

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable Gordon G. Cooper  
Master-in-Equity

---

Appellate Case No. 2016-002559  
Circuit Court Case No. 2016-CP-42-02422

---

Fifth Third Mortgage Company.....Respondent

v.

Tracy L. Liggett and South Carolina Department of Motor  
Vehicles.....Defendants

Tracy L. Liggett is the..... Appellant

---

**RECORD ON APPEAL**

---

**RECEIVED**

JAN 11 2018

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable Gordon G. Cooper  
Master-in-Equity

---

Appellate Case No. 2016-002559  
Circuit Court Case No. 2016-CP-42-02422

---

Fifth Third Mortgage Company.....Respondent

v.

Tracy L. Liggett and South Carolina Department of Motor  
Vehicles.....Defendants

Tracy L. Liggett is the..... Appellant

---

**RECORD ON APPEAL**

---

TRACY LYNN LIGGETT, *Pro se*  
225 Perry Road  
Greer, SC 29651  
864-999-6044  
Tracyliggett5@att.net  
**APPELLANT PRO SE**

WOMBLE CARLYLE SANDRIDGE  
& RICE, LLP  
S. Sterling Laney, III  
Joshua L. Howard  
550 South Main Street, Suite 400  
Greenville, South Carolina 29601

M. Todd Carroll  
1221 Main Street, Suite 1600  
Columbia, South Carolina  
(803) 454-6504

**ATTORNEYS FOR RESPONDENT**

January 11, 2018

**INDEX**

**OPINIONS, ORDERS, JUDGMENTS AND DECREES**

December 1, 2016 Master’s Order and Judgment of Foreclosure Sale.....001  
January 5, 2017 Order Vacating Sale.....011

**PLEADINGS AND MOTIONS**

June 28, 2016 Summons and Complaint.....012  
August 24, 2016 Amended Answers and Affirmative Defenses.....017  
November 16, 2016 Notice of Hearing and Certificate of Mailing.....020  
November 29, 2016 Notice of Unavailability.....022  
December 29, 2016 Notice of Appeal.....023

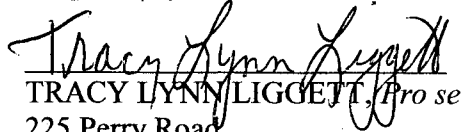
**TRANSCRIPTS**

Transcript of Record December 1, 2016 Hearing.....025

**EXHIBITS AND OTHER MATERIALS AND DOCUMENTS**

Appellant’s Initial Brief.....029  
Respondent’s Initial Brief.....042  
Appellant’s Final Reply Brief.....053

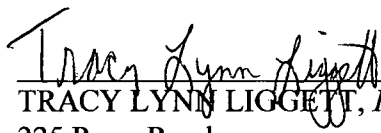
Respectfully Submitted,

  
TRACY LYNN LIGGETT, *Pro se*

225 Perry Road  
Greer, SC 29651  
864-999-6044  
Tracyliggett5@att.net

**Certificate of Service**

I certify that I have served the Record on Appeal to the following Counsel and parties on this 11<sup>th</sup> day of January 2018: S. Sterling Laney, III, Esq., Joshua J. Howard, Esq., 550 South Main Street, Suite 400, Greenville, SC 29601, slaney@wcsr.com, jhoward@wcsr.com, M. Todd Campbell, Esq., 1221 Main Street, Suite 1600, Columbia, SC 29201, todd.carroll@wcsr.com on this 11<sup>th</sup> day of January, 2018.

  
TRACY LYNN LIGGETT, *Pro se*  
225 Perry Road  
Greer, SC 29651  
864-999-6044  
Tracyliggett5@att.net



Spartanburg Common Pleas

**Case Caption:** Fifth Third Mortgage Company VS Tracy L Liggett , defendant, et al  
**Case Number:** 2016CP4202422  
**Type:** Master/Order/Foreclosure & Sale and Form 4

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2016-12-01 10:53:14 page 12 of 12

ELECTRONICALLY FILED - 2016 Dec 01 11:21 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4202422

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Fifth Third Mortgage Company ,  
PLAINTIFF,  
vs.  
Tracy L. Liggett; South Carolina Department  
of Motor Vehicles  
DEFENDANT(S)

MASTER'S ORDER AND JUDGMENT OF  
FORECLOSURE AND SALE  
(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2016-CP-42-02422

DEFICIENCY WAIVED

TO:

Hutchens Law Firm  
Attorney for Plaintiff

Frank L. Valenta, Jr., Esquire  
Attorney for South Carolina Department of Motor Vehicles

Tracy L. Liggett  
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 case. 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 June 30, 2016.
2. The Summons and Complaint were filed on June 30, 2016.
3. Service was made upon the Defendant(s) named in this Order as is shown by the Proof(s) of Service filed herein.
4. The Defendant(s) and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.
5. 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.

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

FINDINGS OF FACT

1. For value received, Tracy L. Liggett made, executed and delivered a Note dated October 6, 2015, promising thereby to pay to the order of Fifth Third Mortgage Company the sum of Seventy-Seven Thousand One Hundred Sixty-Nine Dollars and No Cents (\$77,169.00) with interest at 3.625 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 Tracy L. Liggett made, executed and delivered to Fifth Third Mortgage Company a mortgage in writing, dated October 6, 2015, covering real property in Spartanburg County, which is the same as that described in the Complaint. The mortgage was filed on January 6, 2016, and is of record in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 5061 at page 610.

3. The above referenced instrument constitutes a first lien priority mortgage.

4. 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.

5. 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. Notice of Hearing
7. Proposed Master's Order and Judgment of Foreclosure and Sale
8. Notice of Sale
9. Record of Hearing
10. 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), and 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 Master'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 and the outcome obtained for the Plaintiff, I find that the contractual attorneys' fees in the amount of Two Thousand Two Hundred Seventy-Five Dollars and No Cents (\$2,275.00) are reasonable.

6. 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 January 1, 2016	\$ 76,205.87
(b)	Interest from December 1, 2015 through December 1, 2016 @ 3.625%	\$ 2,532.31
(c)	Escrow adjustments (debits or credits)	\$ 175.26
(d)	Late Charges	\$ 139.10
(e)	Property Inspections	\$ 120.00
(f)	Foreclosure Costs	\$ 610.27
(g)	Attorney Fees	\$ 2,275.00
	<b>TOTAL DEBT</b>	<b>\$ 82,057.81</b>

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 Three and 625/1000 (3.625%) 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.

7. The manufactured home described as a 2000 Dynasty Mobile Home, Serial # H851154GL&R has been affixed to the real property described herein and that certain Manufactured Home Affidavit For Retirement of Title Certificate dated October 6, 2015 was recorded May 5, 2016 in the Register of Deeds Office for Spartanburg County, South Carolina in Book 112-B at Page 277.

8. The records of the South Carolina Department of Motor Vehicles has been searched for 2000 Dynasty Mobile Home, Serial # H851154GL&R; however, the Certificate of Title for the mobile/manufactured home has not been detitled/retired with said agency.

9. 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.

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

11. That the servicer is participating in the Home Affordable Modification Program (HAMP). The loan is not subject to HAMP because the loan was originated after January 1, 2009.

#### CONCLUSION OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Eighty-Two Thousand Fifty-Seven Dollars and 81/100 Dollars

(\$82,057.81) 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.

2. 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 3.625% percent per annum.

3. 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.

4. 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 Master in Equity at public auction at the County Court House in Spartanburg County, South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The Master in Equity 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 3.625% 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 lien priority mortgage.

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.

5. 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 Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

6. 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.

7. That the Master in Equity 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 Master in Equity 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.

8. That the Master in Equity 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.

9. 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 Spartanburg 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.

10. 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.

11. 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.

12. And it is further ORDERED that the Court authorize the South Carolina

Department of Motor Vehicles to register the mobile home if necessary and issue a Certificate of Title free of liens on the mobile home listed in the legal description to the successful bidder at the foreclosure sale.

13. 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 Master in Equity is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

14. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

15. Upon issuance of a Master in Equity'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 Fifth Third Mortgage Company by Tracy L. Liggett, dated October 6, 2015 and recorded January 6, 2016, in Mortgage Book 5061 at page 610 .

16. 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 State of South Carolina, County of Spartanburg, being shown and designated as Lot 47, containing 0.60 acres, more or less, being shown and designated on a survey for Foxbriar, Phase II, prepared by Freeland and Associates, Professional Land Surveying, dated February 01, 1999 and recorded in the Register of Deeds Office for Spartanburg County in Plat Book 146 at Page 706. For a more complete and accurate description refer to the above referenced plat.

TOGETHER with a 2000 Dynasty Mobile Home, Serial # H851154GL&R located thereon.

THIS BEING the same property conveyed to Tracy L. Liggett by virtue of a Deed from Jackie D. Pearson dated January 18, 2008 and recorded January 25, 2008 in Book 90 N at Page 244 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

225 Perry Road  
Greer, SC 29651  
TMS# 4-05-00-013.01 (land)  
TMS# 4-05-00-013.01-0801034 (mobile home)

16. 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.

