE COURT: Okay.

11 MR. CARRINGTON: Lindsay Carrington on behalf of TD
 12 Bank as well.

13 THE COURT: Okay.

14 MR. LEWIS: Robert Lewis and I represent the Lender
 15 Group and also the Estate of Henry William
 16 Boyd.

17 THE COURT: Okay.

18 MR. THOMPSON: Tasha Thompson, South Carolina
 19 Department of Revenue.

20 THE COURT: Okay. Thank you. Thank you. Okay.
 21 This is Civil Action Number 2014-CP-40-1233,
 22 Wells Fargo Bank versus William Hudspeth. This
 23 hearing is a -- the third time we've been here
 24 on surplus funds in this case and the -- this
 25 was a foreclosure, I guess, for clarity of the

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1 APPEARANCES

2 S. Lindsay Carrington, Esquire
 3 BELL CARRINGTON
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 5 Greenville, South Carolina 29501
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 17 and Marcia E. Hudspeth
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 21 Columbia, South Carolina 29201
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 23 and The Lender Group, Inc.
 24 Tasha B. Thompson, Esquire
 25 South Carolina Department of Revenue
 300-A Outlet Pointe Boulevard
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 Attorney for South Carolina Department of Revenue

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Certificate 39

EXHIBITS

(There were no exhibits marked in this hearing.)

1 record. This was a foreclosure. The
 2 foreclosure part of it's over. The property
 3 was bought at a judicial auction, judicial
 4 sale, by TD Bank. Is that -- does everybody
 5 agree with that?

6 MR. LEWIS: Yes, Your Honor.

7 MR. THOMPSON: Yes, Your Honor.

8 MR. CARRINGTON: Yes, Your Honor,

9 THE COURT: All right. So TD Bank had a second
 10 mortgage, is that -- is that also correct?

11 MR. CARRINGTON: That is correct, Your Honor.

12 THE COURT: And TD Bank bid on the property at the
 13 foreclosure sale and was a successful bidder,
 14 is that -- are we still -- are we all together
 15 on that?

16 MR. CARRINGTON: I believe we're all together on
 17 that, Your Honor.

18 THE COURT: Okay. TD Bank overbid or bid more than
 19 the debt and under Rule 71 of the South
 20 Carolina Rules of Civil Procedure, we have a --
 21 a process for disposing of the surplus funds.
 22 Now I think you're going to brief this issue
 23 last time we -- we granted a continuance before,
 24 but it seems to be some confusion on TD Bank's
 25 part because they seem to believe they're

1 (Pages 1 to 4)

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1 entitled to get their money back because they
 2 over -- they bid more than the debt and they're
 3 entitled to get -- get all the surplus funds
 4 back. And Mr. Sowell, of course, is
 5 representing one of the mortgagors and his
 6 argument is that she really wasn't a mortgagor,
 7 so that she should get the money and -- and --
 8 and neither of those positions, I think, is
 9 supported by law. Did you have a chance to
 10 brief this, Mr. Carrington?
 11 MR. CARRINGTON: Well, Your Honor, to kind of bring
 12 you up to speed on a couple of things that have
 13 transpired.
 14 THE COURT: Okay.
 15 MR. CARRINGTON: The -- the bank and Mrs. Hudspeth,
 16 one of the mortgagors, reached an agreement
 17 whereby she was amenable to withdraw her claim
 18 to the surplus funds.
 19 THE COURT: Uh-huh (affirmative response).
 20 MR. CARRINGTON: And her allegations that for some
 21 reason our second lien position was not
 22 authorized under a particular power-of-attorney
 23 because I believe and Mr. Sowell can attest to
 24 that. We've signed some documents here. We
 25 have a release of that claim that can be filed.

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1 So I think we can take that issue, if you
 2 agree, Mr. Sowell, off the -- of the table now.
 3 THE COURT: How did it get on the table? What you
 4 just said has nothing to do with surplus funds
 5 as far as I'm concerned.
 6 MR. CARRINGTON: Well, it does in a sense of ---
 7 THE COURT: Okay.
 8 MR. CARRINGTON: --- Ms. Hudspeth made a claim to
 9 those funds and she has withdrawn that claim
 10 and that was -- the claim was based on an
 11 allegation that our mortgage was not authorized
 12 under a particular power-of-attorney and that
 13 allegation that whatever you want to call it,
 14 that claim is -- is being withdrawn.
 15 THE COURT: Okay. Well, all right.
 16 MR. CARRINGTON: Now as to -- as to TD's position,
 17 Your Honor, what I briefed and provided to the
 18 Court ---
 19 THE COURT: Uh-huh (affirmative response).
 20 MR. CARRINGTON: --- in my opinion lays out and the
 21 law is pretty well settled that the surplus
 22 funds stands in the place of the property to
 23 sell to as to the priority and as to a
 24 lienholder position.
 25 THE COURT: All right. Did -- did ...

