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- STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2015-CP-11-00584

U.S. Bank Trust, N.A., as Trustee for LSF9 Master
Participation Trust,
PLAINTIFF(S)

Wanda Gavin; The Medical University of South
Carolina; Brock and Scott Holdings, LLC; Mary Black
Health Systems, Inc. D/B/A Mary Black Memorial
Hospital
DEFENDANT(S)

Submitted by: John S. Kay (S.C. Bar No. 7914), John B. Kelchner
(S.C. Bar No. 13589), Sarah O. Leonard (S.C. Bar No. 80165), Ashley
Z. Stanley (S.C. Bar No. 74854), Alan M. Stewart (S.C. Bar No.
15576

Attorney for : Plaintiff Defendant
 Self-Represented Litigant

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
SEP 12 P 1:40
BRADY, MCBEE

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 4(b), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional information for the Clerk :

Foreclosure Action

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust	Millie Lucille Holmes	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
300 Marion Avenue, Gaffney, SC 29341
TMS# 099-02-00-043.000

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Sarah U. Shillett
Sarah U. Shillett Special Referee

Judge Code

Date

9/18/17

For Clerk of Court Office Use Only

This judgment was entered on the 12th day of Sept. 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 12th day of Sept. 2017 to attorneys of record or to parties (when appearing pro se) as follows:

John S. Kay (S.C. Bar No. 7914), John B. Kelchner (S.C. Bar No. 13589), Sarah O. Leonard (S.C. Bar No. 80165), Ashley Z. Stanley (S.C. Bar No. 74854), Alan M. Stewart (S.C. Bar No. 15576)

ATTORNEY(S) FOR THE PLAINTIFF(S)

Michael H. Sartip, Esquire

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Brandy W. McBee

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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SHERBORN COUNTY, S.C.
2017 SEP 12 PM 1:40
BRANDY W. MCBEE

FORM 4 ATTACHMENT

Michael H. Sartip, Esquire
Attorney for Defendant, The Medical University of South Carolina
PO Box 808
Myrtle Beach, SC 29578

Wanda Gavin, Pro-Se Defendant
300 Marion Avenue
Gaffney, SC 29341

Brock and Scott Holdings, LLC
c/o Andrew M. Thompson, Esq.
2442 Devine Street
Columbia, SC 29205

Mary Black Health Systems, Inc. D/B/A Mary Black Memorial Hospital
1700 Skylyn Drive
Spartanburg, SC 29307

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STATE OF SOUTH CAROLINA **SC Court of Appeals** THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE

U.S. Bank Trust, N.A., as Trustee for LSF9
Master Participation Trust,

PLAINTIFF,

vs.

Wanda Gavin; Brock and Scott Holdings,
LLC; Mary Black Health Systems, Inc.
D/B/A Mary Black Memorial Hospital; The
Medical University of South Carolina

DEFENDANT(S)

SPECIAL REFEREE'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2015-CP-11-00584

DEFICIENCY WAIVED

TO:
Hutchens Law Firm
Attorney for Plaintiff

Michael H. Sartip, Esquire
Attorney for The Medical University of South Carolina

Wanda Gavin
Pro Se Defendant

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause. Pursuant to the said Order of Reference a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find conclude and order as follows:

PROCEDURAL HISTORY

1. The Lis Pendens was filed on July 27, 2015.
2. The Summons and Complaint were filed on July 27, 2015.
3. Service was made upon the Defendant(s) named in this Order as is shown by the Proof(s) of Service filed herein.
4. Defendant Wanda Gavin, ("Defendant"), filed an Answer on October 23, 2015.

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CHEROKEE COUNTY, S.C.
2017 SEP 12 P 1:41
BRANDY W. MCBEE

5. That the Defendant(s) Brock and Scott Holdings, LLC; and Mary Black Health Systems, Inc. D/B/A Mary Black Memorial Hospital, are in default as shown by the Affidavit of Default on file herein.

6. This matter was referred to Sarah U. Shiflett as Special Referee on January 8, 2016.

7. According to the Affidavit filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under the Service members Civil Relief Act, and any amendments thereto.

