THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Richland County Master in Equity

Appellate Case No. 2017-002410

MidFirst Bank, Respondent,

v.

Richard Brady, State of South Carolina, and
Richland County Clerk of Court, Defendants,

Of whom Richard Brady is the, Appellant.

FINAL BRIEF OF RESPONDENT MIDFIRST BANK

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STATEMENT OF THE CASE

Respondent commenced a foreclosure action against Appellant by the filing of a Lis Pendens, Summons, Complaint and Notice of Foreclosure Intervention on April 15, 2016. (R. pp. 97-105). The Complaint alleged that Appellant executed a note in the amount of $49,149.00 and corresponding mortgage on February 22, 1994, which were subsequently assigned to Respondent. (R. p. 100, ¶¶ 7-9; p. 101, ¶11(a)-(e)). The subject property is located in Richland County, and has a street address of 1816 Haviland Cir., Columbia, South Carolina. (R. p. 100, ¶ 8). The Complaint further alleged that Appellant defaulted on his monthly payments on October 1, 2015, and owed a principal balance of $27,384.37. (R. p. 102, ¶ 8). The State of South Carolina and Richland County Clerk of Court were also named as defendants to the foreclosure. (R. p. 102, ¶ 19). Defendant State of South Carolina accepted service, which was made by certified mail, return receipt requested, as evidenced by the Acceptance of Service, Stipulation and Consent to Reference, and Affidavit of Service by Certified Mail filed on May 13, 2016.[1] (R. pp. 29-30; R. p. 2, ¶ 7). Defendant Richland County Clerk of Court was served pursuant to Rule 4(d)(6), SCRCP, and an Affidavit of Service was filed on April 20, 2016.

Through a private process server, Respondent attempted service upon Appellant at the subject property on April 16, 2016, as evidenced by the Affidavit of Non-Service filed on May 13, 2016. (R. p. 27). Respondent's process server attempted service upon Appellant on April 29, 2016 at 3240 Dreher Shoals Road, Irmo, SC 29603, as evidenced by the Affidavit of Non-Service filed on December 30, 2016. (R. p. 62). Upon Motion and Affidavit of Respondent, an Order of Publication was issued by the Richland County Clerk of Court on May 13, 2016. (R. p. 2). The Affidavit in support of the Motion to publish states:

[1] In response to Appellant's comment in footnote 1 of his Initial Brief, this Defendant and Respondent's firm have a long established practice whereby service is accepted by registered mail.

> Based upon the affidavit of the process server on file herein, and after property due diligence, the above mentioned defendant could not be located for service at the last known address: 1816 Haviland Cir., Columbia, South Carolina 29210. As evidenced by the Certificate of Mailing included herewith, a copy of the Lis Pendens, Summons, Complaint, and Notice of Foreclosure Intervention has been mailed to the last known address of the Defendant pursuant to S.C. Code Ann. § 15-9-740.

(R. p. 31).

The corresponding Certificate of Mailing states that copies of the Lis Pendens, Summons, Complaint and Notice of Foreclosure Intervention were mailed to Respondent at the subject property by certified mail, return receipt requested, with delivery restricted to the addressee. (R. p. 32). A Certification of Exemption from S.C. Supreme Court Administrative Order 2011-05-02-01 was filed on May 13, 2016, together with a skip trace report from Respondent's process server and an Affidavit of Non-Service indicating the subject property was tenant occupied and Appellant did not reside there. (R. p. 33; R. pp. 27-28). The skip trace "Final Report- No New Address" states the most current address being attempted is "unknown" and "no additional addresses could be located for this defendant." (R. p. 28). "The only current address listed to this defendant in our reports is: 3240 Dreher Shoals Road, Irmo, SC 29603." (R. p. 28).

Pursuant to Rule 53, SCRCP, the action was referred to the Master in Equity for Richland County by Order entered on July 26, 2016. (R. p. 3). An Affidavit of Default as to Defendant Richland County Clerk of Court, Affidavit of Default by Publication as to Appellant, and Affidavit of Military Status as to Appellant were also filed on July 26, 2016. (R. pp. 34-35).