---

Gordon G. Cooper  
Master in Equity for Spartanburg County

Spartanburg, South Carolina  
\_\_\_\_\_, 2016.

ELECTRONICALLY FILED - 2016 Dec 01 11:21 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4202422



Spartanburg Common Pleas

**Case Caption:** Fifth Third Mortgage Company VS Tracy L Liggett , defendant, et al  
**Case Number:** 2016CP4202422  
**Type:** Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2017-01-05 11:19:39 page 2 of 2

ELECTRONICALLY FILED - 2017 Jan 05 4:28 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4202422

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Fifth Third Mortgage Company,  
PLAINTIFF,  
vs.  
Tracy L. Liggett; South Carolina Department  
of Motor Vehicles;  
DEFENDANT(S)

ORDER VACATING SALE

(NON-JURY MORTGAGE  
FORECLOSURE)

C/A NO: 2016-CP-42-02422

DEFICIENCY WAIVED

The property which is the subject of this action was sold at public auction on January 3, 2017. Subsequently, the Defendants filed a Chapter 13 petition in the U.S. Bankruptcy Court on January 3, 2017. The Plaintiff was unaware of the Defendant(s)' bankruptcy filing at the time of sale.

It is therefore ORDERED that the foreclosure sale of the subject property was void and of no force and effect due to the filing of the bankruptcy petition and the sale is set aside. It is further ordered that the Plaintiff may sell the property at foreclosure sale if the bankruptcy is concluded.

\_\_\_\_\_  
Gordon G. Cooper  
Master in Equity

\_\_\_\_\_, 2017  
Spartanburg, South Carolina

I SO MOVE:

s/Alan M. Stewart  
John S. Kay S.C. Bar # 7914  
John B. Kelchner S.C. Bar #13589  
Ashley Z. Stanley S.C. Bar # 74854  
Alan M. Stewart S.C. Bar # 15576  
Sarah O. Leonard S.C. Bar #80165  
Hutchens Law Firm  
P.O. Box 8237  
Columbia, SC 29202  
803-726-2700/Attorneys for Plaintiff  
[Alan.Stewart@hutchenslawfirm.com](mailto:Alan.Stewart@hutchenslawfirm.com)  
January 4, 2017

Firm Case No: 1186155

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Fifth Third Mortgage Company ,  
vs.  
Tracy L. Liggett; South Carolina Department of Motor  
Vehicles

PLAINTIFF,

DEFENDANT(S)

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY WAIVED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, P.O. Box 8237, Columbia, SC, 29202, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

BY: Alan M. Stewart  
June 28, 2016

John S. Kay S.C. Bar # 7914  
John B. Kelchner S.C. Bar #13589  
Ashley Z. Stanley S.C. Bar #74854  
~~Alan M. Stewart S.C. Bar #15576~~  
Hutchens Law Firm  
P.O. Box 8237  
Columbia, SC 29202  
803-726-2700  
Attorneys for Plaintiff

2016 JUN 30 AM 9:47

Firm Case No: 1186155 (JFCS.CAE)

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Fifth Third Mortgage Company,	PLAINTIFF,
vs.	
Tracy L. Liggett, South Carolina Department of Motor Vehicles	DEFENDANT(S)

COMPLAINT  
(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:  
DEFICIENCY WAIVED

2016 JUN 30 10:09:41 AM

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a company organized and existing under and by virtue of the laws of the State of Ohio; and that the Defendant, Tracy L. Liggett, is upon information and belief, a citizen and resident of the State of South Carolina. That the Defendant, South Carolina Department of Motor Vehicles is a governmental agency of the State of South Carolina and is responsible for issuing certificates of title for mobile/manufactured homes in this state.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Spartanburg, State of South Carolina.

4. That on or about October 6, 2015, for value received, Tracy L. Liggett did execute and deliver to Fifth Third Mortgage Company, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Tracy L. Liggett promised to pay to Fifth Third Mortgage Company the sum of Seventy-Seven Thousand One Hundred Sixty-Nine Dollars and No Cents (\$77,169.00), together with interest thereon at the rate of Three and 625/1000 percent (3.625%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Tracy L. Liggett, did execute and deliver on October 6, 2015 unto Fifth Third Mortgage Company, a mortgage covering the following described property:

Legal description and property address:

ALL THAT CERTAIN piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 47, containing 0.60 acres, more or less, being shown and designated on a survey for Foxbriar, Phase II, prepared by Freeland and Associates, Professional Land Surveying, dated February 01, 1999 and recorded in the Register of Deeds Office for Spartanburg County in Plat Book 146 at Page 706. For a more complete and accurate description refer to the above referenced plat.

TOGETHER with a 2000 Dynasty Mobile Home, Serial # H851154GL&R located thereon.

THIS BEING the same property conveyed to Tracy L. Liggett by virtue of a Deed from Jackie D. Pearson dated January 18, 2008 and recorded January 25, 2008 in Book 90 N at Page 244 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

225 Perry Road  
Greer, SC 29651  
TMS# 4-05-00-013.01 (land)  
TMS# 4-05-00-013.01-0801034 (mobile home)

6. Thereafter said mortgage was recorded in Book 5061 at page 610 on January 6, 2016 in the office of the Register of Deeds of Spartanburg County.
7. The above referenced instrument constitutes a first lien priority mortgage on the subject property.
8. Pursuant to South Carolina law, Plaintiff is entitled to enforce the terms of the subject note and mortgage.
9. The manufactured home described as a 2000 Dynasty Mobile Home, Serial # H851154GL&R has been affixed to the real property described herein and that certain Manufactured Home Affidavit For Retirement of Title Certificate dated October 6, 2015 was recorded May 5, 2016 in the Register of Deeds Office for Spartanburg County, South Carolina in Book 112-B at Page 277.
10. The records of the South Carolina Department of Motor Vehicles has been searched for 2000 Dynasty Mobile Home, Serial # H851154GL&R; however, the Certificate of Title for the mobile/manufactured home has not been detitled/retired with said agency.
11. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.
12. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.
13. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.
14. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under,

and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

15. The monthly payments due on said note and mortgage are in default since January 1, 2016. Therefore, the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare, the entire balance of said indebtedness due and payable. There is due on said note and mortgage as of January 1, 2016 the sum of Seventy-Six Thousand Two Hundred Five Dollars and Eighty-Seven Cents (\$76,205.87), interest calculated at the rate of Three and 625/1000 percent (3.625%) per annum from December 1, 2015 and the costs of collection associated with this action, including attorney's fees.

16. 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.

17. That the servicer is participating in the Home Affordable Modification Program (HAMP). The loan is not subject to HAMP because the loan was originated after January 1, 2009.

18. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

19. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's mortgage be declared a first lien priority mortgage and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

(4) For an Order directing and empowering the Sheriff of Spartanburg County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

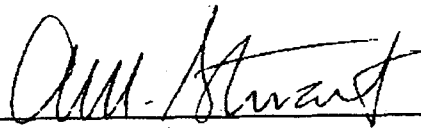
(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(7) For an order satisfying any prior liens that may be of record, but have been paid in full.

(8) Pursuant to S.C. Code of Ann. 56-19-390, for an order authorizing the South Carolina Department of Motor Vehicles to issue a Certificate of Title to the mobile/manufactured home to the successful purchaser of the subject property at the foreclosure sale herein or its successors or assigns.

(9) For such other and further relief as may be just and proper.

BY:



June 28

2016

John S. Kay S.C. Bar # 7914  
John B. Keichner S.C. Bar #13589  
Ashley Z. Stanley S.C. Bar #74854  
~~Alan M. Stewart S.C. Bar #15576~~  
Hutchens Law Firm  
P.O. Box 8237  
Columbia, SC 29202  
803-726-2700  
Attorneys for Plaintiff

2016 JUN 30 AM 9:47

IN THE COURT OF COMMON PLEAS  
STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG

FIFTH THRID MORTGAGE COMPANY.

Plaintiff,

v.

: CASE NO.: 2016-CP-42-2422

TRACY L. LIGGETT; SOUTH CAROLINA  
DEPARTMENT OF MOTOR VEHICLES,

Defendant.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2016 AUG 24 PM 3:46  
M. HOPE BLACKLEY

**AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

COME NOW, Defendant, TRACY L. LIGGETT, (hereafter "Defendant") Pro Se, who admit and deny Plaintiff's, FIFTH THRID MORTGAGE COMPANY (hereafter "Plaintiff") Complaint, along with raising the following affirmative defenses in response to Plaintiff's Complaint, as alleged below and herein:

**I. GENERAL ANSWERS**

1. Defendant is without knowledge and strict proof thereof demanded, but admits only that she is a resident of the State of South Carolina.
2. Defendant is without knowledge and strict proof thereof demanded.
3. Defendant is without knowledge and strict proof thereof demanded.
4. Denied strict proof thereof demanded.
5. Denied strict proof thereof demanded.
6. Defendant is without knowledge and strict proof thereof demanded.
7. Defendant is without knowledge and strict proof thereof demanded.