8. The loan is no longer subject to the Supreme Court of South Carolina's Administrative Order 2011-05-02-01 because Gavin has been served with the required notice of rights, and more than 30 days have elapsed since service upon the Gavin, and Gavin has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process.

9. Plaintiff filed a Motion for Summary Judgment on August 19, 2016. In response to Plaintiff's Motion for Summary Judgment, Gavin filed the Motion to Strike on August 23, 2016.

10. Plaintiff's Motion for Summary Judgment and Defendant's Motion to Compel and Motion to Strike were scheduled for October 6, 2016. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.

11. At the hearing, this Court denied Defendant's Motion to Compel and held its ruling on Plaintiff's Motion and Defendant's Motion to Strike in abeyance so that the parties could attempt to resolve this matter through loss mitigation. On August 14, 2017, Plaintiff's counsel informed this Court that a resolution was not reached.

FINDINGS OF FACT

1. For value received, Millie Lucille Holmes made, executed and delivered a Note dated September 9, 2002, promising thereby to pay to the order of ABN AMRO Mortgage Group, ("ABN"), the sum of Eighty-Five Thousand Five Hundred Dollars and No Cents (\$85,500.00) with interest at 6.375 percent per annum. Other terms and conditions are stated in the Note, which is of record herein.

2. To better secure the payment of the Note described above, the said Millie Lucille Holmes made, executed and delivered to ABN a mortgage in writing, dated September 9, 2002, covering real property in Cherokee County, which is the same as that described in the Complaint.

The mortgage was filed on September 19, 2002, and is of record in the Office of the Register of Deeds for Cherokee County in Mortgage Book 879 at page 119.

3. Thereafter, by virtue of an assignment dated November 6, 2007 and recorded November 7, 2007, in Mortgage Volume 14 at page 873, ABN by CitiMortgage, Inc., as successor in interest by merger, assigned said mortgage unto LaSalle Bank Midwest National Association, ("LaSalle").

4. Thereafter, by virtue of a corporate merger, LaSalle merged unto Bank of America, N.A., ("BANA").

5. Thereafter, by virtue of an assignment dated March 28, 2016, recorded April 27, 2016, in Mortgage Book 84 at page 2137, BANA assigned said mortgage unto U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust making U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust the present lien holder and Plaintiff herein.

6. The above referenced instrument constitutes a first mortgage lien and is a purchase money mortgage with the proceeds of the loan being used to purchase the property.

7. That the Mortgagor Millie Lucille Holmes died intestate June 26, 2006 as evidenced in the Cherokee County Probate Court's Office (Estate # 2006-ES-11-00233).

8. Thereafter, Mille Lucille Holmes' interest in subject property was conveyed to David H. Holmes, Wanda Gavin and David D. Holmes by David H. Holmes, as Personal Representative for the Estate of Millie Lucille Holmes (Estate # 2006-ES-11-002332) by virtue of a Deed of Distribution dated April 2, 2008 and recorded April 4, 2008 in Volume 17 at Page 1128 in the Office of the Clerk of Court for Cherokee County, South Carolina.

9. Thereafter, David H. Holmes' interest in subject property was conveyed to David D. Holmes by David D. Holmes, as Personal Representative for the Estate of David H. Holmes (Estate # 2011-ES-11-00394) by virtue of a Deed of Distribution dated January 20, 2012 and recorded March 22, 2012 in Volume 50 at Page 2003 in the Office of the Clerk of Court for Cherokee County, South Carolina.

10. Thereafter, David D. Holmes conveyed all his interest in subject property to Wanda Gavin by virtue of a Deed dated January 20, 2012 and recorded March 22, 2012 in Volume 50 at Page 2006 in the Office of the Clerk of Court for Cherokee County, South Carolina making Gavin the sole owner of subject property making Wanda Gavin the sole owner of subject property.

11. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

12. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens.

