

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Wells Fargo Bank, N.A., Plaintiff,

v.

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

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

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

Appellate Case No. 2016-000958

Appeal From Richland County
Joseph M. Strickland, Master-in-Equity

Unpublished Opinion No. 2018-UP-423
Heard September 10, 2018 – Filed November 14, 2018

REVERSED

Samuel Lindsay Carrington, of Bell Carrington & Price,
LLC, of Greenville; James Martin Page, of Bell

Carrington & Price, LLC, of Columbia; and Brett L. Messinger, of Duane Morris, LLP, of Philadelphia, PA, for Appellant TD Bank, N.A.

Robert B. Lewis and Christopher L. Boguski, both of Rogers Lewis Jackson Mann & Quinn, LLC, of Columbia, for Respondent The Lender Group, Inc.

PER CURIAM: In this civil matter, TD Bank, N.A., argues the master-in-equity erred when he allocated the surplus funds from the foreclosure sale of a senior mortgage to The Lender Group, Inc, a third-priority judgment lienholder, before allocating the surplus funds to TD Bank, the second-priority lienholder and purchaser at the foreclosure sale. We agree and reverse pursuant to Rule 220(b), SCACR, and the following authorities: *Agnew v. Charlotte, C. & A.R. Co.*, 24 S.C. 18, 22 (1885) ("[A] mortgagee, who buys the estate under mortgage, not under process of foreclosure of his lien, extinguishes the debt or claim with lien on the land. . . . The [merger doctrine] excludes from its operation a case, whe[n] the mortgage premises are sold to pay the mortgage debt, *under process of foreclosure*. In such case the mortgagee may purchase and take good title." (emphasis added) (citation omitted)); *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 623–24, 731 S.E.2d 547, 549 (2012) (holding the extinguishment of a second mortgagee's lien on real property by virtue of a foreclosure sale on the first mortgage did not extinguish the second mortgagee's interest in the surplus funds pursuant to its original lien and underlying note); *see also* 27 S.C. JUR. MORTGAGES § 61 (stating the merger doctrine "operates to extinguish a mortgage whe[n] *the mortgagee purchases the mortgaged property other than through the foreclosure process.*" (emphasis added)).

REVERSED.

HUFF, SHORT, and WILLIAMS, JJ., concur.