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1 MR. CARRINGTON: So the surplus funds, in effect,
 2 you know take the place of the property because
 3 I think we all -- can all agree through the
 4 foreclosure sale, the lien is extinguished.
 5 THE COURT: All right. Do you have a copy of your
 6 brief?
 7 MR. CARRINGTON: I do, Your Honor.
 8 THE COURT: And I can -- because I -- sometimes it
 9 takes a while for things to make it from the
 10 clerk's office down the hall.
 11 MR. CARRINGTON: Understood, understood.
 12 THE COURT: If you'll let me look at it?
 13 MR. CARRINGTON: Sure. Hang tight just a second.
 14 Here we go. Do you need a copy?
 15 MR. KOUTRAKOS: I've got one.
 16 THE COURT: Okay. Give me one minute and I -- I
 17 hate to take so much of y'all's time, but the
 18 argument you're making, sir, is something I've
 19 never heard before, and -- and I may be -- I
 20 mean, just completely educated here today
 21 because the bottom line is your client, which
 22 bid on the property, owns the property. You
 23 don't have a lien anymore, you actually own the
 24 property and -- and you bid more than the debt
 25 and despite what Rule 71 says, they outlined

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1 the procedure for disposing of surplus funds,
 2 your client's position is they should get their
 3 money back and -- and I've never -- I've never
 4 heard that before, quite frankly. So -- so
 5 give me a minute just to read this.
 6 MR. CARRINGTON: Sure, absolutely, Your Honor.
 7 THE COURT: All right. Mr. Carrington, do you -- I
 8 notice you cite a lot of cases ---
 9 MR. CARRINGTON: Yes, Your Honor.
 10 THE COURT: --- from other jurisdictions. And one
 11 case ---
 12 MR. CARRINGTON: Yes.
 13 THE COURT: --- and one case -- and one case from
 14 South Carolina that -- that if I read it, I
 15 read it five years -- four or five years ago.
 16 MR. CARRINGTON: Sure, Your Honor, and I have a copy
 17 if you'd like to see one.
 18 THE COURT: Yes, please, if you would. And can I
 19 keep this copy of your brief, or ...
 20 MR. CARRINGTON: You may.
 21 THE COURT: All right. We'll make sure that gets to
 22 the file. One moment, please. All right. Now
 23 in -- in the Kinder Case ---
 24 MR. CARRINGTON: Yes, Your Honor.
 25 THE COURT: --- was the Claimant, BAC, were they the

2 (Pages 5 to 8)

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1 successful bidder at the judicial sale?
 2 MR. CARRINGTON: The -- the Kinder Case really --
 3 the -- the point -- the -- the instructive, as
 4 I view the language in there, the factual
 5 pattern is different from what we have here, I
 6 believe, Your Honor.
 7 THE COURT: Uh-huh (affirmative response).
 8 MR. CARRINGTON: But what is important, I think, is
 9 if you look at the document I provided you down
 10 towards the bottom of the first page where in
 11 the reporter book it goes from page 623 to 624,
 12 the Court instructs and discusses that the
 13 magistrate ruled in that instance regarding the
 14 claim funds ignores that it was a claiming the
 15 surplus funds pursuant to its original lien.
 16 THE COURT: Uh-huh (affirmative response).
 17 MR. CARRINGTON: And what there -- there's very
 18 little case law out in our jurisdiction as to
 19 any of this, but I think what that tells us is
 20 that South Carolina follows the restatement and
 21 a whole host of other jurisdictions that say
 22 your lien is extinguished during the
 23 foreclosure -- at the foreclosure sale, and the
 24 surplus funds that are created stand in place
 25 of that real estate to satisfy the creditors in

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1 the order of priority that they -- that they
 2 enjoyed at the time that the foreclosure was
 3 filed. That's in essence our -- our argument.
 4 THE COURT: But -- but the kicker is, your client no
 5 longer has a lien. Your client has the
 6 property. You own the property. You bought it
 7 at a judicial sale and -- and for whatever
 8 reason, bid more than the debt.
 9 MR. CARRINGTON: Well, bid more than -- bid more
 10 than the first position's debt.
 11 THE COURT: That's right.
 12 MR. CARRINGTON: But not more than our debt.
 13 THE COURT: But they -- but your client now owns the
 14 property, so ...
 15 MR. CARRINGTON: Correct, correct.
 16 THE COURT: So ...
 17 MR. CARRINGTON: But in essence, if you look at it
 18 so that my client has advanced on the initial
 19 underlying lien.
 20 THE COURT: Uh-huh (affirmative response).
 21 MR. CARRINGTON: Call it \$300,000 for -- for rough -
 22 - roughly \$300,000, okay. So that money is
 23 advanced, then they advance or buy at a sale
 24 for whatever that was \$350,000. I don't
 25 remember the exact numbers.

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1 THE COURT: Uh-huh (affirmative response).
 2 MR. CARRINGTON: So they've advanced \$650,000.
 3 They're seeking to recoup.
 4 THE COURT: They -- they want ...
 5 MR. CARRINGTON: Their -- their surplus funds. It's
 6 as if they had -- it's as if a third-party
 7 bidder had total unbeknownst to us, had come in
 8 and bid the same, we'd -- we'd be making the
 9 same argument. I don't think our status as the
 10 -- as the winner of the bid has any bearing on
 11 our rights and priority to the surplus funds.
 12 THE COURT: I -- I think it must, otherwise, Rule
 13 71, you know, wouldn't -- wouldn't -- wouldn't
 14 help us at all here, but you -- you don't know
 15 of any case where that -- the Supreme Court
 16 said ---
 17 MR. CARRINGTON: I don't think that's either way as
 18 to that specific issue. What I know is, you
 19 know, the host of cases outside of our state
 20 that support our position, but I don't know of
 21 anything within the state other than Kinder
 22 that even, you know, touch on our issue.
 23 THE COURT: Okay. Mr. Koutrakos, any -- anything to
 24 add?
 25 MR. KOUTRAKOS: I mean, just from my position, if