The Firm has been responsible for the preparation of the following pleadings:

1. Notice of Foreclosure Intervention
2. Lis Pendens
3. Summons and Complaint
4. Affidavit of Default
5. Order of Reference
6. Motion for Summary Judgment and Memorandum in Support
7. Memorandum in Opposition to Defendant's Motion to Compel
8. Notice of Hearing
9. Proposed Special Referee's Order and Judgment of Foreclosure and Sale
10. Notice of Sale
11. Other documents as applicable pertaining to service, foreclosure intervention and prosecution of the action.

Additionally, the Firm has arranged for service of process on the Defendant(s), has scheduled and attended the hearing in the matter, has provided reinstatement/payoff figures to the primary Defendant(s), if requested, and has had telephone conversations with the Defendant(s), if requested. Future duties include forwarding copies of the Special Referee's Order and Judgment of Foreclosure and Sale to the Defendant(s) advising the Defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by Plaintiff, representation of Plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a foreclosure matter, the attendant responsibilities, the outcome obtained for the Plaintiff, and contested nature of the within action, I find that the

attorneys' fees in the amount of Eleven Thousand Nine Hundred Forty-Five Dollars and No Cents (\$11,945.00) are reasonable.

13. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Total Principal due as of March 1, 2015	\$	67,633.71
(b)	Interest from February 1, 2015 through August 30, 2017 @ current interest rate of 6.375%	\$	11,121.57
(c)	Escrow Adjustments (taxes and insurance)	\$	8,504.54
(d)	Late Charges	\$	293.37
(e)	Property Inspections	\$	435.00
(f)	Unapplied Funds	(\$	166.96)
(g)	Foreclosure Costs	\$	2,089.82
(h)	Attorney Fees	\$	11,945.00
	TOTAL DEBT	\$	101,856.05

Interest for the period from the date shown in (b) above, through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of Six and 375/1000 (6.375%) per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

14. That the Defendant, Brock and Scott Holdings, LLC, is made a party by virtue of a judgment against David H. Holmes in the amount of Six Thousand Three Hundred Ninety-Seven Dollars and Thirty-One Cents (\$6,397.31), dated November 20, 2008, filed November 20, 2008 with the Cherokee County Clerk of Court, and identified as Civil Action No. 2008-CP-11-00115. Said lien is junior in priority to the Plaintiff's first mortgage lien.

15. That the Defendant, Mary Black Health Systems, Inc. D/B/A Mary Black Memorial Hospital, is made a party by virtue of a judgment against David Holmes in the amount of Five Thousand Seven Hundred Eight Dollars and Fifty-One Cents (\$5,708.51), dated April 23, 2009, filed April 24, 2009 with the Cherokee County Clerk of Court, and identified as Civil

Action No. 2008-CP-11-01000. Said lien is junior in priority to the Plaintiff's first mortgage lien.

16. That the Defendant, The Medical University of South Carolina, is made a party by virtue of a Statement of Creditor's Claim filed against the Estate of David H. Holmes dated February 24, 2012 and recorded February 29, 2012 in the amount of One Thousand One Hundred Forty-One Dollars and Thirty-Four Cents (\$1,141.34). Said lien is junior in priority to the Plaintiff's first mortgage lien.

17. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

18. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

19. That the servicer is participating in the Home Affordable Modification Program (HAMP). The HAMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower is deceased and no other interested parties have responded to the HAMP Solicitation.

CONCLUSIONS OF LAW

I. AS TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff has established that it is entitled to relief through the provision of accurate and indisputable facts necessary to prove its right to foreclose on the subject property. Plaintiff has proven the existence of the Note and Mortgage and that it is the holder of the Note with the right to bring the within action. Plaintiff has also proven that there was a breach or unjustifiable failure to perform the contract and damages suffered by the Plaintiff as a direct and proximate result of the breach. The Loan is in default and due for the March 1, 2015 payment and all subsequent monthly installments. Defendant admitted the accuracy of the Plaintiff's payment history in her Responses to Plaintiff's Requests for Admission and Defendant has failed to provide any evidence showing that Plaintiff's allegations are inaccurate.

