THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2019-001732
Case No. 2017-CP-10-04445

Kathleen A. Grant; Dylan T. Grant; Devin D. Grant; and Andrea J. Grant, Appellants,

v.

Nationstar Mortgage, LLC Respondent.

FINAL BRIEF OF APPELLANTS

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2. WHETHER THE TRIAL COURT ERRED IN FINDING THAT COUNTRYWIDE AND ITS SUCCESSOR IN INTEREST, NATIONSTAR, AS MORTGAGE LENDERS, HAD NO DUTIES THAT INURE TO THE BENEFIT OF THE INNOCENT REMAINDERMEN.

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4. WHETHER THE TRIAL COURT ERRED IN FINDING THAT NATIONSTAR'S MORTGAGE IS A VALID ENCUMBRANCE ON THE PROPERTY

STATEMENT OF THE CASE

This action is about whether a mortgage placed upon a residence by a life tenant is valid and enforceable against the surviving remaindermen when the Mortgage Lender—Countrywide Home Loans, Inc. ("Countrywide")—(1) received notice that the life tenant and remaindermen's interests were subject to the terms of a Will, (2) willfully ignored and failed to even review the Will, including the express restrictions contained therein on the life tenant's ability to mortgage the property, (3) failed to make any inquiry as to the life tenant's *reason* for the mortgage so as to ascertain whether it was permissible, (4) failed to notify **any** of the remaindermen as to its placement of a $625,000.00 mortgage on the property, and (5) the entire $625,000.00 is gone and not a single dollar was obtained for nor went to the remaindermen.

On August 29, 2017, Kathleen Grant, Dylan Grant, Devin Grant, and Andrea Davis ("Remaindermen") brought this action seeking a declaratory judgment as to whether a mortgage obtained by David Grant, in his stated capacity as a life tenant and purported trustee, was valid against them. The Remaindermen contended that the Mortgage was not valid because (1) Countrywide was put on notice that David held a life interest in the property by virtue of a Will, (2) Countrywide willfully ignored and/or did not review the Will, which contained express limitations and restrictions as to David's ability to mortgage the property, (3) David did not obtain the mortgage in furtherance of his obligation to protect the Remaindermen taking after him and did not otherwise have authority to obtain the mortgage, (4) Countrywide and its representatives failed to inquire as to David's reason for seeking a mortgage so as to ascertain whether it was permissible, (5) Countrywide did not even notify the Remaindermen regarding the placement of a $625,000.00 mortgage on the property.

A non-jury bench trial was held on July 30, 2019 before the Honorable Bentley D. Price

in Charleston County, Court of Common Pleas. At trial, the Remaindermen asserted that this was an action in equity because the Remaindermen were challenging the validity and enforceability of the mortgage on the Property. Defendant Nationstar Mortgage Inc. ("Nationstar"), Countrywide's successor in interest, contended that no equitable principles applied to this case, that such principles should not be considered, and that the validity and enforceability of a mortgage is purely a matter of law, not equity.

On August 14, 2019, the Circuit Court entered an Order finding that (1) the lawsuit was an action at law[1], (2) that the mortgage was a valid encumbrance on the property under the express terms of the Will and the purported testamentary trust created therein, (3) that despite placing a $625,000.00 mortgage on the Property, David Grant, the life tenant, had not invaded the principal of the Property, (4) that by mortgaging the property for $625,000.00, the life tenant had protected the interests of the Remaindermen because the Mortgage Lender had required that taxes and homeowners insurance be paid out of escrowed mortgage premiums, and that by doing so, the property had been kept "in the family name," (5) that even if David Grant, the life tenant had misused the loan proceeds, Countrywide/Nationstar had no duty that inures to the benefit of the Plaintiffs, and (6) that the $625,000.00 mortgage placed on the Property by Countrywide (and subsequently assigned to Nationstar) remains a valid, first priority lien on the Property and is enforceable against the innocent Remaindermen.

On August 22, 2019, Plaintiffs filed a *Motion to Alter or Amend the Court's Order Filed August 14, 2019 Pursuant to Rule 59(e)*. On September 27, 2019, the Circuit Court denied the *Motion to Alter or Amend*. Plaintiffs filed their *Notice of Appeal* on October, 10, 2019. This appeal follows.

[1] In finding that this lawsuit was an action at law, the Court declined to address any of the equitable principles raised by the Remaindermen.

STANDARD OF REVIEW

"In order to determine the appropriate standard of review to apply in an appeal from a declaratory judgment action, this court must look to the nature of the underlying action." *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 273-74, 705 S.E.2d 73, 77 (Ct. App. 2010). "Whether an action for declaratory relief is legal or equitable in nature depends on the plaintiff's main purpose in bringing the action." *Williams v. Wilson*, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002).

Where the plaintiff's main purpose in bringing the declaratory judgment action is to dissolve, cancel, and/or invalidate a mortgage—as is the case here—the action is equitable in nature: "A mortgage is the imposition of a lien on certain property therein mentioned, given to secure a contract […]." *Aultman & Taylor Co. v. Rush*, 26 S.C. 517, 2 S.E. 402, 405 (1887). "**Our courts recognize that an action to dissolve a lien is an action in equity.**" *Shelley v. S.C. Dep't of Mental Health*, 283 S.C. 344, 346, 322 S.E.2d 687, 689 (Ct. App. 1984), citing *Gantt v. Van der Hoek*, 251 S.C. 307, 313, 162 S.E.2d 267, 273 (1968). "**Actions to foreclose or cancel an instrument are actions in equity.**" *Cody Discount, Inc. v. Merrit*, 629 S.E.2d 697, 699, 368 S.C. 570 (Ct. App. 2006), quoting *Wilder Corp. v. Wilke*, 324 S.C. 570, 576, 479 S.E.2d 510, 513, (1996).