A hearing was held on August 17, 2016, after notice of same was provided to all parties by United States Mail, postage prepaid, on August 1, 2017. (R. pp. 36-37). The Notice of Hearing and related Certificate of Service was filed on August 17, 2017 and certifies that said Notice was mailed to Appellant at the subject property. (R. pp. 36-37). A Judgment of

Foreclosure and Sale was entered on September 21, 2016, and the subject property was scheduled to be sold October 3, 2016. (R. pp. 4-10). The Judgment and Notice of Sale were served on all parties by United States Mail, postage prepaid, on September 30, 2016. (R. pp. 38-39). The related Certificate of Service filed on October 4, 2016 certifies that said Notice was mailed to Appellant at the subject property. (R. p. 39).

A foreclosure sale was held on October 3, 2016, at which Respondent was the successful bidder. (R. pp. 11-12). Appellant filed a Motion to Vacate Judgment of Foreclosure and Sale and Affidavit on October 24, 2016. (R. pp. 41-52). The Master in Equity issued a Report on Sale and Disbursements and Order of Confirmation on November 1, 2016. (R. pp. 11-12). A Master's Deed conveying the subject property to Respondent and Satisfaction of Mortgage were filed with the Richland County Register of Deeds Office on November 7, 2016. (R. pp. 53-54; R. p. 13).

Respondent filed a Return to Appellant's Motion to Vacate on December 30, 2016, attaching the following as exhibits thereto: (A) Filed Affidavit of Non-Service as to Appellant at the subject property, and Affidavit of Non-Service Service as to Appellant at 3240 Dreher Shoals Road, Irmo, SC 29063 on April 29, 2016[2]; (B) Filed Affidavit of Service as to Appellant at 3240 Dreher Shoals Road, Irmo, SC 29063 in a prior foreclosure action of the subject mortgage; (C) Filed Affidavit of Service as to Appellant at 3240 Dreher Shoals Road, Irmo, SC 29063 in a prior debt collection; (D) Affidavit of Due and Diligent Search as to Appellant in underlying foreclosure action executed May 11, 2016[3], and copy of envelope addressed to Appellant at 3240 Dreher Shoals Road, Irmo, SC 29063, by Certified Mail, Restricted Delivery to Appellant

[2] While this Affidavit was filed as an attachment to Respondent's Return, it was not filed with the Court along with the other Affidavits of Non-Service as to Appellant.

[3] This Affidavit was not initially filed with the Court along with the other Affidavits of Non-Service as to Appellant.

postmarked May 4, 2016; and (E) Richland County Assessor's data view for subject property as of December 31, 2015. (R. pp. 55-74).

Appellant filed a Supplemental Memorandum in Support of the Motion to Vacate on March 28, 2017. (R. pp. 75-90). A hearing was held on March 28, 2017, which resulted in the Order denying Appellant's Motion filed on May 10, 2017. (R. pp. 14-19). Appellant filed a Motion for Reconsideration pursuant to Rule 59(e), SCRCP, on May 26, 2017. (R. pp. 91-95). The Motion for Reconsideration was heard on August 8, 2017, and denied by subsequent Order entered on September 15, 2017. (R. pp. 26). Appellant filed the instant appeal on November 17, 2017. (R. pp. 96).

STANDARD

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). The standard of review, therefore, is limited to determining whether there was an abuse of discretion. *See BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006) (finding statutory requirements for personal service not met where pleadings posted on door and occupant inside refused to answer; thus abuse of discretion occurred in denying motion to set aside judgment). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Id.* (citing *Tri-Cnty. Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990)).