Answer Page 1 of 3

8. Defendant is without knowledge and strict proof thereof demanded.
9. Defendant is without knowledge and strict proof thereof demanded.
10. Defendant is without knowledge and strict proof thereof demanded.
11. Denied, strict proof thereof demanded.
12. Denied, strict proof thereof demanded.
13. Denied, strict proof thereof demanded.
14. Denied, strict proof thereof demanded.
15. Denied, strict proof thereof demanded.
16. Denied, strict proof thereof demanded.
17. Denied, strict proof thereof demanded.
18. Denied, strict proof thereof demanded.
19. Denied, strict proof thereof demanded.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2016 AUG 24 PM 3:46  
M. HOPE BLACKLEY

**WHEREFORE**, Defendant respectfully request that this Court enter an Order in favor of the Defendant, denying all relief sought in Plaintiff's Complaint and dismissing the Complaint, further awarding Defendant attorney's fees and costs pursuant to South Carolina Code §15-36-10 and other applicable rules and law and applicable contract provisions, and for all such and further relief as this Court deems just and appropriate.

**I. DEFENDANT'S ENTITLEMENT TO ATTORNEY'S FEES**

20. Defendant retains the right to obtain counsel at any point in time in this instant action and will be obligated to pay said attorney a reasonable fee for their services when provided. Pursuant to the loan documents and South Carolina Code §15-36-10 Defendant are entitled to an award of attorney's fees at the successful conclusion of this case if applicable.

**DEFENDANTS' ASSERTIONS**

Answer Page 2 of 3

8. Defendant is without knowledge and strict proof thereof demanded.
9. Defendant is without knowledge and strict proof thereof demanded.
10. Defendant is without knowledge and strict proof thereof demanded.
11. Denied, strict proof thereof demanded.
12. Denied, strict proof thereof demanded.
13. Denied, strict proof thereof demanded.
14. Denied, strict proof thereof demanded.
15. Denied, strict proof thereof demanded.
16. Denied, strict proof thereof demanded.
17. Denied, strict proof thereof demanded.
18. Denied, strict proof thereof demanded.
19. Denied, strict proof thereof demanded.

FILED  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 2016 AUG 24 PM 3:46  
 M. HOPE BLACKLEY

**WHEREFORE,** Defendant respectfully request that this Court enter an Order in favor of the Defendant, denying all relief sought in Plaintiff's Complaint and dismissing the Complaint, further awarding Defendant attorney's fees and costs pursuant to South Carolina Code §15-36-10 and other applicable rules and law and applicable contract provisions, and for all such and further relief as this Court deems just and appropriate.

**I. DEFENDANT'S ENTITLEMENT TO ATTORNEY'S FEES**

20. Defendant retains the right to obtain counsel at any point in time in this instant action and will be obligated to pay said attorney a reasonable fee for their services when provided. Pursuant to the loan documents and South Carolina Code §15-36-10 Defendant are entitled to an award of attorney's fees at the successful conclusion of this case if applicable.

**DEFENDANTS' ASSERTIONS**

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Fifth Third Mortgage Company,  
PLAINTIFF,

vs.

Tracy L. Liggett; South Carolina Department  
of Motor Vehicles

DEFENDANT(S)

NOTICE OF HEARING AND  
CERTIFICATE OF MAILING

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2016-CP-42-02422

DEFICIENCY WAIVED

A hearing has been scheduled in this matter before the Honorable Gordon G. Cooper Master in Equity for Spartanburg County at 180 Magnolia Street, Judicial Center, 3rd Floor, Suite 901, Spartanburg, SC 29306 on December 1, 2016 at 10:00 AM. You will take notice that the Plaintiff's attorney intends to submit written testimony on behalf of the Plaintiff pursuant to South Carolina Code Ann. §14-11-110 (as amended).

s/ Alan M. Stewart  
John S. Kay S.C. Bar #7914  
John B. Kelchner S.C. Bar #13589  
Sarah O. Leonard S.C. Bar #80165  
Ashley Z. Stanley S.C. Bar #74854  
Alan M. Stewart S.C. Bar #15576  
Hutchens Law Firm  
P.O. Box 8237  
Columbia, SC 29202  
803-726-2700  
Attorneys for Plaintiff  
[Alan.Stewart@hutchenslawfirm.com](mailto:Alan.Stewart@hutchenslawfirm.com)  
November 16, 2016

Firm Case No: 1188155 (JFCS.CAE)

I certify that I Virginia Shropshire, have deposited on this date in the US Mail, with proper first class postage attached, a copy of this hearing notice to each of the defendants above at the following address(es):

This the 14<sup>th</sup> date of November, 2016.

BY: Virginia Shropshire

Virginia Shropshire

Tracy L. Liggett  
225 Perry Road  
Greer, SC 29651

South Carolina Department of Motor Vehicles  
c/o Frank L. Valenta, Jr. - General Counsel  
P.O. Box 1498  
Blythewood, SC 29016

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.

IN THE COURT OF COMMON PLEAS  
STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG

FIFTH THIRD MORTGAGE COMPANY,

Plaintiff,

v.

CASE NO.: 2016-CP-42-02422

TRACY L. LIGGETT; SOUTH CAROLINA  
DEPARTMENT OF MOTOR VEHICLES,

Defendants.

2016 NOV 29 PM 12:38  
CLERK OF COURT  
SPARTANBURG COUNTY

**DEFENDANT'S NOTICE OF UNAVAILABILITY and MOTION for CONTINUANCE of  
December 1, 2016 HEARING**

Defendant, TRACY L. LIGGETT, (hereafter "Defendant") Pro Se, hereby files this Notice of Unavailability and Motion for Continuance of December 1, 2016 hearing and states that she will be unavailable and absent from the jurisdiction of this Court from November 29, 2016 through December 10, 2016 and requests that no court appearances, hearings, depositions, trials, or other proceedings or events be scheduled in this action during that period.

Defendant requests a continuance of the hearing scheduled on December 1, 2016 in front of the Honorable Gordon G. Cooper Master in Equity for Spartanburg County.

**WHEREFORE**, Defendant respectfully requests that this Court enter an Order continuing the hearing scheduled for December 1, 2016 to a new date mutually agreeable to the parties, and requests that no additional proceedings be set in this matter prior to December 11, 2016.

Respectfully submitted,

Answer Page 1 of 2

IN THE COURT OF COMMON PLEAS  
STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG

FIFTH THIRD MORTGAGE COMPANY,

Plaintiff,

v.

CASE NO.: 2016-CP-42-02422

TRACY L. LIGGETT; SOUTH CAROLINA  
DEPARTMENT OF MOTOR VEHICLES,

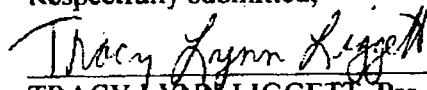
Defendants.

---

**DEFENDANT'S NOTICE OF APPEAL**

Notice is hereby given that Defendant, TRACY L. LIGGETT, *Pro Se*, in the above captioned case hereby appeals to the South Carolina Court of Appeals the Judgment of Foreclosure entered in this action of the 1<sup>st</sup> day of December, 2016 by Judge Gordon G. Cooper, in the County of Spartanburg. A copy of the Judgment is attached hereto.

Respectfully submitted,



TRACY LYNN LIGGETT, Pro se

225 Perry Road

Greer, SC 29651

864-999-6044

Tracyliggett5@att.net

2016 DEC 29 PM 3:51  
COURT CLERK

Answer Page 1 of 2

**MASTER-IN-EQUITY**

SPARTANBURG COUNTY JUDICIAL CENTER  
180 MAGNOLIA STREET  
POST OFFICE BOX 5668  
SPARTANBURG, SOUTH CAROLINA 29304

**GORDON G. COOPER**  
Judge

Telephone (864) 596-2501  
Fax (864) 596-2078

February 2, 2017

Ms. Tracy Liggett  
225 Perry Road  
Greer, SC 29651

Re: Firth Third Mortgage Company, V. Teracy L. Liggett, South Carolina Department of  
Motor Vehicles, (2016CP42-2422).

Dear Ms. Liggett:

Enclosed you will find the Transcripts from the hearings held in this office on December  
1, 2016, per your request. The cost for said Transcript is Twelve & no/100 (\$12.00) dollars.

Thank you,

Very truly yours,

  
Sarah Hollis  
Court Reporter

sh:

PAID IN FULL (\$12.00) ON FEBRUARY 2, 2017.  
Enclosures



1 STATE OF SOUTH CAROLINA  
2 COUNTY OF SPARTANBURG  
3 FIFTH THIRD MORTGAGE COMPANY, )  
4 )  
5 ) PLAINTIFF,  
6 )  
7 ) -VS-  
8 ) TRACY L. LIGGETT, SOUTH  
9 ) CAROLINA DEPARTMENT OF  
10 ) MOTOR VEHICLES,  
11 )  
12 ) DEFENDANTS.