In instances where a trust is encapsulated in a will (i.e. a testamentary trust), an action to construe or interpret the testamentary trust is also equitable in nature. See *Holcombe-Burdette v. Bank of America*, 640 S.E.2d 480, 483 (Ct. App. 2006), noting **"In the case sub judice, a trust is encapsulated within the four corners of a will. An action to construe or interpret a testamentary trust is equitable in nature."** Citing *Waddell v. Kahdy*, 309 S.C. 1, 4-5, 419 S.E.2d 783, 785-86 (1992). "Trusts have long and broadly been a field for the jurisdiction of

equity." *Floyd v. Floyd*, 615 S.E.2d 465, 485, 365 S.C. 56 (2005), *superseded by statute on other grounds*, quoting *Epworth Orphanage, v. Long*, 199 S.C. 385, 389, 19 S.E.2d 481, 482 (1942).

"In an action in equity, tried by the judge alone, without a reference, on appeal the [appellate court] has jurisdiction to find facts in accordance with its views of the preponderance of the evidence." *Townes v. Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). See also, *Sullivan v. Brown (In re Estate of Kay)*, 423 S.C. 476, 480-481, 816 S.E.2d 542, 544-545 (2018), expanding *Townes*, and noting that the appellate courts of this state may take their own view of the preponderance of the evidence when dealing with equity matters.

FACTS

The Property

The property at issue in this case is a single-family home located at 1 Wall Street in downtown Charleston, South Carolina ("Property"). (Stip. of Facts, R. p. 497; Complaint, R. p. 3, para. 4.) The late Roberta R. Grant ("Roberta") purchased the Property on June 25, 1987. (Stip. of Facts, R. p. 497) Roberta died testate on December 28, 1988, bequeathing a **life estate** in the Property to her Husband, David E. Grant ("David"), and leaving the **remainder interest** to her four children, Kathleen Grant, Dylan Grant, Devin Grant, and Andrea Davis (collectively, "Appellants" and/or "Remaindermen"). (Stip. of Facts, R. p. 498, para. 4-5; Will of Roberta Grant, R. pp. 428-433; Deed of Dist., R. pp. 487 and 490).

The Limitations on David's Life Estate

Roberta's Last Will and Testament ("Will") set forth express limitations and restrictions as to David's life estate interest in the Property. (Will, R. pp. 431- 433) Specifically, Article V, Section 1(b) of the Will instructed, *inter alia*, that David could not consume or retain any principal of this estate as his own ***and*** that the **provisions of Article V and of the Will** should be construed in accordance with this restriction:

> He [David] shall not ***in any event*** be entitled, directly or indirectly, to consume or otherwise retain any principal of this estate absolutely as his own, ***or have or possess any substantially equivalent powers or rights***, ***and the provisions of this ARTICLE and of this Will in general shall be construed accordingly***.
>
> [Emphasis added] (Will, R. p. 431)

Article V of the Will also instructed that David shall possess the power and authority to mortgage the Property, but only ***in furtherance of*** his obligation to **protect** the Remaindermen taking after him. (Will, R. pp. 431- 432) Specifically, Article 5, Section 1(d) instructed as follows:

> **David E. Grant shall be obligated** to invest and reinvest the properties from time to time constituting the assets of such life estate, **in order to protect the remaindermen taking after him**, and ***in furtherance of said obligation*** he shall have and possess full power and authority during his lifetime to mortgage or pledge all or any portion of such property […] upon such terms and conditions as he in his absolute discretion may deem most advantageous, ***taking into account the protection of the remaindermen taking after him.*** [Emphasis added]. (Will, R. pp. 431-432)

Article V, Section 1(f) of the Will also left instructions for the creation, funding, and administration of **separate trusts to benefit each of Roberta's living children** (i.e. the Remaindermen) upon the occurrence of either of the following: 1) Upon Roberta's death if she were predeceased by David, or 2) Upon David's death if he survived Roberta, but failed to leave a will exercising the "power of appointment" afforded to him under Article V, Section 1(e) of Roberta's Will. (Will, R. p. 432) Absent these two limited circumstances, the Will does not provide instructions for the creation, funding, or administration of trusts for the Remaindermen. [2]

[2] At trial, the closing attorney for the Subject Mortgage transaction testified that neither of the events described under Article V, Section 1(f) had occurred when Countrywide placed the mortgage on the Property. (Trial Tr., R. p. 170, line 4 to p. 171, line 4) Indeed, David was alive when Countrywide placed the encumbrance on the Property. Accordingly, the circumstances

Life after Roberta's Death

David remarried in 1993. (Trial Tr., R. p. 222, lines 15-18; p. 253, line 17) Soon after Roberta's death, he began taking out mortgages on the Property, each time invading the principal. (Stip. or Facts, R. pp. 499-501) These mortgages culminated in the $625,000.00 mortgage placed on the Property by Countrywide that is the subject of this action, and which is described in detail below. (Stip. Of Facts, R. p. 501; Mortgage, R. p. 450; Trial Tr., R. p. 217, lines 17-21) David died on July 3, 2016, having exhausted all mortgage proceeds received from the Property. (Stip. of Facts, R. p. 501; Trial Tr., R., p. 222, line 16) At the time of his death, David had left approximately $3,000.00 in his estate. (Trial Tr., R. p. 224, lines 10-15).