ARGUMENT

I. SERVICE BY PUBLICATION ON APPELLANT WAS EFFECTIVE, THUS THE JUDGMENT AND ORDER OF FORECLOSURE IS NOT VOID.

A court may relieve a party from a final judgment if the judgment is void. *See* Rule 60(b)(4), SCRCP. "The movant in a Rule 60(b) motion has the burden of presenting

evidence proving the facts essential to entitle her to relief." *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable.'" *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). The definition of "void" under Rule 60, SCRCP only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. *See McDaniel v. U.S. Fidelity and Guar. Co.*, 324 S.C. 639, 478 S.E.2d 868, 871 (Ct. App. 1996) (citing *Thomas*, 318 S.C. 286, 457 S.E.2d 340).

"An order for service by publication may be issued pursuant to S.C. Code Ann. § 15-9-710 when an affidavit, satisfactory to the issuing officer, is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of action exists against him." S.C. Code Ann. § 15-9-710(3). "When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion." *Wachovia Bank of South Carolina, N.A. v. Player,* 341 S.C. 424, 429, 535 S.E.2d 128, 130 (2000); *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (1987); *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (1894); *Yates v. Gridley*, 16 S.C. 496 (1882). "Where a party contests the validity of an order of publication based on a lack of diligence in attempting to locate the party, this court has held that the trial court is 'without authority to overrule the finding of the clerk of court.' " *Caldwell v. Wiquist*, 402 S.C. 565, 569, 741 S.E.2d 583, 585-86 (Ct. App. 2013). "In the absence of fraud or collusion, the decision of the officer ordering service by publication is final." *Id.* at 569, 741 S.E.2d at 586.

Appellant seeks to set aside the Judgment of Foreclosure and subsequent judicial sale of the property on the grounds that the trial court lacked personal jurisdiction as a result of allegedly improper service by publication. As will be shown hereinbelow, the Affidavit in support of service by publication and resulting Order were not rendered facially defective because they contained incorrect statements regarding Appellant's last known address. As such, the due diligence standard is satisfied and the Court's inquiry necessarily must address whether the Order of publication was obtained by fraud and/or collusion. There is absolutely no indication or allegation in the Record that Respondent obtained the publication Affidavit by fraud or collusion.

Notwithstanding any incorrect statements in the Affidavit and Order, the Record shows that the Summons and Complaint were, in fact, sent to Appellant's admitted last physical address by certified mail, return receipt requested, delivery restricted to addressee. (R. p. 71). While Appellant argues otherwise, exacting compliance is not required by the rules to effect service of process where the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. *See Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995). At best, it is specious to argue alleged technical deficiencies render the judgment void when in actuality the best means of putting Appellant on notice of the proceedings was employed in accordance with the rules.

Finally, Appellant improperly attempts to confer a duty upon Respondent's counsel in its efforts to ascertain an address at which to attempt service upon Appellant which is not found in any applicable authority for this State. For these reasons, the trial court's order denying Appellant's Motion to Set Aside the Judgment and Sale should be affirmed.

A. The Order of Publication and Affidavit were not facially defective.

In 1882, the South Carolina Supreme Court "rejected the argument that a publication affidavit was insufficient because it contained only conclusory statements." *See Yarborough*, 293 S.C. at 292, 360 S.E.2d at 301 (quoting *Yates v. Gridley*, 16 S.C. 496 (1882) ("The [statute] does not specify the character of the facts and circumstances which must be stated in the affidavit or the quantity of evidence necessary to satisfy the officer before ordering publication. It simply requires that it must appear to his satisfaction. . . [and] when he is satisfied, in the absence of fraud or collusion, it is final.")). In *Yarborough*, the Supreme Court overruled the Court of Appeals' determination that because the order of publication at issue contained differing factual statements from those in the publication affidavit, the resulting default judgment was rendered unenforceable as jurisdictionally defective. *Yarborough*, 293 S.C. at 293, 360 S.E.2d at 301. Since there was no allegation of fraud or collusion in the procurement of the publication affidavit, it was error to consider the sufficiency of the affidavit. *Id.*