COURT OF COMMON PLEAS

TRANSCRIPT OF TESTIMONY

(2016CP42-2422)

Spartanburg, South Carolina

12 REFERENCE HELD:

DECEMBER 1, 2016.

13 B E F O R E:

HONORABLE GORDON G. COOPER,  
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

14  
15 THE HUTCHENS LAW FIRM,  
16 BY: JOHN KAY, ESQUIRE  
Attorneys for the Plaintiff.

17  
18  
19  
20  
21  
22  
23 Sarah Hollis, Court Reporter  
24  
25

1 THE COURT: We go on the record in the case of Fifth Third Mortgage Company, versus  
2 Tracy L. Liggett, and South Carolina Department of Motor Vehicles. This is case number 2016-  
3 CP42-02422. The Lis Pendens and Order of Reference have been filed with the Clerk. The  
4 appropriate Affidavits have been filed with the Clerk. The Plaintiff is represented by Mr. Kay.  
5 Counsel when you are ready.

6 MR. KAY: Your Honor. Tracy Liggett was served on July 6, 2016 and later we did receive after  
7 her time for filing an Answer had expired we received an Answer and Defenses and no  
8 Counterclaim to the Plaintiff's Complaint but it was mailed out and filed on August 24, 2016  
9 after the thirty (30) day deadline. Your Honor, we also and I was not sure if this had been efiled  
10 or not. Ms. Liggett did send us and it was dated November 29, 2016 and it looks like it was  
11 filed on the 29<sup>th</sup>, a notice, called a Notice of Unavailability and a Motion for a Continuance of the  
12 Hearing from November 29 to December 10, 2016. I didn't know if Your Honor had received  
13 that or not?

14 THE COURT: No, I have not. Oh, she has been doing this pro se.

15 MR. KAY: Yes sir, I am sorry I didn't mention that she was pro se.

16 THE COURT: Okay. And that was back in August it looks like or July.

17 MR. KAY: Yes sir.

18 THE COURT: I see Notice of Hearing was sent it looks like on November 16, 2016.

19 MR. KAY: Yes sir.

20 THE COURT: I can't pull it up but it is there.

21 MR. KAY: That is correct.

22 THE COURT: And it doesn't look like that there is anything else that has been filed. There  
23 was not a Counterclaim it was just a general denial it looks like.

24 MR. KAY: Yes sir.

25 THE COURT: And Notice was sent. All right, lets go ahead and go over the debt figures.

1 counsel.

2 MR. KAY: Yes sir.

3 THE COURT: It looks like notice was properly sent and there was no Counterclaim. A general  
4 denial. And counsel make sure on this one that when you get your Notice that you send a Notice  
5 of Sale to her by regular mail since she is pro se.

6 MR. KAY: Yes sir.

7 THE COURT: All right.

8 MR. KAY: Your Honor, in this case the principal balance due as of January 1, 2016 that figure  
9 is \$76,205.87. Interest has accrued through today's date, December 1, 2016 at 3.625 percent.  
10 The interest figure is \$2,532.31. The deficit in the escrow account is \$175.26. Late charges  
11 accrued on the loan of \$139.10 for late charges. Property inspection of \$120.00. The Plaintiff  
12 has expended \$610.27 by way of foreclosure costs. We are requesting an attorney's fee in the  
13 amount of \$2,275.00. To make the total debt through December 1, 2016 at \$82,057.81. Your  
14 Honor, the Plaintiff is seeking a deficiency in this case and will request that the foreclosure of the  
15 property and that the property be sold again at the January 3, 2017 sales date. And that is all I  
16 have, Your Honor.

17 THE COURT: The total debt is found to be \$82,057.81 and that includes \$2,275.00 in  
18 attorney's fees and the first sale will be January 3, 2016. And again counsel if you will, when  
19 the Notice of Sale is entered make sure that the debtor receives a copy of the Notice.

20 MR. KAY: Yes sir, I will.

21 THE COURT: All right.

22 MR. KAY: Thank you, Your Honor.

23 -----END OF HEARING-----

24

25

1 STATE OF SOUTH CAROLINA

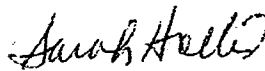
2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4  
5 CERTIFICATE

6  
7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County  
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and  
9 accurate Transcript of Testimony of the proceedings had at the hearing of the captioned case,  
10 before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South  
11 Carolina, on the 1<sup>st</sup> day of December, 2016.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13  
14 

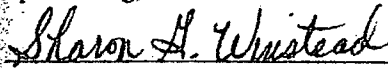
15 Sarah Hollis

16 Court Reporter

17  
18 SWORN to before me this

19 31st day of January, 2017.

20  
21 Spartanburg, South Carolina.

22 

23 Notary Public for South Carolina

24 My Commission Expires: September 13, 2026.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

**RECEIVED**

MAR 21 2017

SC Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

---

Case No.: 2016-CP-42-02422

---

Fifth Third Mortgage Company,

Respondent

v.

Tracy Liggett,

Appellant.

---

INITIAL BRIEF OF APPELLANT

---

March 21, 2017

*Tracy Liggett*

Tracy Liggett  
225 Perry Road  
Greer, SC 29651  
(864) 999-6044  
[Tracyliggett5@att.net](mailto:Tracyliggett5@att.net)

TABLE OF CONTENTS

Table of Cases.....3

Table of Statutes.....4

Table of Authorities.....4

Statement of Issues on Appeal .....5

Statement of the Case.....5

Standard of Review.....6

Argument

    I.    THE LOWER COURT ABUSED ITS DISCRETION IN ENTERING FINAL  
          JUDGMENT IN FAVOR OF RESPONDENT .....6

        A.    RESPONDENT LACKS STANDING.....7

        B.    RESPONDENT FAILED TO MEET CONDITIONS PRECEDENT.....9

        C.    APPELLANT WAS DENIED DUE PROCESS.....10

Conclusion .....12

TABLE OF AUTHORITIES

CASES

*Ballenger Corp. v. City of Columbia*, 286 S.C. 1, 5, 331 S.E. 2d 365, 368 (Ct. App. 1985).....9

*Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013).....8

*Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002).....11

*B & T of South Carolina v. Kidwell*, 350 S.C. 382, 387, 565 S.E.2d 316, 319 (Ct.App.2002)....6

*Charles v. West*, 155 S.C. 488, 494, 152 S.E. 644, 646 (1930).....9

*Cobb v. Gross*, 291 S.C. 550, 552, 354 S.E. 2d 573, 574 (Ct. App. 1987).....9

*Gwaltney of Smithfield v. Chesapeake Bay Found.*, 484 U.S. 49, 69 (U.S. 1987).....8

*Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010).....8

*I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000).....6

*Jaxon v. Circle K Corp.*, 773 F.2d. 1138,1140 (10th Cir. 1985)(1).....12

*Jenkins v. McKeithen*, 395 US 411(1959).....12

*J.K. Construction, Inc. v. Western Carolina Regional Sewer Authority*, 336 S.C. 162, 519 S.E. 2d 561 (1999)

*LaSalle Bank Nat'l Ass'n v. Davidson*, 386 S.C. 276, 277, 688 S.E.2d 121, 121 (2009).....11

*Lewis v. Lewis*, 392 S.C. 381, 709 S.E. 2d 650 (2011).....6

*Lewis v. Premium Inv. Corp.*, 341 S.C. 539, 5 35 S.E. 2d 139 (Ct. App 2000).....6

*Moriarity v. Garden Sanctuary Church of God*, 341 S.C. 320 534 S.E. 2d 672 (2000).....6

*Picking v. Pennsylvania R. Co.*,151 F. 2d. 240.....12

*Reynoldson v. Shillinger*, 907 F. 2d. 124,16 (10th Cir. 1990).....12

*Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E. 2d 462, 470 (2004).....10

*Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).....6

*U.S. v. Marcus*, 130 S. Ct. 2159, 2164 (2010).....11

*Platsky v. C.I.A.*, 953 F.2d.25.....12

STATUTES

S.C. Code Ann. § 11-22-300 (1976) .....2  
S.C. Code Ann. § 22-33-400 (1985) .....2  
S.C. Code Ann. § 33-44-500 (Supp. 2000) .....2  
S.C. Code Ann. § 361201(b)(21)(a) (Supp. 2015).....8  
S.C. Code Ann. § 363301 (Supp. 2015).....8

OTHER AUTHORITY

4 S.C. Jur. Action § 23 (1991).....8  
24 C.F.R. Section 203.604.....9,10  
S.C. Const. art. 1, § 3.....2  
Rule 17(a), SCRCF.....8

### STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT ABUSE ITS DISCRETION IN ENTERING FINAL JUDGMENT IN FAVOR OF RESPONDENT?
2. DID RESPONDENT HAVE STANDING TO FORECLOSE?
3. DID RESPONDENT MEET CONDITIONS PRECEDENT PRIOR TO BRINGING THE FORECLOSURE ACTION?
4. DID RESPONDENT VIOLATE APPELLANT'S DUE PROCESS RIGHTS?