At trial, the Remaindermen provided testimony that the Property had been encumbered without their knowledge; that neither Countrywide, Nationstar, nor any of their representatives had ever notified them about their intent to place a $625,000.00 mortgage on the Property, and that no mortgage proceeds had been used in furtherance of protecting their interests. (Trial Tr., R. p. 229, lines 8-19; p. 243, lines 12-15; p. 247, line 18 to p. 248 line 9; p. 254, line 19 to p. 255, line 8; p. 185, lines 12-15; p. 303, lines 11-15) The Remaindermen also testified that David, contrary to their interests, had failed to maintain the property or provide necessary repairs during his life tenancy and that the Property had deteriorated and fallen into terrible disrepair.[3] (Trial Tr., R. p. 226, line 23 to p. 228, line 25; p. 246, line 16 to p. 247, line 17; p. 251, line 18 to p. 252, line 3; p. 252, line 23 to p. 254, line 18).

The Countrywide Mortgage

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giving rise to the testamentary trusts under the Will had not occurred.

[3] The Remaindermen testified that David had allowed half the Property's windows to rot out, resulting in broken glass throughout the Property; that the home's porches had also rotted off; that a hole had opened up in the home's entryway due to an unattended bathroom leak; that the HVAC system had not been properly maintained, leading to moisture dripping through the wall; and that rodents and other vermin had taken up residence in the walls.

On March 14, 2007, Countrywide, upon David's application, placed a $625,000.00 mortgage on the Property. (Stip. of Facts, R. p. 501; Mortgage Application, R. p. 359; Mortgage, R. p. 450) Although the mortgage that was filed with the Charleston County Register of Mesne Conveyance (the "RMC") listed David Grant as a "Trustee under the Last Will and Testament of Roberta R. Grant," it is notable that the mortgage application did not state that David Grant was seeking a mortgage in his capacity as Trustee on behalf of the Remaindermen. Rather, the mortgage application indicated that David was seeking a mortgage **in his own name** and that title would be held in fee simple. (Application, R. p. 359) In addition, David did not sign the mortgage application as "Trustee under the Last Will and Testament of Roberta Grant," but simply as David Grant. (Application, R. p. 361)

As part of his duties, the closing attorney for the Subject Mortgage transaction performed a title examination on the Property. (Trial Tr. R. p. 192, lines 18-21) His examination revealed the Deed of Distribution, filed with the RMC on November 16, 2016 in Book S-358 at page 265. (Stip. of Facts, R. pp. 499-500; Deed of Dist., R. p. 486). The Deed of Distribution evidenced that David Grant did not hold title in fee simple, but rather that he held a life interest in the Property by virtue of Roberta Grant's Last Will and Testament and that Roberta's descendant's (i.e. her children) held the remainder interest. (Deed of Dist., R. pp. 486 and 490; Trial Tr. R. p. 175, line 24 to p. 176, line 5)

The mortgage resulting from the David's application was recorded in the RMC on March 19, 2007 in Book C-619 at page 182 ("Subject Mortgage"). (Stip. of Facts, R. p. 501; Mortgage, R. p. 450) It noted the mortgagers as "David E. Grant and Martha S. Grant [David's second and since deceased wife] **and** David Grant as Trustee under the Last Will and Testament of Roberta Grant". (Mortgage, R. p. 450) In other words, David Grant was listed individually and as Trustee

under Roberta's Will, but there was no mention to David's life estate interest in the Property or even the existence of any Remaindermen. On September 3, 2013, the Subject Mortgage was purchased and assigned to Countrywide's successor in interest, Nationstar Mortgage, Inc. ("Nationstar" and/or "Respondent").[4] (Stip. of Facts, R. p. 501; Assignment, R. p. 493)

An Out-of-the-Ordinary Transaction

The closing attorney for the Subject Mortgage transaction testified that he had found it "out of the ordinary" for a life tenant to seek a permanent mortgage on property—so out of the ordinary—that he consulted with his law partner to see whether they could figure out if David, as a life tenant, had authority to mortgage the Property under Roberta's Will. (Trial Tr., R. p. 165, line 2-9; p. 206, lines 6-16; p. 212, lines 3-7). The law partner, in turn, suggested that the closing attorney "run it up the flag" and consult the title insurance company responsible to Countrywide for insuring the validity and enforceability of the mortgage.[5] (Trial Tr., R. p. 206, lines 6-16; p. 212, lines 3-7)

Following the advice of his law partner, the closing attorney consulted the title insurance company to see whether it would issue a policy to Countrywide insuring the validity and enforceability of the mortgage without any exceptions (i.e. without placing any restrictions on David's ability to obtain the mortgage). (Trial Tr., R. p. 212, line 19 to p. 213, line 17) A representative for the title insurance company testified that the closing attorney raised the aforementioned concern to him and that, despite the concern, the title insurance company decided it would issue a policy to Countrywide insuring the validity and enforceability of the

[4] It is unknown what Nationstar paid to acquire the Countrywide mortgage.

[5] The closing attorney testified that, in performing his duties at the closing, he was acting as an agent of the title insurance company. (Trial Tr., R. p. 173, lines 19-22)

mortgage without any special exceptions (i.e. it would not place any restrictions on David's ability to obtain the mortgage). (Trial Tr., R. p. 318, line 7 to p. 319, line 14; p. 322, line 8 to p. 323 line 3) As the closing attorney confirmed in his testimony, "the title company took the risk." (Trial Tr., R. p. 213, lines 2-17) [6]

The issuance of a title insurance policy to Countrywide was an integral component of the mortgage transaction. (Trial Tr., R. p. 212, lines 13-14; p. 321, lines 16-23) The closing attorney testified, "Every real estate closing we've been doing [in the] last twenty years requires title insurance. And if you don't get title insurance, you can't get a loan." (Trial Tr., R. p. 213, lines 2-4) He further testified that title insurance is there, because if there is a mistake, then the title insurance company would protect the bank making the loan. (Trial Tr., R. p. 213, lines 5-8)

