

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JAN 10 2019

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

SC Court of Appeals

Joseph M. Strickland, Master-in-Equity for Richland County

Appellate Case No. 2016-000958

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.

RESPONDENT'S REPLY TO APPELLANT'S RETURN IN OPPOSITION TO  
PETITION FOR REHEATING

Pursuant to Rule 240, SCACR, Respondent, The Lender Group, Inc., (hereinafter, "The Lender Group"), hereby submits this Reply to Appellant's Return in Opposition to Petition for Rehearing (the "Return"). The undersigned received Appellant's Return in Opposition to Petition for Rehearing via US Mail on January 7, 2019.

In its Return, TD Bank again urges the Court to overlook an important distinction that must be considered by the Court with regard to merger: which lienholder initiated the foreclosure proceeding. Simply put, the portion of Agnew that has bearing on the present

situation provides that the merger doctrine *does apply* when the mortgagee is purchasing property “not under process of foreclosure of *his* lien”. 24 S.C. at 22 (emphasis added). TD Bank was a second lien holder purchasing the property not through foreclosure of the TD Bank lien, but through the foreclosure sale of the senior mortgage holder’s lien. Likewise, and as provided by Agnew, the mortgagee who purchases *not under process of foreclosure of his lien*, extinguishes the debt or claim with lien on the land”. 24 S.C. at 22 (emphasis added). TD Bank’s lien interest was extinguished through the doctrine of merger when it became the owner of the Subject Property.

In an effort to avoid restating previous arguments, The Lender Group asserts that it does not dispute that TD Bank does not have the same rights as Carolina First Bank did with regard to the Second Mortgage on the Subject Property. BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 621, 731 S.E.2d 547, 548 (2012) (“We hold the assignee may recover the surplus funds even though it was not a lienholder of record at the time of the sale”). Here, however, TD Bank is not entitled to recover any surplus for the arguments raised by The Lender Group in its Final Brief. Furthermore, and as previously stated, the Lender Group would contend that the Court misapprehended the general proposition of 27 S.C. Jur. Mortgages § 61 in that it does not specify the scenario in which the foreclosure occurred, i.e. it does not take into account a situation like the present in which a first mortgage is foreclosed, and the property is purchased by a second lienholder at the foreclosure sale. As such, this Court should note the distinction of the present situation.

Finally, in its Return, TD Bank discusses Rule 71(c), SCRCPP, and the perfection of its mortgage lien through recording in the Richland County Register of Deeds. The Lender Group

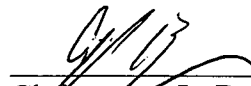
again asserts that SCRC 71(c) states that the officer holding the hearing for the allocation of the surplus *must determine how the funds will be allocated* and makes no reference to any rights attaching presale. Regardless, it is clear that in a scenario in which a mortgagee purchases a property under foreclosure of a lien other than his own, merger of title would occur and extinguish that mortgagee-purchaser's lien, thereby eliminating the mortgagee purchaser's entitlement to any surplus that may exist. Here, it is clear TD Bank did not institute the foreclosure action and as such, its lien interest merged with the Subject Property when it purchased the Subject Property at the foreclosure sale.

For the reasons set forth above, The Lender Group respectfully requests that this Court grant the Petition for Rehearing, withdraw the current Opinion, and issue a new Opinion denying TD Bank's request to vacate the trial court's April 29, 2016 Disbursement Order and the May 17, 2016 Supplemental Order, affirm the award of the surplus funds as stated in the aforementioned Orders, and not remand this action for further proceeding.

Respectfully Submitted,



Robert B. Lewis, Esq. SC Bar No. 3315



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

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

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of *RESPONDENT'S REPLY TO APPELLANT'S RETURN IN OPPOSITION TO PETITION FOR REHEATING* by depositing a copy of the same in United States Mail, postage prepaid, on January 10, 2019, to Appellant's Attorney of record, listed herein:

J. Martin Page, Esq.  
Samuel Lindsay Carrington, Esq.  
508 Hampton Street, Suite 301  
Columbia, SC 29201

Brett L. Messinger, Esq.  
30 South 17<sup>th</sup> Street  
Philadelphia, PA 19013

  
\_\_\_\_\_  
Christopher L. Boguski, Esq.

January 10, 2019

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# ROGERS LEWIS

ATTORNEYS AT LAW

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January 10, 2019

Via Hand Delivery

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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SC Court of Appeals

RE: *Wells Fargo Bank, N.A. v. Hudspeth, et al.*  
Appellate Case No. 2016-000958

Dear Ms. Kitchings:

Enclosed please find an original and six copies of Respondent's Reply to Appellant's Return in Opposition to Petition for Rehearing. Once filed, it may be returned in the enclosed envelope.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

ROGERS LEWIS JACKSON MANN & QUINN, LLC

  
Christopher L. Boguski, Esq.

Enclosures

cc: J. Martin Page, Esq.  
Samuel Lindsay Carrington, Esq.  
508 Hampton Street, Suite 301  
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Brett L. Messinger, Esq.  
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