Defendant sets forth a general denial and what appear to be affirmative defenses in the form of lack of standing and unspecified legal and equitable defenses. However, Defendant has failed to meet the burden of establishing a valid defense to the foreclosure. "Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." U.S. Bank Trust

National Association v. Bell, 385 S.C. 364, 684 S.E.2d 199, 205 (S.C. Ct. App. 2009) (quoting Bandy v. Bandy, 187 S.C. 410, 413, 197 S.E. 396, 397 (1938) Defendant sets forth no facts controverting the existence of the Note and Mortgage, that Plaintiff is the holder of the Note, and that Defendant is in default on the loan. In fact, Defendant acknowledges that the Loan is in default by admitting the accuracy of the Payment History. Since Defendant has not offered any facts to refute the allegations set forth in the Complaint and Affidavits accompanying Plaintiff's Motion for Summary Judgment, Plaintiff is entitled to judgment as a matter of law as to its Complaint.

Defendant's primary defense to the Plaintiff's action is that it does not have standing to foreclose. She argues that Plaintiff has not proven that it is the holder of the original Note entitled to enforce the Note and Mortgage, it does not hold a lien on the subject property, and the assignments are invalid. Plaintiff has proven these facts in its complaint and affidavits in support of its Motion for Summary Judgment. "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." Bank of Am., N.A., v. Draper, 405 S.C. 214, 219, 746 S.E.2d 478, 480, quoting Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 444, 605 S.W.E.2d 237, 241 (Ct. App. 2008). "Every action shall be prosecuted in the name of the real party in interest." SCRCP Rule 17(a).

The terms of the Note require that payments are to be made to the order of the "Lender". A person entitled to enforce instrument, such as the Note and Mortgage, means "(i) the holder of the instrument ... even though the person is not the owner of the instrument." S.C. Code § 36-3-301. A holder is "the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession." S.C. Code § 36-1-201(b)(21). Therefore, the party that is the holder of the Note can enforce its terms including the right to accelerate upon the Loan's default. The Note provides that "the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder'". The Mortgage also provides for the transfer of the Loan. The "transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument." S.C. Code § 36-3-203(b)

ABN, the original Lender indorsed the instrument to EaSalle. An "indorsement means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating instrument." S.C. Code §

36-3-204(a). "For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security instrument is effective as an unqualified indorsement of the instrument." S.C. Code § 36-3-204(c). Therefore, upon the indorsement of the Note to LaSalle and execution of the Assignment from to LaSalle by ABN, LaSalle became the party with the right to enforce the Note and Mortgage.

Thereafter, LaSalle endorsed the Note in blank, thereby making it a "blank indorsement" according to S.C. Code § 36-3-205. (Affidavit in Support, Exh. A) "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone." S.C. Code § 36-3-205. A "bearer means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank." S.C. Code § 36-1-201(b)(5) Therefore, as Plaintiff is now the bearer of the instrument, it is entitled to enforce the Note and Mortgage. Defendant's claim that Plaintiff is not a holder in due course pursuant to S.C. Code § 36-3-302 is inapplicable as no party is making a claim against BANA in this action.

In arguing that Plaintiff lacks standing to foreclose, Defendant contends that the chain of assignments referenced herein is invalid. "Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract." R.J. Griffin v. Beach Club II Homeowners, 384 F.3d 157, 164 (4th Cir. 2004). In Reese v. U.S. Bank Nat. Ass'n, 2012 WL 1952819 U.S. Dist.Ct., Dist. S.C., the borrower Plaintiff challenged the assignment of the mortgage but the Court found that Plaintiff lacked the standing to do so as "Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity." Reese. "An assignment of a mortgage is a separate contract to which the borrower is not a party," and "a borrower lacks standing to attach assignments or question their validity". In re Guy, Guy v. Carrington Mortgage Services, 552 B.R. 89 (2016). In the within case, not only is Defendant not a party to either Assignment, she is not a party to the Note or Mortgage. Therefore, she does not have standing to challenge the assignments.

As Defendant concedes in her admission of the payment history, payments were made on this loan up and to May 2015. The Assignment of the Mortgage to LaSalle was executed in 2007 and BANA provided notice of the acceleration of the Loan in 2013. As payments were tendered to BANA well after the transfer of the Loan to BANA, Defendant cannot now argue that BANA

did not have the right to accept them or accelerate the Loan upon default. For these reasons, the defense of a lack of standing does not provide grounds for a genuine issue of material fact.