A Lack of Inquiry and Failure to Notify

Following the title insurance company's decision to insure the mortgage, the closing attorney issued an opinion letter to Countrywide stating that David held a **life interest** in the Property **by virtue of Roberta's Will** and that Roberta's children held the **remainder interest**, but that, nonetheless, Countrywide would have a fully enforceable fee simple mortgage to foreclose on, which would divest not only David from any interest he had in the Property, but also the Remaindermen's fee simple interest. (Opinion Letter, R. p. 365; Trial Tr. p. 183, lines 6-9)

[6] Although the representative from the title insurance company testified that he often spoke with attorneys four or five times a day, it was rare for him to review a will for purposes of making a determination for the company as to whether an applicant could take out a mortgage. (Trial Tr., R. p. 320, lines 7-10) p. 325, line 23 to p. 326 line 3) The representative testified that he probably performed such a review only two or three times a year. (Trial Tr., R. p. 326, lines 22 to 25) When asked how often the wills involved life estates, as is the case here, the representative testified, "Probably once every few years." (Trial Tr., R. p. 327, lines 1-3) In other words, the representative who made a determination as to the Will's validity and enforceability for the title insurance company had very little experience reviewing wills, particularly wills involving life estates.

The opinion letter failed to mention any of the limitations and restrictions imposed on David's life estate by Roberta's Will. (Opinion Letter, R. p. 365.) Nonetheless, the letter put Countrywide on notice as to David's life estate interest in the Property and to the existence of Roberta's Will. At trial, the closing attorney testified that Countrywide, having received notice, could have exercised its right to request a copy of Roberta's Will as part of its evaluation of the mortgage application:

> Q. Would you agree with me, Mr. Barr, that once they [Countrywide] knew that there was a life estate, they had the right, if they wanted to -- and that there was a will, they had the right, if they wanted, to look and see what the will said with regard to the transfer of the life estate?
> A. If they wanted to, like I stated in our deposition.
> Q. And if they had done that, then they would have clearly known -- if they had done that, they would have seen the language that we referenced in Article V, section (d), that set forth the requirement and the duty to protect the remaindermen taking out the loan, correct?
> A. If they had wanted to.
> Q. All of that was at their disposal?
> A. Yeah. They could ask for anything they wanted and it would have been provided. (Trial Tr., R. p. 180, line 15 to p. 181, line 5)

Countrywide did not request or receive a copy of the Will from the closing attorney. (Trial Tr., R. p. 185, lines 18-21) Despite the limitation imposed by the Will that David could only mortgage the property in furtherance of his obligation to protect the Remaindermen, ***and*** that he was expressly prohibited from consuming or otherwise retaining any principal of the life estate as his own, ***and*** that the provisions of Article V *and the Will in general*, including the testamentary trust language, were required to be construed in accordance with this express

limitation, ***and*** that the limited circumstances giving rise to trusts on behalf of the Remaindermen had not occurred, Countrywide placed a mortgage on the Property. (Mortgage, R. p. 450; Stipulation of Facts, R. pp. 500-501; Will, R. pp. 431-433)

Countrywide never inquired as to David's reason for seeking a mortgage, nor did it contact any of the Remaindermen about placing a $625,000.00 mortgage on the Property against their interests. (Trial Tr., R. p. 229, lines 8-19; p. 243, lines 12-15; p. 247, line 18 to p. 248, line 9; p. 254, line 19 to p. 255, line 8; p. 185, lines 12-15; p. 303, lines 11-15) Instead, Countrywide turned a blind eye to the existence of Roberta's Will and the limitations set forth therein. The Mortgage did not even make reference to the existence of David's life estate in the Property. (Mortgage, R. p. 450; Trial Tr., R. p. 308, lines 21-25) At trial, the closing attorney testified that if Countrywide had chosen to review Roberta's Will and read the limitations, that based on the totality of the circumstances, Countrywide might have "changed their mind". (Trial Tr., R. p. 181, line 14 to p. 182, line 6) It might not have issued the mortgage. (Trial Tr., R. p. 182, lines 4-6.)

Conflicts of Interest

Although the closing attorney, testifying solely as a fact witness, attempted to defend his opinion that the mortgage was valid and enforceable against the Remaindermen, he acknowledged that (1) the title insurance company was defending the present lawsuit and (2) he had acted as their agent during the closing. (Trial Tr., R. p. 173, line 19 to p. 174, line 5; p. 172, lines 2-5) The closing attorney also acknowledged that if his opinion regarding the enforceability

of the mortgage was incorrect, the title insurance company might try to hold him responsible.[7] (Trial Tr., R. p. 174, lines 2-5)

Counsel for Nationstar also called several witnesses with no first-hand knowledge of the mortgage transaction. It is incontrovertible that each of these witnesses had conflicts of interest. Over the Remaindermen's objection, a representative from Nationstar testified as to Countrywide's mortgage practices. (Trial Tr., R. pp. 277-309) The Nationstar representative had never worked at Countrywide and possessed no firsthand knowledge of how the Subject mortgage was handled. (Trial Tr., R p. 277, line 15 to p. 278, line 8; p. 285, lines 13-21; p. 303, line 25 to p. 304, line 13; p. 303, line 20; p. 308, lines 1-10; p. 295, lines 8-13; p. 302, lines 3-5) Also over the Remaindermen's objection, Counsel for Nationstar put forth a representative from the title insurance company as a witness despite the fact that (1) the present action was against Nationstar, not the title insurance company, (2) the title insurance company's decision to insure the mortgage is not in any way relevant to whether the mortgage is actually valid and enforceable, and (3) the title insurance company was defending Countrywide in the present lawsuit and trying to limit its own liability. (Trial Tr., R. p. 173, line 19 to p. 174, line 5; p. 310, line 3 to p. 316, line 15).