### STATEMENT OF THE CASE

On June 30, 2016, Respondent brought a Non-Jury Foreclosure action against Appellant for property located at 225 Perry Road Greer, SC, 29651, in Spartanburg County. (June 30, 2016 Summons and Complaint, R.pp. 013-016)

On August 10, 2016, Respondent certified that the Appellant was served the required notice of rights and that Appellant failed, refused or voluntarily elected not to participate in any foreclosure intervention process.

On August 24, 2016, Appellant filed Amended Answers and Affirmative Defenses. (August 24, 2016 Amended Answers and Affirmative Defenses, R.pp. 017-019).

On September 15, 2016, an Order of Reference was entered that referred the Foreclosure action to Gordon G. Cooper, as Master in Equity with authority to enter a final Judgment.

On November 16, 2016, a Notice of the hearing on December 1, 2016 was sent out to Appellant. (November 16, 2016 Notice of Hearing and Certificate of Service, R.pp. 020-021)

On November 29, 2016, Appellant filed a Notice of Unavailability and requested that the hearing on December 1, 2016, be continued to allow her to be present at the hearing. (November 29, 2016 Notice of Unavailability, R.p. 22).

On December 1, 2016, the Master in Equity found the total debt to be \$82,057.81.00.

(Transcript of Record December 1, 2016 Hearing, R.p. 27, Lines 17-19).

On December 29, 2016, Appellant filed a Notice of Appeal. (December 29, 2016

Notice of Appeal, R.p. 23).

On January 5, 2017 an Order was entered Vacating the Sale. (January 5, 2017 Order Vacating Sale, R.p. 011).

## STANDARD OF REVIEW

A foreclosure case is a case in equity. In an action at equity, the appellate Court may find facts in accordance with its views of the preponderance of the evidence. Factual findings will be affirmed unless the appellant satisfies the Court that the preponderance of the evidence is against the finding of the Court. *Lewis v. Lewis*, 392 S.C. 381, 709 S.E. 2d 650 (2011). In an action in equity referred to a master in equity like the case at bar, the appellate Court may take its own view of the preponderance of the evidence although it is not required to disregard the findings of the master or referee. *Lewis v. Premium Inv. Corp.*, 341 S.C. 539, 535 S.E. 2d 139 (Ct. App 2000).

The standard of review as to issues of law is *de novo*. *Moriarity v. Garden Sanctuary Church of God*, 341 S.C. 320 534 S.E. 2d 672 (2000). The *de novo* standard also applies to the trial judge's application of the law to the facts. *J.K. Construction, Inc. v. Western Carolina Regional Sewer Authority*, 336 S.C. 162, 519 S.E. 2d 561 (1999).

"An action to foreclose a real estate mortgage is an action in equity." *BB & T of South Carolina v. Kidwell*, 350 S.C. 382, 387, 565 S.E.2d 316, 319 (Ct.App.2002). On appeal from an action in equity, this Court may "find facts in accordance with its views of the preponderance of the evidence." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Furthermore, this Court is not bound by the trial court's legal determinations. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000).

## ARGUMENT

### I. THE LOWER COURT ABUSED ITS DISCRETION IN ENTERING FINAL JUDGMENT IN FAVOR OF RESPONDENT

A. RESPONDENT LACKS STANDING

Respondent is the mere servicer and holder of the note. Federal Home Loan Mortgage Corporation (“Freddie Mac”) is the owner of the loan. In a letter dated December 9, 2015, from Freddie Mac to Appellant, Notice was provided to Appellant that Freddie Mac had purchased the Appellant’s Mortgage Loan as of November 17, 2015. Despite the foregoing, the Respondent filed suit against Appellant approximately seven (7) months later on June 30, 2016.

Respondent did not provide proof that the Appellants’ loan was ever legally transferred to Freddie Mac. Respondent has not provided an assignment of mortgage to Freddie Mac. If Freddie Mac did obtain legal possession of the loan, when was it transferred back to Respondent and where is the proof of that transfer? Respondent did not prove that it had standing to bring this lawsuit.

A crucial element in any Mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose. Standing to bring a mortgage foreclosure proceeding must be established by either an assignment or an equitable transfer of the Mortgage and note prior to the filing of the Complaint.

On June 1, 2016, Appellant sent via certified mail an Error Resolution and Information Request (“ERIR”) to Respondent requesting information on her loan. On June 24, 2016, Appellant received a response from Respondent stating that Freddie Mac is the owner of her loan and enclosing a copy of her Note, Mortgage, payment history and escrow notices. The copy of the Note attached to the Response did not contain an endorsement.

Courts have held that a party's lack of standing is a defect that cannot be cured by acquiring the right of standing after action has already been filed. See *Gwaltney of Smithfield v. Chesapeake Bay Found.*, 484 U.S. 49, 69 (U.S. 1987) (Scalia, J., concurring) ("Subject matter jurisdiction depends on the state of things at the time of the action is brought").

There is no record or evidence in this case that the Respondent had possession of the original note or of any equitable transfer of the Note or Mortgage to the Respondent prior to the filing of the lawsuit. Freddie Mac claims ownership of the loan as of 2015.

Purportedly, the promissory note was originally executed to Fifth Third Mortgage Company See S.C. Code Ann. § 361201(b)(21)(a) (Supp. 2015) (stating a holder is "the person in possession of a negotiable instrument that is payable...to...an identified person that is the person in possession"); S.C. Code Ann. § 363301 (Supp. 2015) (noting the holder of an instrument is entitled to enforce the instrument).

Appellant argues that Respondent is not entitled to enforce the instrument, nor does it have standing to pursue foreclosure. See Rule 17(a), SCRPC ("Every action shall be prosecuted in the name of the real party in interest."); *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E. 2d 478, 481 (Ct. App. 2013) ("It is ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property." (footnote omitted) (quoting 4 S.C. Jur. Action § 23 (1991)); *Id.* ("Generally, a party must be a real party in interest to the litigation to have standing." (quoting *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010)).

Therefore, the Respondent did not prove by a preponderance of the evidence that it had standing to foreclose and the entry of the foreclosure judgment was error.

B. RESPONDENT FAILED TO MEET CONDITIONS PRECEDENT

On August 10, 2016, Respondent certified that the Appellant was served the required notice of rights and that Appellant failed, refused or voluntarily elected not to participate in any foreclosure intervention process.

Paragraph 15 of the Appellant's Mortgage requires that a notice of default be provided to Appellee. The Complaint of the Respondent in paragraph 19 states that a Notice of consumer's right to cure was given or was not required and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed and have occurred.

A condition precedent is "any fact, other than mere lapse of time, which, unless excused, must exist or occur before a duty of immediate performance by the promisor can arise." *Ballenger Corp. v. City of Columbia*, 286 S.C. 1, 5, 331 S.E. 2d 365, 368 (Ct. App. 1985). "Words and phrases such as 'if,' 'provided that,' 'when,' 'after,' 'as soon as,' and 'subject to' frequently are used to indicate that performance expressly has been made conditional." *Cobb v. Gross*, 291 S.C. 550, 552, 354 S.E. 2d 573, 574 (Ct. App. 1987). "Whether a stipulation in a contract constitutes a condition precedent is a question of construction dependent on the intent of the parties to be gathered from the language they employ." *Id.* If there is doubt about the construction of a writing, the doubt must be resolved against the drafter and in favor of the party to whom it was delivered. *Charles v. West*, 155 S.C. 488, 494, 152 S.E. 644, 646 (1930).

Appellant contends that she was not provided with the required notice of default prior to being served the foreclosure Complaint, nor was she provided with the face-to-face interview with the mortgagor, nor was a reasonable effort made to arrange such a meeting pursuant to 24 C.F.R. Section 203.604 included herein:

(b) The mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid. If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor, or make a reasonable attempt to arrange such a meeting within 30 days after such default and at least 30 days before foreclosure is commenced, or at least 30 days before assignment is requested if the mortgage is insured on Hawaiian home land pursuant to section 247 or Indian land pursuant to section 248 or if assignment is requested under § 203.350(d) for mortgages authorized by section 203(q) of the National Housing Act.

24 C.F.R. Section 203.604 requires that a face-to-face meeting be provided to a borrower prior to the initiation of foreclosure actions. The subject property is Appellant's personal residence. For these reasons, Respondent did not meet conditions precedent to entitle it to a foreclosure judgment.

#### C. APPELLANT WAS DENIED DUE PROCESS

Due process prior to the taking of one's property is a protection based in both State and Federal Law. Article I Section 3 of the South Carolina Constitution provides that property shall not be taken without due process of law. S.C. Const. art. 1, § 3. Appellant in this case, was denied due process prior to the taking of her property (Article I, Section 3, The Constitution of the State of South Carolina; R.p. 067). Appellant has attempted to defend the lawsuit in the Lower Court to the best of her ability. She filed a Notice of Unavailability and a Motion for Continuance of the December 1, 2016 hearing on November 29, 2016. The December 1, 2016 hearing proceeded without Appellant present notwithstanding her request for Continuance and Appellant was unable to present her defenses to the foreclosure. She could not appear for the December 1, 2016, hearing for medical reasons and promptly advised the Respondent and the Court accordingly.