Similarly, in *Wachovia Bank of South Carolina, N.A. v. Player*, the Supreme Court upheld service by publication where the petition for order of publication contained untrue statements regarding the efforts made to attempt service. *Player*, 341 S.C. 424, 535 S.E.2d 128 (2000). There, the petition for the publication order asserted service was attempted by the Sherriff for Georgetown County when, in fact, service was only attempted by a private process server. *Id.* at 428, 535 S.E.2d at 130. Despite the apparent misstatements in the petition when read together with the process server's affidavit, the Court in *Player* found sufficient due diligence was made to the satisfaction of the issuing officer. *Id.* As a result, service was effective in *Player* where there was no allegation of fraud or collusion. *Id.*

Appellant cites *Caldwell v. Wilquist* and *Belle Hall Plantation Homeowner's Ass'n v. Murray* for the proposition that the supporting Affidavit here was facially defective because it fails to state what due diligence was undertaken in attempting to serve Appellant and stated that the subject property was Appellant's last known address. *See Caldwell*, 402 S.C. 565, 741 S.E.2d 583; *see also Belle Hall Plantation Homeowner's Ass'n v. Murray*, 419 S.C. 605, 799 S.E.2d 310 (Ct. App. 2017). Appellant's reliance on these decisions is demonstrably misplaced.

In *Caldwell*, this Court reversed the trial court's refusal to set aside default judgments obtained by publication on the grounds that the underlying affidavits requesting service by publication were facially deficient. *Caldwell*, 402 S.C. at 588, 571 S.E.2d at 574-75. Specifically, the affidavits were facially deficient because they contained no facts concerning efforts to locate the defendants; they merely stated that the defendants were "non-residents of Beaufort County" and "cannot be served a copy of the Summons in Beaufort County." *Id.* at 587, 571 S.E.2d at 571. *Caldwell* held that the affidavit must support some factual basis upon which the court issuing the order of service by publication can find that the defendant cannot, after due diligence, be found within the state. *Id.* at 588, 571 S.E.2d at 574. The Court went on to state: "[i]t is the existence of this factual basis that our appellate courts have found make the order for service by publication unreviewable, absent fraud or collusion." *Id.* The Court in *Caldwell* also expressly declined to address the argument that *Yates* and its progeny should be overruled to the extent that the decision of the officer ordering service by publication is final absent fraud or collusion, which remains binding precedent today. *Id.* at 586, 571 S.E.2d at 570.

Conversely in *Belle Hall*, this Court found the underlying publication affidavit was facially deficient because it attempted service on the wrong defendant. *Belle Hall*, 419 S.C. at 616, 799 S.E.2d at 315. There, the affidavit at issue stated that "after due diligence. . . Plaintiff's

counsel has been unable to ascertain the location of Defendant, John A. Murray . . . ." *Id.* Appellant erroneously states that *Belle Hall* vacated the underlying judgment of foreclosure on 60(b)(4) grounds because "attempts by the plaintiff to serve [appellant] were grossly negligent, notwithstanding that fraud or collusion was not established." Appellant's mischaracterization of *Belle Hall* is further addressed below in response to Appellant's gross negligence argument. Instead, *Belle Hall* determined that compliance with the publication statute was not exacted because, based upon the face of the supporting affidavit, no effort to serve John E. Murray had been made and service on the wrong defendant was attempted. *Id.* As a result, the decision to order service by publication could be overturned in the absence of fraud or collusion.

The Affidavit at issue in this matter is most closely related to the affidavit that was the subject of the decision in *Player*. (R. p. 31). There is nothing which the Clerk of Court could have considered to determine that Appellant's actual last known address at the time service was attempted was not the subject property; Appellant contends that the Clerk should somehow have known this or presumably have made some inquiry as to the validity of that statement, based upon a review of the documents filed with the Court at the time. Appellant also argues that setting forth this attempt to serve Appellant at the subject property is somehow insufficient to show due diligence. Unlike *Caldwell*, which made no statement whatsoever as to the efforts to attempt service, the Affidavit here stated service could not be achieved at the subject property, despite the misstatement that it was not, in actuality, Appellant's last known address. (R. p. 31). As stated in *Roche v. Young Bros., Inc., of Florence*,

> Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action. We have never required exacting compliance with the rules to effect service of process. Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.