Passing the Buck

Countrywide went out of business due, in large part, to the mortgage practices it

[7] Although the closing attorney's concerns regarding his professional liability are somewhat understandable, it is worth noting that the title insurance company was not prejudiced by the closing attorney because he contacted the company, raised his concerns about the Will's language, and obtained a determination directly from the company that it would insure the mortgage despite the limitations contained in the Will. (Trial Tr., R. p. 301, lines 20-23; p. 318, line 7 to p. 319, line 14; p. 322, line 8 to p. 323 line 3) Nationstar—Countrywide's successor in interest—is not without remedy under these circumstances because Countrywide obtained title insurance in case there was just such a mistake with the mortgage. (Trial Tr., R. p. 174, lines 2-5)

employed leading up to the financial crisis of 2007-2008. (Trial Tr., R. p. 303, line 25 to p. 306, line 1). As noted above, Countrywide **never reviewed** the Will, **never inquired** as to David's reason for taking out the mortgage, and **never contacted** any of the Remaindermen about placing a $625,000.00 mortgage on the Property. Nationstar, Countrywide's successor in interest, now seeks to enforce the mortgage against the innocent Remaindermen and foreclose on the Property to their detriment. (Trial Tr., R. p. 283, lines 12-17; p. 309, lines 4-9) As the closing attorney testified at trial, "[I]f you've ever been to foreclosure sales, basically, anybody that goes through [a] foreclosure sale is trying to steal a property for as little as they can." (Trial Tr., R. p. 210, lines 18-21)

ARGUMENTS

I. BECAUSE THE REMAINDERMEN'S MAIN PURPOSE IN BRINGING A DECLARATORY JUDGMENT ACTION WAS TO SEEK THE CANCELLATION OF A MORTGAGE ON THE GROUND THAT IT WAS INVALID, THE TRIAL COURT ERRED IN FINDING THAT THE PRESENT ACTION WAS AN ACTION AT LAW, AND THAT EQUITABLE PRINCIPLES DID NOT APPLY.

Whether the Remaindermen's action for declaratory relief is legal or equitable in nature is significant for purposes of this Court's review. "On appeal from an action at law that was tried without a jury, the appellate court can correct errors of law, but the findings of fact will not be disturbed unless found to be without evidence which reasonably supports the judge's findings." *Holcombe-Burdette v. Bank of America*, 640 S.E.2d 480, 483 (Ct. App. 2006) However, "In an **action in equity**, tried by the judge alone, without a reference, **on appeal the [appellate court] has jurisdiction to find facts in accordance with its views of the preponderance of the evidence.**" [Emphasis added] *Townes v. Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). See also, *Sullivan v. Brown (In re Estate of Kay)*, 423 S.C. 476, 480-481, 816 S.E.2d 542, 544-545 (2018), expanding *Townes*, and

noting that the appellate courts of this state may take their own view of the preponderance of the evidence when dealing with equity matters regardless of how many lower court judges ruled on the case.

In the present case, the trial court erred in finding that the Remaindermen's action for a declaratory judgment was an action at law. "Whether an action for declaratory relief is legal or equitable in nature depends on the plaintiff's main purpose in bringing the action." *Williams v. Wilson*, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002). "The main purpose of the action should generally be ascertained from the body of the complaint." *Wells Fargo Bank, NA, v. Smith*, 398 S.C. 487, 730 S.E.2d 328, 332 (Ct. App. 2012), citing *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978). However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." Id.

A. The Remaindermen's main purpose in bringing an action for declaratory judgment was equitable in nature.

The Remaindermen's main purpose in bringing a declaratory judgment action was to seek the cancellation of a mortgage on the ground that it was invalid. This makes the action equitable in nature: "A mortgage is the imposition of a lien on certain property therein mentioned, given to secure a contract […]." *Aultman & Taylor Co. v. Rush*, 26 S.C. 517, 2 S.E. 402, 405 (1887). "**Our courts recognize that an action to dissolve a lien is an action in equity.**" *Shelley v. S.C. Dep't of Mental Health*, 283 S.C. 344, 346, 322 S.E.2d 687, 689 (Ct. App. 1984), citing *Gantt v. Van der Hoek,* 251 S.C. 307, 313, 162 S.E.2d 267, 273 (1968). "**Actions to foreclose or cancel an instrument are actions in equity.**" *Cody Discount, Inc. v. Merrit*, 629 S.E.2d 697, 699, 368 S.C. 570 (Ct. App. 2006), quoting *Wilder Corp. v. Wilke*, 324 S.C. 570, 576, 479 S.E.2d 510, 513, (1996).

The Remaindermen's main purpose in bringing this action can be readily ascertained from the body of their complaint, the prayer for relief, the arguments presented at the hearing on Nationstar's Motion for Summary Judgment and at trial, and the nature of the requests for admission served by the Remaindermen upon Nationstar.