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1 you're the junior lienholder and you want to
 2 protect your junior lien -- say hypothetical is
 3 \$100,000 mortgage in front of you, and you have
 4 \$100,000 second mortgage, and say
 5 hypothetically to protect your second lien
 6 interest, you bid \$120,000, right, \$100,000
 7 goes to the first lienholder, \$20,000 surplus
 8 claim. Why wouldn't the second lienholder get
 9 the \$20,000. It's to protect -- it's to
 10 protect the lien -- it's to protect -- to
 11 protect the interest in being a junior
 12 lienholder.
 13 THE COURT: But -- but now, the second lienholder
 14 owns the property.
 15 MR. KOUTRAKOS: Right, but the mortgage doesn't --
 16 the mortgage is a matter of law doesn't stick
 17 to the property, so there's no merger. There's
 18 no merger between, you know -- if I own
 19 property and I give a mortgage to -- to myself,
 20 or something like that, that clearly, if I have
 21 a mortgage on a piece of property and I buy
 22 that property through a merger, (inaudible),
 23 but that's not what we have here.
 24 THE COURT: Uh-huh (affirmative response).
 25 MR. KOUTRAKOS: Because it's a matter of law, the

3 (Pages 9 to 12)

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1 mortgage is extinguished at the time of the
 2 sale. The mortgage then transfers to the
 3 funds. Lindsay, correct me if I'm wrong, but
 4 that my opinion is.
 5 THE COURT: All right.
 6 MR. KOUTRAKOS: And those positions, I've never seen
 7 it, because I've never represented a junior
 8 creditor under these circumstances, but try to
 9 imagine the scenario where they're trying to
 10 protect their interest. That's exactly what
 11 they would do.
 12 THE COURT: Well, and -- and I'd break it down a
 13 little more simply, they're trying to get their
 14 money back because for them to bid that much
 15 that must have meant, and I don't remember,
 16 because -- because we do this, you know, so
 17 often. There must've been competitive bidding
 18 and -- and I don't know, Mr. Carrington, do you
 19 know if -- if the bidding instructions for your
 20 client came from the bank or came from an
 21 attorney, or -- or was it stated by somebody
 22 because my -- my perception is that the only --
 23 only way you can prevail is to actually ask
 24 that the sale be set aside to start all over
 25 again. Now if you make that motion, Ms.

1 to parties, they want to be treated like the
 2 first lienholder, sometimes they want to be
 3 treated like -- like somebody else, but I've
 4 never had a case where the third-party bidder
 5 got their money back after bidding more than
 6 the debt and I mean, and I don't know -- again,
 7 I don't know if, did y'all bid -- did you bid
 8 on behalf? I think it was either ...
 9 MR. CARRINGTON: I did not, no, Your Honor.
 10 THE COURT: Yeah, sometimes, I -- you know sometimes
 11 people a hire bidding service, sometimes they
 12 come themselves, and -- and they're very
 13 secretive. Usually, the lawyers are very
 14 secretive about what their instructions are as
 15 far as bidding. I think, you know, somebody
 16 needs to go back and see what those bidding
 17 instructions were, but -- but I'm not -- I'm
 18 not going to let you characterize what my
 19 ruling is ---
 20 MR. CARRINGTON: Well, and I'm ---
 21 THE COURT: But you made record -- you know we made
 22 a record and I understand. I understand your
 23 position, but I -- again, in the absence of a
 24 -- of a case from South Carolina or a rule or
 25 a statute that supports your position, I'd have

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1 Thompson and Mr. Lewis are going to -- are
 2 going to scream and also the other lienholders
 3 who -- who several of them I don't think are
 4 here. There are others in addition to those
 5 two, but -- but I -- I, you know, in the
 6 absence of a -- of a South Carolina Appellate
 7 Court Case or a rule or a statute that supports
 8 your position, I don't see any way that your
 9 client, TD Bank, can get their money back.
 10 MR. CARRINGTON: And -- and if you would, just so
 11 I'm clear, the Court's ruling is in effect that
 12 because TD Bank is now the owner of the
 13 property, it's not entitled to the surplus
 14 funds. Am I -- am I correct in kind of
 15 distilling it down?
 16 THE COURT: Well, that -- that's not my ruling. My
 17 ruling is that -- that under Rule 71, it tells
 18 us what to do with surplus funds and I've never
 19 had a case where the third-party bidder got
 20 their money back and -- and so my ruling is not
 21 what you stated, but -- but I'm just, you know,
 22 here more basic than that. Your client was a
 23 third-party bidder and we have this come up at
 24 sales a lot, people bid, then they -- then they
 25 want to be treated like -- like -- like they go

1 to stand on the fact that the other lienholders
 2 are -- would take -- would take the money
 3 somehow, you know.
 4 MR. CARRINGTON: Your Honor, may I make -- make sure
 5 -- so if a third party had bid this money and
 6 we were here arguing about surplus funds, TD
 7 would be treated differently at that point
 8 because we were not a third-party bidder?
 9 THE COURT: Yes, yes, you would be in a different
 10 position. Yes, yeah. But again, I -- you
 11 know, if TD Bank hadn't bid, and somebody else
 12 bid -- overbid the debt by -- by close to a
 13 quarter of a million dollars, then TD Bank
 14 would be here claiming that money because they
 15 have a second mortgage, right?
 16 MR. CARRINGTON: Yeah.
 17 THE COURT: Do you disagree with that?
 18 MR. CARRINGTON: Well I -- I -- they would be here
 19 claiming rights to the surplus funds based on
 20 the fact that the surplus funds stand in the
 21 stead of the real estate to satisfy liens that
 22 existed at the time foreclosure was filed and
 23 I don't -- I don't -- that has not changed. The
 24 law on that has not changed based on the fact
 25 that TD was the high bidder at the -- at the