Defendant makes several allegations that neither BANA nor Plaintiff provided proper notices or validation of the debt prior to and subsequent to the initiation of the foreclosure. The Mortgage provides that "any notice to borrower in connection with this security instrument shall be deemed to have been given to borrower when mailed by first class mail" and "the notice address shall be the property address unless borrower has designated a substitute notice address by notice to Lender." This Court finds that BANA mailed the Demand Letter to the "Estate of Millie Lucille Holmes" to the property address and BANA was the proper entity to provide the notice of acceleration.

Defendant further argues that Plaintiff did not provide validation of the debt. A notice required by 15 U.S.C § 1601 of the Fair Debt Collection Practices Act was served with the Complaint. In addition, Defendant contends that Plaintiff should be prevented from pursuing the foreclosure pursuant to 15 U.S.C. § 1692(g). As Defendant is not a party to the Loan, however, she is not a "consumer" as defined in 15 U.S.C. § 1692(a)(3) ("[t]he term "consumer" means any natural person obligated or allegedly obligated to pay any debt") and therefore, she does not have a right to the validation of the debt. 15 U.S.C. § 1692(a)(3) Even so, Plaintiff subsequently served upon Defendant discovery requests and responses to her discovery which included the Note, Mortgage, Assignment to LaSalle and the Payment History. Therefore, as the debt has been validated, even though Defendant had no right to invoke under the FDCPA, this Court finds this defense to have no merit.

Finally, Defendant argues that "Plaintiff's action established a bad faith, oppressive or unconscionable conduct." There were no allegations set forth in Defendant's Answer nor subsequent evidence presented that substantiate this claim. Plaintiff is not attempting to obtain a personal judgment against Defendant and only seeks in rem relief through foreclosure of the Property. Defendant admits the validity of the payment history thereby acknowledging the default. Plaintiff is the entity with the right to enforce the Note and Mortgage and the loan was properly accelerated. Therefore, Defendant has failed to meet the burden of establishing this defense.

II. AS TO DEFENDANT'S MOTION TO STRIKE

Defendant seeks to strike the Affidavit of Debt filed August 19, 2016 in support of the

Motion for Summary Judgment ("Debt Affidavit"). Specifically, she argues that the affiant lacks personal knowledge to attest the facts set forth in the Debt Affidavit, cannot attest to the sale or the assignment of the debt from ABN to BANA, and does not have the knowledge of how ABN or BANA's business records were kept, and that the facts set forth in the Debt Affidavit amount to hearsay. She also alleges the affiant does not explain how the debt was validated, is unqualified to testify, and did not swear under penalty of perjury that the facts contain the Debt Affidavit were true and accurate.

SCRCP 56(e) requires that "supporting and opposing affidavits shall be made on personal knowledge". SCRE Rule 602 provides that "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." However, the South Carolina Rules of Evidence provides an exception to the hearsay rule:

"A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness."

SCRE 803(6).

The business record exception applies with respect to determining the validity of the Debt Affidavit. As an authorized signatory, the affiant can attest to the figures reflected in the Debt Affidavit and is not required to have personal knowledge of how the payments were applied by ABN or BANA. Defendant's remaining arguments fail to justify striking the affidavit. The affiant is only attesting to the amount of the debt and the breakdown of the figures comprising the debt. She is not attesting to any facts relating to the "sale or the assignment of the debt". She is also not required to explain how the debt was "validated". SCRCP 56(e) does not require that the affidavit be sworn under "penalty of perjury". The Debt Affidavit mirrors the standard format of affidavits of debt that are submitted in support of motions for summary judgment and introduced as evidence in foreclosure actions before equity courts in South Carolina.

I, therefore, conclude as follows:

1. The Plaintiff's Motion for Summary Judgment should be granted, Plaintiff should have judgment of foreclosure of the subject mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2. As the Debt Affidavit is in compliance with the requirements of SCRPC Rule 56, the Motion to Strike should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's Motion for Summary Judgment is hereby granted and Plaintiff shall have judgment of foreclosure of the subject mortgage.