The very first paragraph of the Complaint states:

> This is a Declaratory Judgment Action filed pursuant to S.C. Code Title 15, Section 53. It asks the Court to declare **whether or not certain mortgages are valid vis-à-vis four remaindermen/ remainderwomen** who only recently came into possession of certain property in Charleston, South Carolina and discovered that the property they inherited is deeply encumbered by mortgages that may well not be entirely proper. [Emphasis added]
>
> (Complaint, R. p. 22)

The body of the Complaint also asserts, "[T]his lawsuit has been put of record to ask the court for assistance and aid in determining whether or not the remaindermen and remainderwomen left in Roberta R. Grant's Last Will really are obligated to pay the mortgage on the property they have inherited." (Complaint. R. p. 23, para. 5) The Complaint further states, "If Roberta Grant's children are right, it follows that it was not proper or lawful to put permanent mortgages on the property." (Complaint, R. p. 24, para. 10) The prayer for relief also establishes that the Remaindermen sought **equitable relief** from the Court: "Wherefore, **the Plaintiffs request that the Court inquire into this matter and determine whether or not the mortgages are indeed valid and lawful with regard to the Plaintiffs in this case.**" (Complaint, R. p. 24)

While the Remaindermen's Complaint does indeed make reference to the validity of the mortgage in light of Roberta's Will, the **main purpose** of their declaratory judgment action was not to interpret the Will, but rather for the Court to determine whether the mortgage itself was

valid and enforceable against them. As noted in *Williams v. Wilson*, *supra*, it is the Remaindermen's main purpose in pursuing a declaratory judgment action that sets the standard of review in a declaratory judgment action. 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002)

Throughout the entirety of this action, the Remaindermen have asserted that the mortgage is not valid or enforceable against them, not just because of the language contained in Roberta's Will, but also because of Countrywide's willful failure to exercise due diligence (e.g. its failure to inquire as to the reason for the mortgage and its failure to notify the Remaindermen about placing a $625,000.00 encumbrance on the property so as to protect all pertinent interests). See Facts, *supra*. As the Supreme Court of South Carolina has stated, such actions are equitable in nature:

> We stress that sophisticated financial institutions that prepare mortgages purporting to encumber a customer's property must ensure that the customer in fact holds a legal interest in that property **so as to protect all pertinent interests**. Concomitantly, South Carolina courts should not stretch **equitable principles** to unfairly place fault on parties who did not contribute to the underlying transaction. See, e.g., McClintock on Equity, at 320 […] We earnestly appreciate the dissent's concerns. However, **we would be more concerned with an *equitable doctrine* so broad as to allow lenders to ameliorate their complete failure to exercise proper due diligence at the expense of third parties.**
>
> [Emphasis added]

Wachovia Bank, N.A. v. Coffey, 404 S.C. 421 at n.1, 746 S.E.d 35 at n.1 (2013)

To the extent that there was ever any possible doubt as to Remaindermen's main purpose in bringing this action, the Remainder addressed this at trial by—out of an abundance of caution—moving to amend the pleadings so as to conform to the evidence and thereby emphasize the equitable nature of their action for declaratory judgment:

> MR. SLOTCHIVER: I agree with everything my

> co-counsel said, but to add one more point to make it abundantly clear, the law is -- the law sets forth that a party has the right to amend the pleadings to conform to the evidence at any time before, during, or even after a trial is over. So to the extent that they want to assert us on the pleadings, we disagree.
>
> Out of abundance of caution and clarity, we will make a motion. We move at this point to amend the pleadings to conform to the evidence as Mr. Tamasitis stated. We've raised these equitable issues at the motion for summary judgment. We've raised equitable issues in our response to their second set of requests to admit. There's no surprise here what the equitable theories are.
>
> If they want to take the position -- we don't agree with it -- but the pleadings do not contain equity, then at this point, we move to amend the pleadings to conform to the evidence which is before the parties. Everybody knows about it. There's no surprise. And we would ask that you would grant that motion in addition to denying their motion.

(Trial Tr., R. p. 147, line 11 to p. 148, line 5; See also, Trial Tr., R. p. 143, line 16 to p. 147, line 8; and Summ. J. Hr'g Tr., R. pp. 108-129)

Although Remaindermen's motion to amend was admittedly redundant and unnecessary for purposes of establishing that their action was brought in equity, it should be noted that the Judge *granted* the their motion to amend and denied Nationstar's Motion in Limine to exclude evidence, testimony, and arguments as to any equitable theories or equitable relief for which the Remaindermen are entitled. (Trial Tr., R. p. 148, line 11 to p. 149, line 3; p. 149, lines 18-20) Nonetheless, in the end, the trial court's Order erroneously found that the Remaindermen's action for declaratory judgment was brought as an action at law, and not an action in equity. (Order, R. p. 14). In doing so, the trial court did not address any of the equitable principles raised by the Remaindermen.

It was Nationstar's intention, not the Remaindermen's to limit the Court's analysis to one of Will interpretation (a Will that Countrywide never even read before placing a mortgage on the Property). (Trial Tr., R. p. 139, line 24 to page 149, line 3). It was error for the Court to find that the Remaindermen's main purpose in bringing this declaratory judgment action was for the Court to interpret a Will and therefore an action at law.

B. Even if the Remaindermen's main purpose in bringing a declaratory judgment action was for the Court to construe the testamentary trust language contained in the Will, the action would still be one in equity.

Assuming *arguendo* that the main purpose of this action was to interpret Roberta Grant's Will, this action would still—under the present set of facts—be one in equity. This is because the trial court attempted to construe the testamentary trust contained within the Will as justification for Countrywide's failure to exercise due diligence. (Order, R. pp. 16-17, 19) In instances where a trust is encapsulated in a will (i.e. a testamentary trust), **an action to construe or interpret the testamentary trust is equitable in nature.** See *Holcombe-Burdette v. Bank of America*, 640 S.E.2d 480, 483 (Ct. App. 2006), noting "In the case sub judice, a trust is encapsulated within the four corners of a will. An action to construe or interpret a testamentary trust is equitable in nature." Citing *Waddell v. Kahdy*, 309 S.C. 1, 4-5, 419 S.E.2d 783, 785-86 (1992). "Trusts have long and broadly been a field for the jurisdiction of equity." *Floyd v. Floyd*, 615 S.E.2d 465, 485, 365 S.C. 56 (2005), *superseded by statute on other grounds*, quoting *Epworth Orphanage v. Long*, 199 S.C. 385, 389, 19 S.E.2d 481, 482 (1942).