Roche, 318 S.C. at 209-10, 456 S.E.2d at 899.

There is a significant distinction between an affidavit that makes no statement as to the efforts to locate a defendant, one that attempts service on the wrong defendant, and one that misstates what a defendant's actual last known address is, all of which is supported by the applicable case law cited herein. It is an especially important distinction when the Record shows that, despite the misstatement in the Affidavit and publication Order, the pleadings were in fact sent to the Appellant's admitted physical last address via certified mail, restricted delivery to Appellant on May 4, 2016 pursuant to S.C. Code Ann. § 15-9-740 and Rule 4(d)(8), SCRCP (R. p. 71), and the process server's affidavit attempting service at that location (R. p. 62) indicated the property was unoccupied, for sale, and the real estate agent confirmed Appellant was not living there. Together with the process server's Affidavit of Due and Diligent Search (R. pp. 65-71), the Record demonstrates that Respondent sufficiently complied with the rules such that the trial court had personal jurisdiction of Appellant and Appellant had notice of the proceedings.

Finally, Appellant seems to suggest that because the Master's Orders denying Appellant's Motion to Vacate and Motion for Reconsideration reflect Appellant's admission that 3240 Dreher Shoals Road, Irmo, SC 29063 was his last known residence, that "finding" should somehow be retroactively binding on Respondent at the time service was attempted. (R. p. 18, ¶ 2, lines 5-9; R. p. 25, lines 1-4). That circuitous argument is neither sound nor relevant, in light of the efforts to attempt service reflected in the Record and authority cited herein.

For these reasons, the trial court's decision finding service was valid should be upheld.

B. No fraud or collusion.

Generally, "[w]hen the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion." *Player*, 341 S.C. at 429, 535 S.E.2d at

130. Appellant concedes that the instant appeal is not made on fraud or collusion grounds, and instead contends that the subject Order of publication should have been overturned in the absence of same because the Affidavit was facially defective.

However, as previously addressed, nothing in the supporting Affidavit or resulting Order of publication amounts to a facial defect or actionable variance with the publication statutes. (R. p. 31; R. p. 2). In Appellant's analysis of the fraud and collusion factors in considering whether service by publication was proper, Appellant asks this Court to take:

> "judicial notice of the fact that the Clerk of Court for Richland County does not routinely consider or actually issue, orders of publication, except through members of her staff and that, practically speaking, no evaluation of the affidavit accompanying a proposed order of publication is ever made by members of the staff, who routinely (automatically) sign such orders on behalf of the Clerk of Court. In other words, no decision to issue an order of publication is ever made by the Clerk of Court (personally) except possibly in extraordinary circumstances; and no such decision was made by the Clerk of court (personally) in this case, as reflected by the signature on the Order of Publication."

This Court should categorically refuse to consider this purported "fact." First, it appears nowhere in the Record. *See* Rule 210(h), SCACR; *see also Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 349, 611 S.E.2d 485, 487-88 (2005) (declining to address merits of claim not in record because appealing party has the burden of providing a sufficient record); *Germain v. Nichol*, 278 S.C. 508, 509, 299 S.E.2d 335, 335 (1983) (holding that the appealing party has the burden of providing a sufficient record). Second, it is not the type of "fact" of which judicial notice can be taken. A fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability. *See Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984). "Judicial notice takes the place of proof." *Masters*, 283 S.C. at 255, 321 S.E.2d at 196 (holding

recitals in purchaser's deed did not constitute indisputable matter subject to judicial notice in Court of Appeals). "Appellate courts are generally reluctant to notice adjudicative facts even when those facts may be absolutely reliable." *Id.* at 256, 321 S.E.2d at 197. "Notice of 'facts' for the first time on appeal may deny the adverse party the opportunity to contest the matters noticed; it may also violate the general principle that appellate review should be limited to the record." *Id.* Third, to the extent it is even relevant to this appeal, Appellant had the opportunity to take this issue up on the record given that the Richland County Clerk of Court is a party to the case and failed to do so.