To have a property interest triggering due process protection, a person must "show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E. 2d 462, 470 (2004).

"Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review." *Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002). (Emphasis Added)

Appellant is an interested party to the property and holds title to the property via a Warranty Deed. Appellant was not heard at the December 1, 2016 hearing where her property was foreclosed on.

In *LaSalle Bank Nat'l Ass'n v. Davidson*, 386 S.C. 276, 277, 688 S.E.2d 121, 121 (2009), the court held that the failure of a judge to attend a mortgage foreclosure proceeding was a structural defect that violated the Appellants' "constitutional guarantee to procedural due process." There, the court ordered a new trial, stating: "The purported hearing was a nullity, and the resulting order must be vacated. The judge's absence from the hearing deprived the [Appellants] of the opportunity to be heard and, thus violated their constitutional guarantee of procedural due process." *Id.* at 281, 688 S.E.2d at 123; *see also U.S. v. Marcus*, 130 S. Ct. 2159, 2164 (2010) (stating that "certain errors, termed 'structural errors,' might 'affect substantial rights' regardless of their actual impact on an appellant's trial").

It was apparent that the Appellant contested the foreclosure. On August 24, 2016, Appellant filed Answers and Affirmative Defenses denying the allegations set forth in Respondent's Complaint. Even the Master-In-Equity at the hearing on December 1, 2016, was informed that Answers and Affirmative Defenses were filed in the matter and the Appellant was not present but had filed a Notice of Unavailability. The Master-In-Equity was unaware that the Appellant was Pro Se until Respondent informed him at the hearing.

Appellant was denied due process of law prior to the taking of her property and the foreclosure judgment should be reversed.

### CONCLUSION

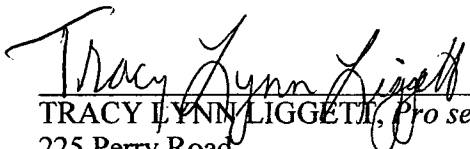
Respondent did not prove it had standing to bring this lawsuit or that it complied with conditions precedent. Respondent did not properly compute or plead its entitlement to judgment.

Appellant also alleges that Pro Se pleadings should be considered without regard to the same technicality as pleadings of attorneys because Pro Se litigants' pleadings are generally not to be held to the same standards of perfection as lawyers. See the US Supreme Court decisions in *Jenkins v. McKeithen*, 395 US 411(1959) and *Picking v. Pennsylvania R. Co.*, 151 F. 2d. 240.

Pro Se litigants have generally been given reasonable opportunity to remedy defects in order to provide the constitutional right of access to the courts which allows those who may not be able to afford legal representation a fair opportunity to litigate their claims and to represent themselves in court. See *Platsky v. C.I.A.*, 953 F.2d.25 citing *Reynoldson v. Shillinger*, 907 F. 2d. 124,16 (10th Cir. 1990); see also *Jaxon v. Circle K. Corp.*, 773 F.2d. 1138,1140 (10th Cir. 1985)(1)

Based on the foregoing, Appellant requests that the Appellate Court reverse the trial Court's Judgment against Appellant and remand to the Lower Court for further proceedings in this action.

Respectfully submitted,

  
TRACY LYNN LIGGETT, Pro se  
225 Perry Road  
Greer, SC 29651  
864-999-6044  
[Tracyliggett5@att.net](mailto:Tracyliggett5@att.net)

5

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable Gordon G. Cooper  
Master in Equity

Appellate Case No. 2016-002559  
Circuit Court Case No. 2016-CP-42-2422

RECEIVED

OCT 27 2017

SC Court of Appeals

Fifth Third Mortgage Company..... Respondent,

v.

Tracy L. Liggett and South Carolina Department of Motor  
Vehicles, ..... Defendants.

of whom

Tracy L. Liggett is the..... Appellant.

RESPONDENT'S INITIAL BRIEF

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

S. Sterling Laney, III  
Joshua L. Howard  
550 South Main Street, Suite 400  
Greenville, South Carolina 29601  
(864) 255-5400

M. Todd Carroll  
1221 Main Street, Suite 1600  
Columbia, South Carolina 29201  
(803) 454-6504

Attorneys for Respondent Fifth Third Mortgage Company

October 25, 2017

TABLE OF CONTENTS

**TABLE OF AUTHORITIES** ..... ii

**STATEMENT OF ISSUES** ..... 1

**STATEMENT OF THE CASE**..... 2

    I. Foreclosure Proceedings Before the Master in Equity ..... 2

    II. Ms. Liggett’s Federal Lawsuit ..... 3

    III. Ms. Liggett’s Bankruptcy Filings ..... 3

**ARGUMENTS AND AUTHORITIES**..... 4

    I. Ms. Liggett has not preserved her arguments for appellate review. .... 4

    II. Even if the Court can address the issue of Fifth Third’s standing to foreclose, Ms. Liggett has conceded the point in her opening brief..... 5

    III. Judge Cooper did not abuse his discretion when he denied Ms. Liggett’s motion for a continuance. .... 5

**CONCLUSION** ..... 7

**TABLE OF AUTHORITIES**

**Cases**

*Allendale County Bank v. Cadle*, 348 S.C. 367, 375, 559 S.E.2d 342, 346 (Ct. App. 2001) ..... 4

*Bank of Am., NA v. Draper*, 405 S.C. 214, 222–23, 746 S.E.2d 478, 482 (Ct. App. 2013) ..... 5

*In re Liggett*, Case No. 17-00028-hb (Bankr. D.S.C. Mar. 2, 2017) ..... 3

*Jackson v. Speed*, 326 S.C. 289, 309, 486 S.E.2d 750, 760 (1997) ..... 6

*Lennon v. S.C. Coastal Council*, 330 S.C. 414, 417–18, 498 S.E.2d 906, 907–08 (Ct. App. 1998)  
..... 5

*Liggett v. Fifth Third Mortgage*, Case No. 7:16-4011-HMH-JDA, 2017 U.S. Dist. LEXIS  
148882, at \*3 (D.S.C. Sept. 14, 2017) ..... 3

*State v. Colden*, 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007) ..... 6

*State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ..... 4

*State v. Lytchfield*, 230 S.C. 405, 95 S.E.2d 857 (1957) ..... 6

*Trotter v. Trane Coil Facility*, 393 S.C. 637, 649, 714 S.E.2d 289, 295 (2011) ..... 6

**Rules**

Rule 40(i)(1), SCRCF ..... 6

## STATEMENT OF ISSUES

1. **Issue Preservation:** Before the circuit court, Ms. Liggett did not assert any affirmative defenses or counterclaims, did not present any evidence or arguments, and did not appear for the foreclosure hearing. Are the arguments contained in her opening brief preserved for appellate review?

2. **Standing:** In her opening brief, Ms. Liggett acknowledges that Fifth Third Mortgage Company is the “servicer and holder of the note” at issue in this case. Does Fifth Third have standing to foreclose?

3. **Continuance:** Less than 48 hours before the foreclosure hearing, Ms. Liggett filed a motion seeking a continuance of the hearing. Judge Cooper denied that motion. Did he abuse his discretion?

## STATEMENT OF THE CASE

This is a routine foreclosure action, and Judge Cooper's final order should be readily affirmed by this Court.

On October 6, 2015, Fifth Third Mortgage Company and Ms. Liggett entered into a note in the principal amount of \$77,169.00. (R. p. \_\_\_; Note at 1.) To secure repayment, the parties also executed a mortgage that covered Ms. Liggett's real property in Spartanburg County, along with an accompanying manufactured home affixed to that parcel. (R. p. \_\_\_; Mortgage at 3.) Ms. Liggett subsequently defaulted on her debt. (R. p. \_\_\_; Affidavit of Debt.)

### **I. Foreclosure Proceedings Before the Master in Equity**

Fifth Third commenced this action on June 28, 2016. (R. p. \_\_\_; Complaint.) Ms. Liggett filed an answer on August 24, 2016. (R. p. \_\_\_; Amended Answer and Affirmative Defenses to Complaint.) Despite the caption of her responsive pleading, Ms. Liggett did not actually assert any affirmative defenses in opposition to Fifth Third's foreclosure action.<sup>1</sup>

On November 16, 2016, Fifth Third served Ms. Liggett with notice of a December 1, 2016 hearing in this matter. (R. p. \_\_\_; Notice of Hearing and Certificate of Mailing.) On November 28, 2016, Fifth Third submitted its evidence to support the foreclosure:

- Copies of the parties' note (R. p. \_\_\_) and mortgage (R. p. \_\_\_);
- An Affidavit of Debt (R. p. \_\_\_);
- An Affidavit of Attorneys' Fees (R. p. \_\_\_); and
- Additional written testimony (R. p. \_\_\_).