The trial court erroneously construed and relied upon testamentary trust language to absolve Nationstar and any other lender from any duties to the innocent Remaindermen. (Order, R. pp. 16-17, 19). It erred in finding that the Remaindermen brought this declaratory judgment action as an action at law, and not an action in equity. The Remaindermen's main purpose in

bringing a declaratory judgment action was to seek the cancellation of a mortgage on the ground was invalid. The Supreme Court of South Carolina has held that such an action is an action in equity. In addition, even where the main purpose of an action is to construe and interpret a testamentary trust contained within a will, which the trial court attempted to do, the action is still one brought in equity. Accordingly, contrary to the trial court's findings and Nationstar's contention, this Court has jurisdiction to review the facts in accordance with its view of the preponderance of the evidence. In addition, ***because*** this us an action in equity, the trial court erred in failing to apply the equitable principles raised by Plaintiff at trial.

II. BECAUSE SOPHISTICATED FINANCIAL INSTITUTIONS THAT PREPARE MORTGAGES PURPORTING TO ENCUMBER PROPERTY MUST ENSURE THAT THE MORTGAGE APPLICANT IN FACT HOLDS A LEGAL INTEREST SUFFICIENT TO ENCUMBER THE PROPERTY, THE TRIAL COURT ERRED IN FINDING THAT COUNTRYWIDE AND ITS SUCCESSOR IN INTEREST, NATIONSTAR, HAD NO DUTIES THAT INURE TO THE BENEFIT OF THE **INNOCENT** REMAINDERMEN.

Countrywide was a sophisticated financial institution that prepared mortgages for hundreds of thousands, if not millions of people across the United States. (Trial Tr., R. p. 305, line 21 – p. 306, line 6) Unfortunately, its mortgage practices contributed to the financial crisis of 2007-2008, and resulted in Countrywide going out of business. (Trial Tr., R. p. 303, line 25 to p. 306, line 1) Nationstar, a mortgage servicing company, is also a sophisticated financial institution, which purchased thousands of mortgages originating from Countrywide, including the Subject Mortgage, despite acknowledging that Countrywide, like many mortgage lenders of its era, had suffered a "black eye" due to their practices. (Trial Tr., R p. 276, lines 3-17; p. 305, line 21 to p. 306)

As noted under Argument I, *supra*, "Sophisticated financial institutions that prepare mortgages purporting to encumber a customer's property **must** ensure that the customer in fact

holds a legal interest in that property **so as to protect all pertinent interests**." [Emphasis Added] *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421 at n.1, 746 S.E.d 35 at n.1. It is their legal duty. It is an obligation that cannot be disregarded and then later excused at the expense of innocent third parties. As the South Carolina Supreme Court noted, **"[W]e would be more concerned with an equitable doctrine so broad as to allow lenders to ameliorate their complete failure to exercise proper due diligence at the expense of third parties.**" [Emphasis added] Id.

In the present case, the trial court erred in finding that Countrywide and its successor in interest, Nationstar, had **no duties** that inure to the benefit of the completely innocent Remaindermen. (Order, R. p. 20) The trial court based its analysis on the tenuous premise that banks and mortgage lenders only have duties to their customers and not third parties. (Order, R. pp. 18-19) This is incorrect. As noted by *Wachovia v. Coffey*, sophisticated financial institutions that prepare mortgages have a duty to third parties so as to protect all pertinent interest. See also *Kirkham v. First Nat. Bank*, 149, S.C. 545, 147 S.E. 648, 649 (1929), cited by the Remaindermen at trial, which states:

> It should be, and is, the purpose of this court, in situations similar to the one in the Des Champs Case (*Des Champs v. Mims*, 145 S.E.2d 623 (1926)) and to the one in the case at bar, **to protect the rights of remaindermen**, both vested and contingent, and all persons, in being and unborn, who may at any time have an interest in real estate, according to the terms of wills and deeds. In other words, **as far as possible**, this court proposes **to carry out the real intention of testators and grantors**, as expressed in their wills and deeds." **Emphasis Added.**
>
> Trial Tr., R. p. 263, line 13 to p. 268, line 14; p. 14, lines 4-16; See also Pl.'s Pre-Trial Brief, R. pp. 59-65; Pl.'s Memo in Opposition to Def.'s Mot. for Summ. J., R. pp. 45-58; and Mot. for Summ. J. H'rg Tr., R. pp. 97-130.)

Countrywide was put on notice that David Grant held a life interest in the Property by virtue of Roberta Grant's Will and that her children held the remainder interest. Despite such

notice, Countrywide turned a blind eye to existence of the Will. It never even bothered to request a copy the Will or read any of the express limitations and restriction placed on David's ability to mortgage the Property. (Trial Tr., R. p. 180, line 15 to p. 181, line 5; p. 185, lines 18-21) **Countrywide never contacted the Remaindermen about its intent to place a $625,000.00 mortgage on the property**. (Trial Tr., R. p. 229, lines 8-19; p. 243, lines 12-15; p. 247, line 18 to p. 248, line 9; p. 254, line 19 to p. 255, line 8; p. 185, lines 12-15; p. 303, lines 11-15) The closing attorney, demonstrating doubts as to the validity and enforceability of the mortgage, contacted the title insurance company to see whether it would insure the mortgage for Countrywide, but nobody—not Countrywide, not the title insurance company, not even the closing attorney—contacted the Remaindermen. (Trial Tr., R. p. 185, lines 12-15; p. 303, lines 11-15) Nobody inquired as to David's reason for applying for a mortgage. (Trial Tr., R. p. 187, lines 4-12) All expressed concern as to Countrywide's bottom line, but nobody expressed concern or exercised any due diligence with regard to the Remaindermen's interests.