Since the Record is devoid of any evidence or allegation that the order of publication was procured by fraud or collusion, the trial court's order must be affirmed.

C. No negligence.

Appellant argues that Respondent's counsel was grossly negligent in attempting to locate Appellant for service. Implicit in this argument is the utterly unsubstantiated contention that Respondent and/or its counsel owed Appellant a duty of care to "provide actual notice of the mortgage foreclosure suit."

"While gross negligence is defined as the failure to exercise slight care, it is also a relative term, and means the absence of care that is necessary under the circumstances." *Hamilton v. Charleston Cnt.y Sheriff's Dept.*, 399 S.C. 252, 258, 731 S.E.2d 727, 730 (Ct. App. 2012) (dissent). "In order for liability to attach based on a theory of negligence, the parties must have a relationship recognized by law as providing the foundation for a duty to prevent an injury." *McCullough v. Goodrich & Pennington Mortg. Fund, Inc.*, 373 S.C. 43, 47, 664 S.E.2d 43, 46 (2007). "The determination of the existence of a duty is solely the responsibility of the court." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003) (holding no

duty of care owed and therefore finding it unnecessary to discuss whether conduct at issue on appeal could amount to gross negligence). "Whether the law recognizes a particular duty is an issue of law to be decided by the Court." *Ellis by Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Hendricks*, 353 S.C. at 456, 578 S.E.2d at 714. "However, this Court will not extend the concept of a legal duty of care in tort liability beyond reasonable limits." *McCullough*, 373 S.C. at 48, 664 S.E.2d at 46.

Appellant attempts to confer a *legal duty* upon Respondent and its counsel to not only effectuate valid service upon Appellant, but also to provide Appellant with *actual notice* of the action. There is absolutely no authority to support either argument, despite Appellant's efforts to obfuscate the issues on appeal by misstating the holding in *Belle Hall*, and listing the written communications from Respondent sent to Appellant's post office box. This Court's sole reference to gross negligence in *Belle Hall* was in its recitation of the case's procedural history at the trial level. In fact, this Court's discussion of the issues in *Belle Hall* is devoid of any mention of gross negligence.

Furthermore, Appellant's argument that he could have been served at his post office box is unavailing for two reasons: first, service by certified mail under Rule 4(d)(8), SCRCP is permissive, not required. "Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule ***may*** be made by the plaintiff. . . by registered or certified mail, return receipt requested and delivery restricted to the addressee." There is no requirement that Plaintiff attempt service pursuant to this method, thus no purported "duty" to serve in this fashion can be implied. It is ultimately Appellant's main argument that because his post office box was either known to or readily ascertainable by Respondent, there

was no other valid means of effecting service of process upon him. That argument is simply untenable, based upon the applicable rules regarding service and law of this State as set forth herein.

CONCLUSION

For all the reasons set forth herein, this Court should affirm the trial court's order denying Appellant's Motion to Vacate the Judgment of Foreclosure and Sale.

Respectfully submitted,

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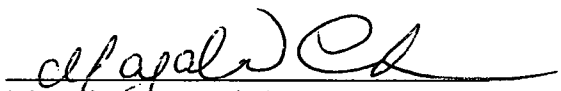
CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the foregoing *Final Brief of Respondent MidFirst Bank* complies with Rule 211(b), SCACR.

FINKEL LAW FIRM LLC



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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing *Final Brief of Respondent MidFirst Bank* has been served upon the following counsel of record by depositing a copy of same in the United States Mail, postage prepaid, on May 15, 2018, addressed to Appellant's counsel of record, Leonard R. Jordan, Esquire, Jordan Law Firm, 211 Veterans Road, Suite D, Columbia, South Carolina 29202.

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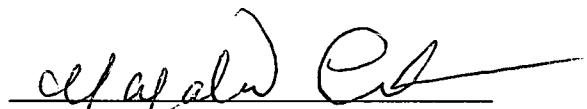

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