The next day, Ms. Liggett filed a request to continue the hearing, which was set to take place less than 48 hours later. She provided no explanation for her motion beyond a cryptic,

---

<sup>1</sup> Also despite captioning her responsive pleading as an "Amended Answer," Ms. Liggett filed only a single answer in this case.

unsupported statement that “she will be unavailable and absent from the jurisdiction of this Court from November 29, 2016 through December 10, 2016,” including the foreclosure hearing. (R. p. \_\_\_\_; Defendant’s Notice of Unavailability and Motion for Continuance.)

Judge Cooper denied Ms. Liggett’s motion and pressed forward with the hearing. (R. p. \_\_\_\_; Transcript of Testimony at 2:9–:25.) Ms. Liggett did not appear, did not submit any evidence—no documents, no written testimony, and no live testimony—and did not submit any arguments or motions in opposition to foreclosure.

By order entered on December 1, 2016, Judge Cooper issued judgment in favor of Fifth Third and authorized the foreclosure sale of the mortgaged property. (R. p. \_\_\_\_; Master’s Order and Judgment of Foreclosure and Sale.) Ms. Liggett did not file any post-judgment motions, but instead appealed to this Court on December 30, 2016. (R. p. \_\_\_\_; Notice of Appeal.) She also unsuccessfully tried to short-circuit this case through two subsequent actions, which are discussed below.

## **II. Ms. Liggett’s Federal Lawsuit**

Two days before noticing her appeal, Ms. Liggett filed a complaint in the District of South Carolina seeking an order that enjoined enforcement of the parties’ note and mortgage. The federal court promptly dismissed her case. *Liggett v. Fifth Third Mortgage*, Case No. 7:16-4011-HMH-JDA, 2017 U.S. Dist. LEXIS 148882, at \*3 (D.S.C. Sept. 14, 2017).

## **III. Ms. Liggett’s Bankruptcy Filings**

In addition to her failed federal action, Ms. Liggett also sought bankruptcy protection from these proceedings. The Bankruptcy Court dismissed that action when Ms. Liggett failed to appear for hearings or file necessary paperwork. Order Dismissing Case in *In re Liggett*, Case No. 17-00028-hb (Bankr. D.S.C. Mar. 2, 2017) (Dkt. No. 25).

## ARGUMENTS AND AUTHORITIES

I. **Ms. Liggett has not preserved her arguments for appellate review.**

In support of her appeal, Ms. Liggett argues that Fifth Third does not have standing to foreclose on the parties' note and mortgage (Appellant's Br. at 7–8), that Fifth Third did not satisfy "conditions precedent" to foreclose (*id.* at 9–10), and that she was denied due process (*id.* at 10–12).

However, Ms. Liggett did not make any of these arguments to the circuit court. She did not assert them below by way of motion or in-person argument. She did not present any evidence in support of these arguments. Nor did she make these arguments through any kind of post-judgment motion under Rule 54, Rule 59, or Rule 60. Ms. Liggett's failure to raise these issues at the trial level is fatal to her appeal.

It is hornbook law that this Court's appellate jurisdiction extends only to issues that have been properly preserved for review. *See Allendale County Bank v. Cadle*, 348 S.C. 367, 375, 559 S.E.2d 342, 346 (Ct. App. 2001) ("An issue not raised to or ruled on by the trial court is not preserved for appellate review."). To preserve an issue for appellate review, a party must timely raise the issue to the circuit court and receive a ruling on it. *See, e.g., State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

Because Ms. Liggett did not raise any of the issues that appear in her opening brief to the circuit court, she has not preserved them for this Court's review. As such, the Court should reject her arguments and affirm Judge Cooper's decision.

**II. Even if the Court can address the issue of Fifth Third's standing to foreclose, Ms. Liggett has conceded the point in her opening brief.**

Though Ms. Liggett failed to preserve the issue of Fifth Third's standing for appellate review, the Court can arguably address her arguments sua sponte because standing touches on a jurisdictional issue. See *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 417–18, 498 S.E.2d 906, 907–08 (Ct. App. 1998) (favorably citing federal authority that permits federal courts to raise “objections to standing” sua sponte). Even if the Court determines that this question is one that it can review, it should still affirm the circuit court's rulings because Ms. Liggett's opening brief concedes that Fifth Third has standing.

The first sentence of Ms. Liggett's standing argument states: “Respondent is the mere servicer and holder of the note.” (Appellant's Br. at 7.) This is certainly true—Fifth Third is a party to both the note and mortgage (R. pp. \_\_, \_\_), it holds the note (R. p. \_\_), and it services the debt (R. p. \_\_).

Fifth Third's status as both the holder and servicer indisputably gives it standing as a foreclosure plaintiff. See, e.g., *Bank of Am., NA v. Draper*, 405 S.C. 214, 222–23, 746 S.E.2d 478, 482 (Ct. App. 2013) (holding that both a note's holder and its servicer have standing to commence a foreclosure action). Accordingly, if the Court takes up the issue of standing, it should affirm Judge Cooper's decision that Fifth Third is a proper plaintiff here.

**III. Judge Cooper did not abuse his discretion when he denied Ms. Liggett's motion for a continuance.**

Finally, Ms. Liggett supports her newfound due process argument by noting that she requested to continue the foreclosure hearing, but that Judge Cooper denied that request. (Appellant's Br. at 10.) If the Court determines that the issue of whether a continuance should have been granted has been preserved for review, it should reject Ms. Liggett's argument.

Rule 40(i)(1), SCRCPP, vests discretion in the circuit court to continue a matter for “good and sufficient cause.” This Court reviews the denial of a motion for continuance for an abuse of discretion. *See Jackson v. Speed*, 326 S.C. 289, 309, 486 S.E.2d 750, 760 (1997) (“A motion for continuance is within the sound discretion of the trial court and the ruling will not be reversed without a clear showing of abuse.”). When reviewing the denial of a continuance, “[o]ur appellate courts have shown great deference to trial judges in this matter.” *State v. Colden*, 372 S.C. 428, 437, 641 S.E.2d 912, 917 (Ct. App. 2007). Accordingly, “reversals of refusal of continuance are about as rare as the proverbial hens’ teeth.” *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957).

In South Carolina, “a continuance is not a matter of right, but of discretion,” and parties are warned that they “assume[] the risk” that a request for a continuance may be denied. *Trotter v. Trane Coil Facility*, 393 S.C. 637, 649, 714 S.E.2d 289, 295 (2011). Here, Fifth Third timely served Ms. Liggett with notice of the December 1, 2016 foreclosure hearing. (R. p. \_\_\_; Notice of Hearing and Certificate of Mailing.) On November 29, 2016—less than 48 hours before the hearing was to commence—Ms. Liggett filed a “Notice of Unavailability” that requested a continuance because “she will be unavailable and absent from the jurisdiction of this Court” during the hearing. (R. p. \_\_\_; Defendant’s Notice of Unavailability and Motion for Continuance.) She provided no explanation or other support for her supposed “unavailability.”

When the hearing was called, Judge Cooper confirmed that Ms. Liggett had been properly noticed, and then proceeded to resolve the case. (R. p. \_\_\_; Transcript of Testimony at 2:9–3:3.) There is nothing in the record to suggest that Judge Cooper abused his discretion in moving the case forward to conclusion despite Ms. Liggett’s unexplained absence.

On appeal, Ms. Liggett cryptically states that her absence was “for medical reasons,” but there is nothing in the record to support this assertion. (Appellant’s Br. at 10.) These unknown “medical reasons” were never disclosed to Judge Cooper and cannot provide a basis for finding that he abused his discretion. Allowing a belated, vague explanation on appeal to serve as the basis for reviewing and reversing the denial of a continuance would effectively wrest docket control away from the trial courts and add an exhausting, untenable layer of administration to this Court’s already crowded system. The Court should decline to undertake such an examination.

Accordingly, if the Court finds that the denial of Ms. Liggett’s requested continuance is preserved for appellate review, it should readily affirm Judge Cooper’s decision as a proper exercise of his discretion.

#### CONCLUSION

This is a routine foreclosure matter that Judge Cooper properly and efficiently resolved. Accordingly, Fifth Third respectfully requests that the Court affirm the circuit court’s decision.

*Signature Page Attached*

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

S. Sterling Laney, III  
S.C. Bar No. 6933  
slaney@wcsr.com  
Joshua L. Howard  
S.C. Bar No. 70260  
jhoward@wcsr.com  
550 South Main Street, Suite 400  
Greenville, South Carolina 29601  
(864) 255-5400

M. Todd Carroll  
S.C. Bar No. 74000  
todd.carroll@wcsr.com  
1221 Main Street, Suite 1600  
Columbia, South Carolina 29201  
(803) 454-6504

Attorneys for Respondent Fifth Third Mortgage Company

October 25, 2017

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable Gordon G. Cooper  
Master-in-Equity

---

Appellate Case No. 2016-002559  
Circuit Court Case No. 2016-CP-42-02422

---

Fifth Third Mortgage Company..... Respondent

v.