4 (Pages 13 to 16)

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1 sale.
 2 THE COURT: Right, TD was high bidder and -- and
 3 they overbid by close to a quarter of a million
 4 dollars, and they want that quarter of a
 5 million dollars back. They've already paid --
 6 Wells Fargo has their -- I mean, I'm assuming
 7 all this, you know, but -- and -- without
 8 looking at the sales book, but -- but TD Bank
 9 was the successful bidder, Wells Fargo, their
 10 -- their mortgage was paid off. TD Bank has --
 11 has a deed to the property and is the owner of
 12 the property, and there are surplus funds, and
 13 now TD Bank wants their surplus funds. They
 14 want that money back.
 15 MR. CARRINGTON: Well, let me make sure I
 16 understand. Let me make sure. TD Bank filed
 17 their claim for surplus funds and I'm -- I'm
 18 pulling it right now. It -- it -- we're not
 19 seeking the surplus funds because we were the
 20 high bidder through a third -- we're seeking it
 21 because the debt that was owed on our mortgage
 22 was well in excess of these surplus funds.
 23 It's not -- it's not as if we're just simply a
 24 third-party bidder that's coming back to -- to
 25 try to get the money.

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1 THE COURT: What, yeah, what was the amount of debt
 2 that ...
 3 MR. CARRINGTON: Let me -- let me pull it. Hold on
 4 just a second.
 5 THE COURT: Was it more than \$350,000?
 6 MR. LEWIS: I think it was \$324,000.
 7 MR. CARRINGTON: It was \$300,000 something. It's a
 8 bunch.
 9 THE COURT: Uh-huh (affirmative response).
 10 MR. CARRINGTON: \$300 --- as of the time -- as of
 11 November of '15, it was \$324,778.10.
 12 THE COURT: That was TD Bank's debt?
 13 MR. CARRINGTON: Correct.
 14 THE COURT: All right. Now did TD Bank have a
 15 cross-claim or a counterclaim or -- or a third-
 16 party claim, or anything. Did they foreclose
 17 their own lien at that time?
 18 MR. CARRINGTON: Well, at that point, no, as far as
 19 I know, they did not. They, you know, being a
 20 junior lienholder, you know, didn't do that.
 21 THE COURT: Okay. No, I'm just -- I get ---
 22 MR. CARRINGTON: Right.
 23 THE COURT: --- I get the feeling, since I can't
 24 find a case or a statute, or a rule that --
 25 that maybe this will be the case that explains

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1 that, but -- but I -- I've never had a third-
 2 party, to my knowledge, to my memory, never had
 3 a third-party bidder get their money back if
 4 they bid more than the ---
 5 MR. CARRINGTON: And I would -- I would agree with,
 6 Your Honor, that a true third-party bidder that
 7 had no lien or had no, you know, standing like
 8 we did, would -- would stand behind the
 9 judgment preference, but -- but we're a little
 10 bit different scenario here in that our claim
 11 is based -- in other words, we're not -- we're
 12 trying to get back money on our mortgage just
 13 as if any other junior creditor or junior
 14 lienholder would and so I want to make sure
 15 that -- that I've made that point clear. It
 16 sounded like what I was hearing and maybe I'm
 17 -- I'm mistaken, what I was hearing was, Your
 18 Honor looked at us as just a pure third-party
 19 trying to get our -- our money back and that's
 20 not what we are.
 21 THE COURT: Uh-huh (affirmative response).
 22 MR. CARRINGTON: I mean, you know we ---
 23 THE COURT: I understand.
 24 MR. CARRINGTON: --- okay. Okay. I just wanted ...
 25 THE COURT: I understand your -- I understand your

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1 position.
 2 MR. CARRINGTON: Okay.
 3 THE COURT: But -- but I'm not persuaded ??? So
 4 and let -- let's hear from the ---
 5 MR. CARRINGTON: Sure.
 6 THE COURT: --- the people that -- that are
 7 claiming. Now Mr. Lewis, would your client
 8 consent to set aside the sale and starting all
 9 over again?
 10 MR. LEWIS: No, sir.
 11 THE COURT: Okay.
 12 MR. LEWIS: We do not consent to that and you know
 13 my position -- first of all, I -- you know,
 14 when we first got involved in this, we checked
 15 and when we filed our claim to the surplus
 16 funds, we -- we checked to see what other
 17 claims had been filed and at that time on the
 18 website, we didn't -- we didn't see that TD
 19 Bank had filed, so just as a preliminary matter
 20 ---
 21 THE COURT: Uh-huh (affirmative response).
 22 MR. LEWIS: --- it -- it -- I wanted to make sure
 23 that the record shows that they filed their
 24 claim within 45 days, of ---
 25 THE COURT: Uh-huh (affirmative response).