2. Defendant's Motion to Strike is hereby denied.

3. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of One Hundred and One Thousand, Eight Hundred Fifty-Six and 05/100 Dollars (\$101,856.05) representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

4. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 6.375% percent per annum.

5. That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Clerk of Court at public auction at the County Court House in Cherokee County, South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The Clerk of Court will require a deposit of Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6.375 percent.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a first mortgage lien and is a purchase money mortgage with the proceeds of the loan being used to purchase the property.

E. The Purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.

F. If the successful bidder is a third party other than the Plaintiff, interest on the balance of the bid shall be paid to the date of compliance at the rate listed in the figures above.

7. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

8. Personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

9. That the Clerk of Court will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Twenty (20) days after date of sale, then the Clerk of Court may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

10. That the Clerk of Court will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

11. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Cherokee County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

13. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record.

14. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the Notice of Pendency of the within action, and the name of the Grantee, and the Special Referee is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

15. The Special Referee will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

16. Upon issuance of a Special Referee's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to ABN AMRO Mortgage Group, Inc. by Millie Lucille Holmes, dated September 9, 2002 and recorded September 19, 2002, in Mortgage Book 879 at page 119.

17. The following is a description of the premises herein ordered to be sold:
ALL that certain piece, parcel or lot of land lying and being situate in the County of Cherokee, State of South Carolina, in the northern portion of the City of Gaffney, situated at the northwest intersection of Marion Avenue, a distance 135, more or less and Oakland Avenue for a distance

of 120 feet, more or less and being more fully shown on plat of property made by Ino M. Jenkins, surveyor, dated November 16, 1948 and recorded in the Office of the Clerk of Court for Cherokee County, South Carolina on May 23, 1958, in Deed Book 4-H, at Page 292 and being further shown on a more recent survey entitled "Thylia Phillips and Susan Phillips, prepared by Lavender, Smith & Associates, dated April 10, 1998 as recorded in Book 24, at Page 70.

THIS BEING the same property conveyed to Millie Lucille Holmes by virtue of a Deed from Mark A. Stewart dated September 9, 2002 and recorded September 19, 2002 in Book 132 at Page 137 in the Office of the Clerk of Court for Cherokee County, South Carolina.

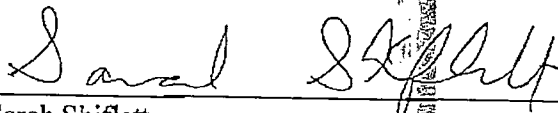
THEREAFTER, Millie Lucille Holmes' interest in subject property was conveyed to David H. Holmes, Wanda Gavin and David D. Holmes by David H. Holmes, as Personal Representative for the Estate of Millie Lucille Holmes (Estate # 2006-ES-11-002332) by virtue of a Deed of Distribution dated April 2, 2008 and recorded April 4, 2008 in Volume 17 at Page 1128 in the Office of the Clerk of Court for Cherokee County, South Carolina.

THEREAFTER, David H. Holmes' interest in subject property was conveyed to David D. Holmes by David D. Holmes, as Personal Representative for the Estate of David H. Holmes (Estate # 2011-ES-11-00394) by virtue of a Deed of Distribution dated January 20, 2012 and recorded March 22, 2012 in Volume 50 at Page 2003 in the Office of the Clerk of Court for Cherokee County, South Carolina.

THEREAFTER, David D. Holmes conveyed all his interest in subject property to Wanda Gavin by virtue of a Deed dated January 20, 2012 and recorded March 22, 2012 in Volume 50 at Page 2006 in the Office of the Clerk of Court for Cherokee County, South Carolina making Wanda Gavin the sole owner of subject property.

300 Marion Avenue
Gaffney, SC 29341
TMS# 099-02-00-043.000

18. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.