Tracy L. Liggett and South Carolina Department of Motor  
Vehicles..... Defendants

Tracy L. Liggett is the..... Appellant

---

FINAL REPLY BRIEF OF APPELLANT

---

January 11, 2018

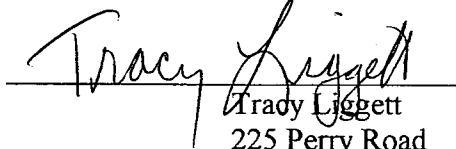
  
Tracy Liggett  
225 Perry Road  
Greer, SC 29650  
(864) 999-6044  
[Tracyliggett5@att.net](mailto:Tracyliggett5@att.net)

Table of Contents

Table of Authorities.....3

Argument in Reply .....4

I. The Trial Court abused its discretion by not effectively denying Appellant’s request for an Order of Continuance in accordance with South Carolina Law. ....4

II. Ms. Liggett was not allowed her Constitutional Right to present and/or preserve her arguments for appellate review. ....6

III. Fifth Third did not prove standing to foreclose and did not have such standing.....7

CONCLUSION .....8

Table of Authorities

Cases

*Allendale County Bank v. Dunbar*, 348 S.C. 367, 375, 559 S.E.2d 342, 346 (Ct. App. 2001) .....7

*Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct.App.1999) .....5

Id. at 90, 515 S.E.2d at 259 .....5

Id. at 92, 515 S.E.2d at 261 .....5

*Upchurch v. Upchurch*, 367 S.C. 16, 624 S.E.2d 643 (2006) .....5

Statutes

S.C. Const. art. 1, § 3.....6

## Argument in Reply

In this Reply Brief, Appellant offers the following points of argument, clarification and rebuttal to the arguments raised by Respondents.

### **I. The Trial Court abused its discretion by not effectively denying Appellant's request for an Order of Continuance in accordance with South Carolina Law.**

In their Initial Brief, Respondents vaguely seem to make the claim that Judge Cooper denied Appellant's request for continuance and they go on to cite several cases that support the Court's right to deny such motion for continuance and further support the reasons why appellate courts can and should deny "reversal of continuance". (R.p. 049; Respondent's Initial Brief)

On page 6 of their Brief (R.p. 50; Respondent's Initial Brief), Respondents refer to the December hearing transcript (Transcript of Record December 1, 2016 Hearing, R.pp.027-028, Lines 2:9-3:3) where they state "When the hearing was called, Judge Cooper confirmed that Ms. Liggett had been properly noticed, and then proceeded to resolve the case." Respondents make no claims that Judge Cooper actually "denied" the request for continuance and in fact, upon review of the Transcript discussed by Respondents, there appears to be no verbal denial of Appellant's request for continuance and that the hearing proceeded without any further consideration of the request for continuance. Even if Judge Cooper had verbally denied the request, that denial would not have satisfied the requirements pursuant to South Carolina Rule of Civil Procedure 58(a) "A judgment is effective only when so set forth and entered in the record." The South Carolina Supreme Court on that issue, is of the opinion that an order isn't valid until it is signed by the judge *and* filed with the clerk's office. Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006).

Even a signed but unfiled order is still unenforceable. That is because the order does not become valid until it is actually filed with the clerk's office. "An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case." *Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct.App.1999) (citation omitted). Further (in *Bowman*), the trial court dismissed the respondent as a party based on the appellants' failure to amend the complaint within ten (10) days of the date of the trial court's order. *Id.* at 90, 515 S.E.2d at 259. The order was signed on September 19, 1996, but was not entered by the clerk until September 23, 1996. The appellants served an amended complaint on October 2, 1996, which was 13 days after the order was signed and 9 days after the order was filed. The court of appeals held that the appellant's amendment of the complaint was timely, finding that the "final and effective date of the trial judge's order was the date the order was entered by the clerk of court, not when the order was signed." *Id.* at 92, 515 S.E.2d at 261.

Requiring an order to be filed before it can be enforced is also important because it preserves the right of appellate review. One has the right to seek supersedeas of a judge's order but the Court of Appeals will not consider supersedeas until the order is filed. That a signed but unfiled order cannot be reviewed for error is one reason the law does not treat such orders as binding.

As in the December 1, 2016 hearing in the instant case, and other situations in which a judge wants immediate compliance with a portion of his or her ruling, the best option for Respondents would have been to ask the judge to execute a simple bench order and to file that order with the clerk's office immediately—with the understanding that a more detailed order will follow. Respondents did not do that, they merely "skipped over" the Appellant's request and moved on with the hearing. Further, because judges' rulings don't become orders until filed with the court,

best practice would have been for Respondents to draft the proposed order to make sure there is minimal delay between the order being signed by the judge and the order being filed with the clerk's office.

Appellant was clear in her assertions in her Initial Brief, in particular in paragraph C on page 10 (R.p.038; Appellant's Initial Brief) regarding Due Process, that "Due process prior to the taking of one's property is a protection based in both State and Federal Law. Article I Section 3 of the South Carolina Constitution provides that property shall not be taken without due process of law. S.C. Const. art. 1, § 3 (Article I, Section 3, The Constitution of the State of South Carolina; R.p. 067). Appellant in this case, was denied due process prior to the Order allowing the taking of her property. When her request for continuance was apparently passed over and the hearing moved forward, she lost her right to assert any issues, claims or defenses, and was deprived of her due process pursuant to the South Carolina Constitution. For these reasons the trial Court abused its discretion, and the Master's Order and Judgment of Foreclosure Sale should be reversed, and this case remanded to the lower Court, and a new hearing be scheduled, to allow Appellant to exercise her rights of due process in accordance with South Carolina Law.

**II. Ms. Liggett was not allowed her Constitutional Right to present and/or preserve her arguments for appellate review.**

In Section I of their Brief (R.pp.-046-047; Respondent's Initial Brief), Respondents argue that because Appellant did not raise any of the issues that appear in her opening brief to the circuit court, she has not preserved them for this Court's review. And as such, they state that the Court should reject her arguments and affirm Judge Cooper's decision.

Respondents assert that Ms. Liggett did not assert any affirmative defenses or counterclaims, did not present any evidence or arguments, and did not appear for the foreclosure hearing, citing

*Allendale County Bank v. Dunbar*, 348 S.C. 367, 375, 559 S.E.2d 342, 346 (Ct. App. 2001) “An issue not raised to or ruled on by the trial court is not preserved for appellate review.”). Obviously *Allendale* does not apply here because in that case, both Respondent and Appellant were provided with the right to present their case whereas Ms. Liggett, was deprived of that right.

In their brief Respondents specifically refer to Appellants arguments in her opening brief, for example, “that Fifth Third does not have standing to foreclose on the parties’ note and mortgage (R.pp.035-036; Appellant’s Initial Brief), that Fifth Third did not satisfy “conditions precedent” to foreclose, and that she was denied due process”.

All of Respondent’s arguments fail because Appellant was deprived of any right to assert her issues, claims or defenses, and was deprived of her due process pursuant to the South Carolina Constitution, when the December 1, 2016 hearing proceeded without her as stated above, and stated previously in her opening brief (R.pp.038-040; Appellant’s Initial Brief). Respondent’s entire argument that Ms. Liggett failed to preserve any issues for review is moot, due their own failure to make sure that an order denying Ms. Liggett’s Motion for Continuance was properly denied and entered into the Docket.

For these and other reasons, Respondent’s arguments fail and this case must be remanded and re-heard by the trial Court.

### **III. Fifth Third did not prove standing to foreclose and did not have such standing.**

Respondents also refer to Ms. Liggett’s Federal Lawsuit and subsequent dismissal in Section II. of their Statement of the Case (R.p.047; Respondent’s Initial Brief). That case is based upon a TILA and “Reg. Z” Loan Rescission executed by Ms. Liggett. That case, even though dismissed, will be further litigated in the independent court, and the issues arising from that Rescission will be raised in the instant case upon reversal and remand of this case back to the Circuit Court.

The validity of Respondent's standing to foreclose or alternatively, the lack thereof, is an issue that must be remanded and fully litigated in the Lower Court.

### CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, Appellant requests that the Appellate Court reverse the trial Court's Judgment against Appellant and remand to the Lower Court for further proceedings in this action.

Respectfully submitted,

  
TRACY LYNN LIGGETT *Pro se*

225 Perry Road

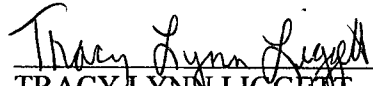
Greer, SC 29651

864-999-6044

[Tracyliggett5@att.net](mailto:Tracyliggett5@att.net)

**CERTIFICATE OF APPELLANT**

The undersigned Appellant hereby certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

  
\_\_\_\_\_  
TRACY LYNN LIGGETT, *Pro se*  
225 Perry Road  
Greer, SC 29651  
864-999-6044  
[Tracyliggett5@att.net](mailto:Tracyliggett5@att.net)