5 (Pages 17 to 20)

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1 MR. LEWIS: --- September 17th, so that -- that's
2 the first issue.
3 THE COURT: Yeah, yeah, and according -- and
4 according with the rule, yeah. Yeah, rule 71.
5 MR. LEWIS: And in your brief, you indicate that,
6 that was done. I just have -- I never checked
7 that out, but that is one of our positions.
8 You know, the second position is -- is this
9 Your Honor, we also kind of see it as a
10 situation where TD Bank could've come in and
11 bid in a way that they would not be making a
12 claim to the surplus funds. They could've come
13 in as the -- as a -- as -- as holding the
14 second mortgage ---
15 THE COURT: Uh-huh (affirmative response).
16 MR. LEWIS: --- and -- and bid in that way. And --
17 and as the second lienholder, they could've bid
18 and that -- that would've extinguished -- they
19 could've bid an amount to cover the first and
20 second liens.
21 THE COURT: Well, that -- that's I don't know, it's
22 some -- some of my law student friends have
23 always said there's a distinction without a
24 difference or something like that. I -- I'm
25 not sure it would've made any difference if

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1 they'd done what you suggested they -- they
2 could've done.
3 MR. LEWIS: But in any event, you know, it's our
4 position and I think the case law is clear that
5 once the -- the bidding process has ended and
6 -- and there is surplus funds, the lien is
7 extinguished, so I guess the question then
8 becomes of all these claimants to the -- these
9 funds, how do we determine who gets what in
10 what priority.
11 THE COURT: Uh-huh (affirmative response).
12 MR. LEWIS: It -- if it's based upon, again, the TD
13 Bank lien is not a mortgage lien, it -- it's
14 now -- it -- if -- if they have a claim at all,
15 they step into the same shoes as any other
16 claimant as a -- as a lienholder.
17 THE COURT: They own the property.
18 MR. LEWIS: I understand that, but -- and I -- and I
19 agree with you 100 percent, but if the Court
20 were to find that they have some claim to these
21 funds at all, my client, the Lender Group, had
22 the oldest and the first lien against the
23 property because they had the first judgment,
24 which was in 2003. TD Bank would've come after
25 that and so the ---

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1 THE COURT: How -- how ---
2 MR. LEWIS: --- first position is they have no claim
3 to the funds. The second position is if they
4 have a claim, we have priority.
5 THE COURT: And what's the amount of your claim, Mr.
6 Lewis?
7 MR. LEWIS: Well, our claim is \$111,263.
8 THE COURT: Uh-huh (affirmative response).
9 MR. LEWIS: We also represent the Estate of Harry
10 Boyd. That one was filed in 2010 and they're
11 -- they're related parties.
12 THE COURT: Okay. And how much is Mr. -- is the
13 Estate of Mr. Boyd?
14 MR. LEWIS: \$66,143.37.
15 THE COURT: All right. All right. Thank you, sir.
16 Ms. Thompson, you represent the Department of
17 Revenue.
18 MS. THOMPSON: I do represent the Department of
19 Revenue
20 THE COURT: Now -- now let me ask -- let me ask you
21 -- I'm sorry to cut you off.
22 MS. THOMPSON: Sure.
23 THE COURT: The fact that the Department of Revenue
24 is involved, is that -- is that by law,
25 automatically does that mean your -- your lien

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1 trumps everybody else's lien or -- or how does
2 that work?
3 MS. THOMPSON: It -- it does not automatically mean
4 that the South Carolina Department of Revenue
5 trumps everyone's lien. The -- the rules of
6 priority apply to the South Carolina Department
7 of Revenue as any other lienholder. We don't
8 get any special privileges in that regard. The
9 reason why I'm here today and I haven't been
10 present at any of the other surplus funds
11 hearings in this case is because simply when
12 there are other claimants, particularly that is
13 not the third-party Defendant that's being
14 foreclosed on, when it's the bank, we get
15 notice of those claims if there are issues that
16 they -- outside of which it seems like here,
17 Rule 71 issues that they're disputing the
18 claim. We'll usually get notice of it ---
19 THE COURT: Uh-huh (affirmative response).
20 MS. THOMPSON: --- and we would appear and argue in
21 that regard. I didn't know that there were
22 other disputed claimants in this particular
23 case until ---
24 THE COURT: Uh-huh (affirmative response).
25 MS. THOMPSON: --- until this week when I got a

6 (Pages 21 to 24)

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1 notice of appearance from one of the parties --
 2 -
 3 THE COURT: Uh-huh (affirmative response).
 4 MS. THOMPSON: --- so that's why I came today to see
 5 what the status of the Department of Revenue is
 6 as far as a lienholder in priority because I
 7 didn't know that these issues were going on.
 8 THE COURT: But you ---
 9 MS. THOMPSON: And I -- and I -- I want to put this
 10 on the record, the reason why the Department of
 11 Revenue does it that way, we don't typically
 12 show up, unless we know of these issues is
 13 because of being conservative in how the
 14 department spends its funds because ---
 15 THE COURT: Uh-huh (affirmative response).
 16 MS. THOMPSON: --- if I'm not in the office, it
 17 costs taxpayers money for me to be at these
 18 hearings and if there's a way that our
 19 interests are preserved and typically we
 20 request that in our plea for relief when we do
 21 these things, then I don't necessarily make an
 22 appearance for that reason, but I would've
 23 appeared if I'd know the issues had been going
 24 on.
 25 THE COURT: Okay.