Sarah Shiflett
Special Referee for Cherokee County

Gaffney, South Carolina

Sept 8, 2017

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OCT 02 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS

SC Court of Appeals

CERTIFICATE OF SALES DECREE

U.S. Bank Trust, N.A., as Trustee for LSF9
Master Participation Trust,

PLAINTIFF,

vs.

Wanda Gavin; Brock and Scott Holdings, LLC;
Mary Black Health Systems, Inc. D/B/A Mary
Black Memorial Hospital; The Medical
University of South Carolina

DEFENDANT(S)

CERTIFICATE OF SERVICE

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2015-CP-11-00584

DEFICIENCY WAIVED

I, the undersigned, do hereby certify that on today's date, I served on the person(s) below a copy of the Decree of Foreclosure and Sale in the above-referenced case by depositing same in the United States Mail with sufficient postage affixed and addressed as follows:

Michael H. Sartip, Esquire
Attorney for Defendant, The Medical
University of South Carolina
PO Box 808
Myrtle Beach, SC 29578

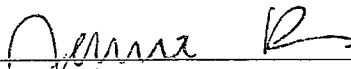
Brock and Scott Holdings, LLC
c/o Andrew M. Thompson, Esq.
PO Box 12245
Columbia, SC 29211

Wanda Gavin, Pro-Se Defendant
300 Marion Avenue
Gaffney, SC 29341

Mary Black Health Systems, Inc. D/B/A
Mary Black Memorial Hospital
1700 Skylyn Drive
Spartanburg, SC 29307

Brock and Scott Holdings, LLC
c/o Andrew M. Thompson, Esq.
2442 Devine Street
Columbia, SC 29205

Mary Black Health Systems, Inc. D/B/A
Mary Black Memorial Hospital
c/o H. Walter Barre - Registered Agent
531 E. Main St.
Spartanburg, SC 29302



Jamie Beidas
Sales Specialist | Foreclosure
Hutchens Law Firm
P.O. Box 8237
Columbia, SC 29202

Columbia, South Carolina
September 15, 2017

HUTCHENS
— LAW FIRM —

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HIGH PERFORMANCE LAW™

OCT 02 2017

Foreclosure Department
Phone: 803-726-2700
Fax: 803-252-6822
HutchensLawFirm.com

Offices in SC Court of Appeals
Fayetteville, Charlotte, Wilmington, NC | Columbia, SC

240 Stoneridge Drive, Suite 400
Columbia, SC 29210

P.O. Box 8237
Columbia, SC 29202

September 15 2017

Michael H. Sartip, Esquire
Attorney for Defendant, The Medical University
of South Carolina
PO Box 808
Myrtle Beach, SC 29578

Brock and Scott Holdings, LLC
c/o Andrew M. Thompson, Esq.
PO Box 12245
Columbia, SC 29211

Wanda Gavin, Pro-Se Defendant
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Gaffney, SC 29341

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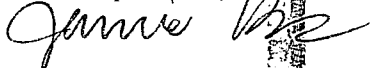
Mary Black Health Systems, Inc. D/B/A Mary
Black Memorial Hospital
c/o H. Walter Barre - Registered Agent
531 E. Main St.
Spartanburg, SC 29302

RE: U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust vs. Wanda Gavin, et al
Docket Number: 2015-CP-11-00584

This property is being advertised for sale at public auction on **November 6, 2017 at 11:00 a.m.** Enclosed is a copy of the Judgment of Foreclosure and Sale in this action that has been executed by the Judge.

Sincerely,

Jamie Beidas
Sales Specialist | Foreclosure



THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. THE PURPOSE OF THIS COMMUNICATION IS TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, except as stated below in the instance of bankruptcy protection.

IF YOU ARE UNDER THE PROTECTION OF THE BANKRUPTCY COURT OR HAVE BEEN DISCHARGED AS A RESULT OF A BANKRUPTCY PROCEEDING, THIS NOTICE IS GIVEN TO YOU PURSUANT TO STATUTORY REQUIREMENT AND FOR INFORMATIONAL PURPOSES AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.