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1 MS. THOMPSON: So having said all of that, the
 2 reason why I'm here today was to find out what
 3 those issues were and for us to determine where
 4 the South Carolina Department of Revenue falls
 5 in priority amongst all these other claimants.
 6 THE COURT: Okay. But -- but, Ms. Thompson, I'm
 7 looking at the notice of claim of surplus funds
 8 that was signed by you and that was dated
 9 October 2, 2015, and it lists eight warrants
 10 against the mortgagor, the former mortgagor.
 11 MS. THOMPSON: That would've been William Hudspeth,
 12 yes.
 13 THE COURT: Yes, ma'am, and I'm not good at math,
 14 otherwise, I would've gone to med school, but
 15 -- but just a brief glance indicates that the
 16 -- that the -- if all eight warrants had the
 17 requisite priority, then -- then y'all would
 18 take the whole surplus funds, is that -- is
 19 that correct, in your opinion?
 20 MS. THOMPSON: Yes, that is correct, if -- if that
 21 is the case because sometimes depending on what
 22 the pleadings reflect, we don't always have the
 23 correct dates in terms of when these liens --
 24 other liens were filed, if they were purchase
 25 monies, sometimes that's not identified and

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1 that would make a difference in terms of our
 2 stance of priority.
 3 THE COURT: Yeah, okay. Now with regard to these
 4 eight warrants, what -- what's the date on
 5 those? The claim didn't indicate when those
 6 warrants were filed.
 7 MS. THOMPSON: I do have dates for those warrants
 8 and the actual lien numbers for those warrants
 9 is and I have a couple of copies. Not --
 10 probably not enough for everyone that's here,
 11 but I can present that to you if I may
 12 approach?
 13 THE COURT: Okay. Well, hold on -- hold on one
 14 second.
 15 MS. THOMPSON: Okay.
 16 THE COURT: All right. And you indicate that your
 17 liens were filed, one was in 2003 and one was
 18 in 2010?
 19 MR. LEWIS: That's correct, Your Honor, and -- and I
 20 have -- my records show that the Department of
 21 Revenue's filings were July 2009. Does that
 22 conform with what -- all of them were the same
 23 -- filed at the same time.
 24 THE COURT: So the Lender Group -- the Lender Group,
 25 their lien was filed before the Department of

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1 Revenue's lien?
 2 MR. LEWIS: Yes, yes, Your Honor.
 3 THE COURT: Okay.
 4 MS. THOMPSON: Our records indicate we have one that
 5 was filed December 17, 2009.
 6 THE COURT: Okay.
 7 MR. LEWIS: Oh, was it -- was it one filing with --
 8 with seven different amounts?
 9 THE COURT: Eight different amounts, I guess, for --
 10 -
 11 MR. LEWIS: Yeah, I have seven.
 12 THE COURT: Okay. I'm sorry I have -- but what was
 13 ---
 14 MR. LEWIS: I threw the high one out. I thought it
 15 was irrelevant.
 16 THE COURT: Okay. Yes, sir, Mr. Sowell?
 17 MR. SOWELL: Your Honor, I think we're bypassing
 18 another issue in that these claimants have a
 19 claim only against William Hudspeth half, not
 20 against her half.
 21 THE COURT: They only have a claim against ...
 22 MR. SOWELL: Monies that would've been owned by him.
 23 THE COURT: Ex -- ex-husband's monies.
 24 MR. SOWELL: Not monies that would've been owned by
 25 her because she wasn't -- she's not a debtor on

7 (Pages 25 to 28)

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1 these liens. The only debtor she is, is the
 2 Lindsay's client.
 3 THE COURT: Okay. All right. So what's that mean,
 4 Mr. Sowell?
 5 MR. SOWELL: It means I'm not sure they -- these
 6 lienholders get all the money, they just get
 7 half the money.
 8 THE COURT: And -- and how -- and why do you think
 9 that Mrs. -- the former Mrs. Hudspeth gets any
 10 money at all?
 11 MR. SOWELL: She doesn't. She -- what she would've
 12 gotten would go to Lindsay's client.
 13 THE COURT: TD Bank?
 14 MR. SOWELL: Yes, sir, but we don't have a dog in
 15 the fight. We're out of it, so I'm not trying
 16 to argue too forcefully. I just thought that
 17 it does show that their claimant's gets half
 18 the money, not the whole -- whole money.
 19 THE COURT: Now do you have any authority for that,
 20 any decision in any case law, any statute, any
 21 rule or anything for that position?
 22 MR. SOWELL: Well, it seems like if they're laying -
 23 - laying claim to those funds, those funds only
 24 apply -- their claim only applies to the
 25 percentage or the portion of the monies that

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1 were owned by Hudspeth, William Hudspeth, but
 2 that's -- like I said, we don't have a dog in
 3 the fight, so I'm going to sit down.
 4 THE COURT: Okay. Thank you, sir. Yes, sir, Mr.
 5 Carrington?
 6 MR. CARRINGTON: Your Honor, I just -- the judgment
 7 -- if -- if TD Bank's lien is extinguished at
 8 the time of the sale ---
 9 THE COURT: Uh-huh (affirmative response).
 10 MR. CARRINGTON: --- and therefore TD Bank is not
 11 entitled to any proceeds as a result of that
 12 lien, wouldn't the same line of logic apply to
 13 judgment grantors, theirs would've been
 14 extinguished at the sale.
 15 THE COURT: Well, and that -- and that's, you know,
 16 as lawyers you have to be real precise in the
 17 language. After the foreclosure process is
 18 complete, there's been a judicial sale, the
 19 liens aren't extinguished. The lien is no
 20 longer attached to the piece of property that
 21 was being foreclosed and so you have to be
 22 precise about language. They weren't -- and a
 23 lot of lawyers say, well, they were wiped out
 24 and lay people say it all the time. They're
 25 not wiped out. The -- the person that signed

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1 a note of mortgage still owes the money, it's
 2 just that the lien no longer attaches to that
 3 particular piece of property. If -- if Mr.
 4 Hudspeth or Mrs. Hudspeth -- is Mr. Hudspeth
 5 still alive, Mr. Sowell?
 6 MR. SOWELL: Oh, yes, Your Honor. I'm in constant
 7 contact with him.
 8 THE COURT: You know if -- if he bought another
 9 house -- does he own another piece of real
 10 estate?
 11 MR. SOWELL: No, sir, he does not.
 12 THE COURT: Yeah, or if she owns another piece of
 13 real estate, that lien attaches to maybe
 14 something else, but not to this particular
 15 piece of property and -- and so we say it's
 16 extinguished. I'm not -- I'm not sure that's
 17 -- that's artful, unless you did it on purpose,
 18 an artful way of -- I think ---
 19 MR. CARRINGTON: No, no, I -- and I understand ---
 20 THE COURT: Yeah, the liens are still ---
 21 MR. SOWELL: --- Your Honor's point, but it ---
 22 THE COURT: But your lien may be extinguished
 23 because your client owns the property now.
 24 MR. CARRINGTON: --- but it seems as if Your Honor
 25 is and counsel for the judgment creditors are

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1 arguing that their priority position is going
 2 to -- is going to be determined as to when
 3 those judgments liens were filed as of
 4 basically the date of the list pendings on
 5 first mortgage foreclosure. It's the same
 6 argument that we're making in effect is that
 7 your priority position at the time of
 8 foreclosure is filed, the list pendings on
 9 foreclosure is filed, governs your priority to
 10 the surplus funds.
 11 THE COURT: Okay. All right. Anything further from
 12 either anyone to that?
 13 MR. LEWIS: Well, the only comment I would have to
 14 that last statement is that -- that you know
 15 perhaps -- perhaps the date of the filing
 16 governs the priority, but -- but since the lien
 17 itself no longer attaches to the property,
 18 there's no priority by virtue of the fact that
 19 the lien attached to -- to the property.
 20 THE COURT: Uh-huh (affirmative response).
 21 MR. LEWIS: Again, our position is that TD Bank
 22 would not have a lien at all because they own
 23 the property now, but if -- if the Court finds
 24 that they have some lien, it would be based
 25 upon the priority of the filing of those liens.

8 (Pages 29 to 32)

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1 THE COURT: All right. Ms. Thompson, I think you
 2 were interrupted. Do you have the dates of
 3 those -- of those eight warrants that the
 4 Department of Revenue issued?
 5 MS. THOMPSON: We do have the dates.
 6 THE COURT: And -- and what -- are they all the same
 7 date or ...
 8 MS. THOMPSON: They're not all the same date. They
 9 are different dates.
 10 THE COURT: Could you please, for clarity of the
 11 record, outline what dates each warrant ---
 12 MS. THOMPSON: Yes.
 13 THE COURT: --- and list and say warrant number one
 14 and then go down all the way down.
 15 MS. THOMPSON: Okay.
 16 THE COURT: Yes, ma'am.
 17 MS. THOMPSON: Warrant number one, December 22,
 18 2008; number two is December 4, 2006; three is
 19 July 21, 2008; April 17, 2006; December 8,
 20 2008; and December 17, 2009. Now we have
 21 listed eight in our request for surplus funds,
 22 but two of those have already been extinguished
 23 by time.
 24 THE COURT: Which ones?
 25 MS. THOMPSON: Let's see. I'll have to go back and

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1 check my files.
 2 THE COURT: Yes, ma'am.
 3 MS. THOMPSON: Just a second. Okay. So the warrant
 4 listed as number four would have been
 5 extinguished.
 6 THE COURT: Okay.
 7 MS. THOMPSON: And one of them is going to be
 8 extinguished in roughly two weeks from now,
 9 right?
 10 MS. THOMPSON: Uh-huh (affirmative response). And
 11 number three.
 12 THE COURT: Okay. So two -- two no longer play into
 13 this, so -- and I'd love to do the math here
 14 while we're -- while we're all here, but I'm
 15 going to ask Mr. Lewis to prepare a proposed
 16 order and get together with Ms. Thompson on
 17 that and also maybe circulate it among -- among
 18 the other side, but -- but based on what's been
 19 presented here today and what was previously
 20 presented by the notice of claim, I -- I award
 21 the surplus funds to the two -- two applicants
 22 here, the Lender Group and also South Carolina
 23 Department of Revenue, and again, your proposed
 24 order, Mr. Lewis, just -- just -- y'all get
 25 together on that and circulate among everyone

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1 else.
 2 MR. LEWIS: Okay. Thank you, Your Honor.
 3 THE COURT: Yes, sir, Mr. Carrington?
 4 MR. CARRINGTON: Your Honor, may I ask that the
 5 Court withhold dispersing the surplus funds
 6 pending the appeal rights that my client may
 7 have?
 8 THE COURT: Well, Mr. Lewis, Ms. Thompson, do y'all
 9 consent to that?
 10 MR. LEWIS: Well, Your Honor, ---
 11 THE COURT: There -- there's a -- there's a rule,
 12 Appellate Court rule that talks about that and
 13 talks about exceptions. I'd have to look it up
 14 because I know, for example, if titled real
 15 estate is at issue, that's an exception to
 16 automatic stay and the appealing party has to
 17 post -- post a bond. Now in this case, I don't
 18 -- I don't know again -- I don't have a case to
 19 tell me what to do in this situation.
 20 MR. LEWIS: I wouldn't want to consent to it, Your
 21 Honor. I'd have to read the rule before I --
 22 I ---
 23 THE COURT: Why don't -- why don't -- we may -- we
 24 may need another -- well, I hope -- I know you
 25 came all the way from -- you're coming from