9 RECEIVED

OCT 02 2017

SC Court of Appeals

Notice of Sale

C/A No: 2015-CP-11-00584

BY VIRTUE OF A DECREE of the Court of Common Pleas for Cherokee County, South Carolina, heretofore issued in the case of U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust vs. Wanda Gavin; Brock and Scott Holdings, LLC; Mary Black Health Systems, Inc. D/B/A Mary Black Memorial Hospital; The Medical University of South Carolina, I the undersigned as Clerk of Court for Cherokee County, will sell on November 6, 2017 at 11:00 AM, at the County Court House, Cherokee County, South Carolina, to the highest bidder:

Legal Description and Property Address:

ALL that certain piece, parcel or lot of land lying and being situate in the County of Cherokee, State of South Carolina, in the northern portion of the City of Gaffney, situated at the northwest intersection of Marion Avenue, a distance 135, more or less and Oakland Avenue for a distance of 120 feet, more or less and being more fully shown on plat of property made by Ino M. Jenkins, surveyor, dated November 16, 1948 and recorded in the Office of the Clerk of Court for Cherokee County, South Carolina on May 23, 1958, in Deed Book 4-H, at Page 292 and being further shown on a more recent survey entitled "Thylia Phillips and Susan Phillips, prepared by Lavender, Smith & Associates, dated April 10, 1998 as recorded in Book 24, at Page 70.

THIS BEING the same property conveyed to Millie Lucille Holmes by virtue of a Deed from Mark A. Stewart dated September 9, 2002 and recorded September 19, 2002 in Book 132 at Page 137 in the Office of the Clerk of Court for Cherokee County, South Carolina.

THEREAFTER, Millie Lucille Holmes' interest in subject property was conveyed to David H. Holmes, Wanda Gavin and David D. Holmes by David H. Holmes, as Personal Representative for the Estate of Millie Lucille Holmes (Estate # 2006-ES-11-002332) by virtue of a Deed of Distribution dated April 2, 2008 and recorded April 4, 2008 in Volume 17 at Page 1128 in the Office of the Clerk of Court for Cherokee County, South Carolina.

THEREAFTER, David H. Holmes' interest in subject property was conveyed to David D. Holmes by David D. Holmes, as Personal Representative for the Estate of David H. Holmes (Estate # 2011-ES-11-00394) by virtue of a Deed of Distribution dated January 20, 2012 and recorded March 22, 2012 in Volume 50 at Page 2003 in the Office of the Clerk of Court for Cherokee County, South Carolina.

THEREAFTER, David D. Holmes conveyed all his interest in subject property to Wanda Gavin by virtue of a Deed dated January 20, 2012 and recorded March 22, 2012 in Volume 50 at Page 2006 in the Office of the Clerk of Court for Cherokee County, South Carolina making Wanda Gavin the sole owner of subject property.

300 Marion Avenue

6
Gaffney, SC 29341
TMS# 099-02-00-043.000

TERMS OF SALE: For cash. Interest at the rate of Six and 375/1000 (6.375%) to be paid on balance of bid from date of sale to date of compliance. The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff therein, do, upon the acceptance of his or her bid, deposit with the Clerk of Court for Cherokee County a certified check or cash in the amount equal to five percent (5%) of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court; and in the event the said purchaser or purchasers fail to comply with the terms of sale within Twenty (20) days, the Clerk of Court shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser. Since a personal or deficiency judgment is waived, the bidding will not remain open but compliance with the bid may be made immediately. If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect. In such event, the sale will be rescheduled for the next available sales day. Plaintiff may waive any of its rights, including its right to a deficiency judgment, prior to sale. Sold subject to taxes and assessments, existing easements and restrictions of record.

Clerk of Court
For Cherokee County

Gaffney, South Carolina

_____, 2017

Hutchens Law Firm
P.O. Box 8237
Columbia, SC 29202
803-726-2700

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OCT 02 2017
SC Court of Appeals



Common Pleas

Case Caption: U.S. Bank Trust, N.A. VS Wanda Gavin, Et Al , defendant, et al

Case Number: 2015CP1100584

Type: Notice/Foreclosure Sale

So Ordered

Brandy W. McBee, Clerk of Court for Cherokee
County by Brittany Ramey