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1 Greenville or Columbia? Are you from
 2 Greenville?
 3 MR. CARRINGTON: Greenville.
 4 THE COURT: I'd hate to have another hearing on that
 5 issue. Of course, it is something I've never
 6 -- I've never been presented with before in a
 7 surplus funds hearing. Do you want -- do you
 8 want ---
 9 MR. CARRINGTON: Honestly, I don't want the money to
 10 go and then if we were to prevail on appeal
 11 have to claw it back from the -- the judgment
 12 creditors. That's ---
 13 THE COURT: I -- I will share this, even though your
 14 not supposed to talk about embarrassing
 15 moments, I did disperse surplus funds to the
 16 wrong person one time and he spent it, but when
 17 we realized the mistake, the order -- ordered
 18 him to pay it back was backed up by the Court's
 19 contempt, so -- so he paid it back, so I'm not
 20 so sure, you know, the Lender Group or the
 21 Department of Revenue they -- they seem to --
 22 they could pay it back, I'm sure. I mean, the
 23 Department of Revenue gets people's refunds all
 24 the time, you know, on the -- on the tax
 25 refund, so I don't think that's necessary, but

9 (Pages 33 to 36)

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1 if you -- if you insist, they don't consent to
2 it, I'm willing to have another hearing on that
3 if -- if that's not a problem, but -- but I
4 don't see where Lender Group or the Department
5 of Revenue would -- would have any trouble
6 paying it back if in fact I'm reversed on
7 appeal, so -- I mean, seriously, if you feel
8 strongly about it?
9 MR. CARRINGTON: Well, I do, Your Honor, I certainly
10 don't want my client, if we're successful on
11 appeal, to have to go through a process --
12 contempt process ---
13 THE COURT: Well, it won't be contempt only if they
14 -- if I order them to pay it back and they
15 don't pay it back.
16 MR. CARRINGTON: --- but my client in the meantime
17 is going to extend funds for me to go through
18 that process to get that and I -- you know, I
19 don't know that it's -- well, I think if your
20 concern -- if Your Honor wants us to -- to
21 brief that issue or have another hearing, I'm
22 fine doing that. I feel very strongly that --
23 I don't want these funds to get away and then
24 have to come claw them back.
25 THE COURT: But my position is they're not going to

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1 get away. I suspect Mr. Lewis will advise
2 client and Ms. Thompson will advise her client
3 that if -- if the Court said we have to pay
4 that money back, we'll pay it back. And of
5 course, you can tell by my ruling, I -- I don't
6 think -- I think this is unusual and -- and I
7 think I made the right decision. Now Appellate
8 Courts have disagreed with me before, so -- but
9 that comes with the territory, so -- so your
10 motion is denied.
11 MR. LEWIS: Thank you, Your Honor.
12 THE COURT: All right. Thank you all.
13 MS. THOMPSON: Thank you.
14 (There being no further matters, the hearing
15 adjourned at 10:13 a.m.)

10 (Pages 37 to 38)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joseph M. Strickland, Master-In-Equity

Appellate Case No. 2016-00958

Wells Fargo Bank, N.A., Plaintiff,

v.

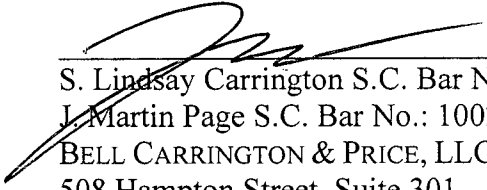
William R. Hudspeth, Marcia E. Hudspeth; TD Bank, N.A. s/b/m to Carolina First Bank; The Lender Group, Inc.; Business Carolina, Inc.; South Carolina Department of Revenue; Carapace, LLC; Wurth Wood Group, Inc.; The Estate of Harry William Boyd, by Joan L. Boyd, Personal Representative; Adecco USA, Inc.,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

CONSENT OF COUNSEL

I certify that I have received the consent of counsel to file *Supplemental Record*. Please see the e-mail attached.



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September 26, 2016

ATTACHMENT

Alex Davila

From: Robert Lewis <rlewis@rogerslewis.com>
Sent: Monday, September 26, 2016 12:18 PM
To: Martin Page
Cc: Christopher Boguski; Alex Davila
Subject: Re: Wells v. Hudspeth Appellate Case No.: 2016-00958

Sure

Sent from my iPhone

On Sep 26, 2016, at 11:05 AM, Martin Page <mpage@bellcarrington.com> wrote:

Robert and Chris,

Hope you guys are well. I'm finalizing the our brief and released the transcript of hearing in the Record on Appeal is missing every other page.

Do you guys consent to me doing an appendix to the Record on Appeal with the complete transcript?

Thanks,

Martin

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joseph M. Strickland, Master-In-Equity

Appellate Case No. 2016-00958

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SC Court of Appeals

Wells Fargo Bank, N.A.; Plaintiff,

v.

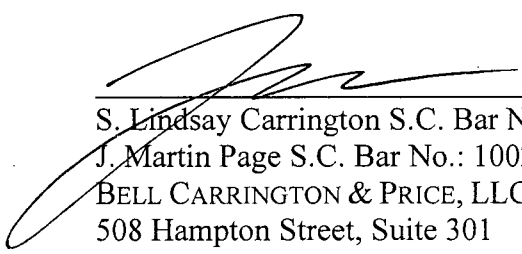
William R. Hudspeth, Marcia E. Hudspeth; TD Bank, N.A. s/b/m to Carolina First Bank; The Lender Group, Inc.; Business Carolina, Inc.; South Carolina Department of Revenue; Carapace, LLC; Wurth Wood Group, Inc.; The Estate of Harry William Boyd, by Joan L. Boyd, Personal Representative; Adecco USA, Inc.,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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal complies with Rule 212(b).



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