Nationstar, Countrywide's successor in interest, now wishes to construe the language of the testamentary trust contained in the Will (a Will that Countrywide knew about, but never bothered to read) with the hopes of enforcing a mortgage against the completely innocent Remaindermen. Much like the lender in *Wachovia v. Coffey*, Countrywide's successor in interest, now seeks to "ameliorate their complete failure to exercise proper due diligence at the expense of third parties." As in that case, Countrywide/Natisonstar "is the architect of its own problem." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 424, 746 S.E.d 35, 37.

III. BECAUSE DAVID GRANT, THE LIFE TENANT AND PURPORTED TRUSTEE, WAS ONLY AUTHORIZED TO MORTGAGE THE PROPERTY IN FURTHERANCE OF HIS OBLIGATION TO PROTECT THE REMAINDERMEN, THE COURT ERRED IN FINDING THAT HE POSSESED THE AUTHORITY TO MORTGAGE THE PROPERTY AS HE SAW FIT.

A. David Grant did not have authority to borrow money for any purpose or mortgage the Property as he saw fit.

The trial court erred in finding that "[A]s Trustee of the testamentary trust created by the Will, David E. Grant has full authority to '**borrow money for *any* purpose**, either from the Trustee or from others, and to mortgage or pledge any Trust Property to include the Property,'" and that "David E. Grant had the express authority as Trustee **to mortgage the Property as he saw fit.**" [Emphasis added] (Order, R. pp. 16-17)

First, David did not have the authority to borrow money for any purpose. Roberta Grant's Last Will and Testament set forth **express limitations and restrictions** as to David's ability to consume or otherwise retain any principal of the life estate. Article V, Section 1(b) of the Will states:

> He [David] shall not ***in any event*** be entitled, directly or indirectly, to consume or otherwise retain any principal of this estate absolutely as his own, or have or possess any substantially equivalent powers or rights, ***and the provisions of this ARTICLE and of this Will in general*** shall be construed accordingly.
>
> [Emphasis added] (Will, R. p. 431)

In setting forth this limitation and restriction, Roberta Grant made sure that—at least when it came to David—"**the provisions of this Article [V] and of this Will in general** shall be construed accordingly." (Will, R. p. 431) The trial Court, notably, did not construe the testamentary trust language contained in the Will in accordance with the above limitation, but rather erred in finding that David had the authority to "borrow money for any purpose". (Order, R. p. 16)

Second, Article V of the Will expressly restricted David's ability to mortgage the property. Specifically, Article V, Section 1(d) of the Will instructed that David shall possess the power and authority to mortgage the Property, but only ***in furtherance of*** his obligation to

protect the Remaindermen taking after him:

> **David E. Grant shall be obligated** to invest and reinvest the properties from time to time constituting the assets of such life estate, **in order to protect the remaindermen taking after him**, and ***in furtherance of said obligation*** he shall have and possess full power and authority during his lifetime to mortgage or pledge all or any portion of such property […] upon such terms and conditions as he in his absolute discretion may deem most advantageous, ***taking into account the protection of the remaindermen taking after him.*** [Emphasis added]. (Will, R. pp. 531-532)

Contrary to the trial court's finding, David did not have "the express authority as Trustee to mortgage the property as he saw fit." (Order. R. p. 17) The opposite was true. Roberta Grant expressly provided that **David only had authority to mortgage the property in furtherance of his obligation to protect the remaindermen taking after him**. It is important to note that the foregoing language is contained under Article V of Roberta's Will and that, again, Article V, Section 1(b) of the Will removes any doubt as to Roberta's intent to curtail David's authority to encumber the Property by instructing that this mortgage provision (and all provisions in the Will) be construed in accordance to the express limitations and restrictions contained in Section 1(b) ("the provisions of this ARTICLE and of this Will in general shall be construed accordingly.") (Will, R. p. 431).

B. The wide range of liberties afforded to trustees under the Will did not apply to David Grant.

While there is language in the Will which transfers the Property to David Grant "for the term of his life, if he shall survive me" (i.e. creates a life interest subject to the express limitations and restriction set forth under Article V of the Will) there is no language which transfers the property to any specified trust for the benefit of the Remaindermen during David's lifetime. However, even if this Court were to assume, *arguendo,* that the Property had, under

some theory, transferred to some unspecified trust during David's lifetime for him to hold and administer as a trustee (and not just as a life tenant with a severely restricted right of disposition), the testamentary trust language cited by the trial Court would *still* not give David the authority to mortgage the Property as he did. This is because the wide range of liberties afforded to possible Trustees under the Will, which include Roberta's sister, Barbara, specifically does not apply to David. (Will. R. pp. 431 and 445; Trial Tr., R. p. 218, lines 21-25)

Unlike Barbara or other potential trustees under the Will, Roberta placed express restrictions and limitations on ***David's authority*** to use, consume, and/or mortgage the Property, and she expressly instructed that—as it applied to David—"**the provisions of this Article [V] *and of the Will in general*** shall be construed accordingly." (Will, R. p. 431) Had Countrywide not turned a blind eye to the existence of Roberta's Will and actually read the limitations and restrictions contained therein, it would have known that David did not have the authority to mortgage the property. "We stress that sophisticated financial institutions that prepare mortgages purporting to encumber a customer's property must ensure that the customer in fact holds a legal interest in that property **so as to protect all pertinent interests."** Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 746 S.E.d 35 (2013) Nationstar, Countrywide's successor in interest, should not be permitted to "ameliorate their complete failure to exercise proper due diligence at the expense of third parties." **Id.** It was error for the Court to find that the testamentary trust language of the Will "absolves Nationstar or any other lender of any responsibility." (Order, R. p. 19).

IV. THE COURT ERRED IN FINDING THAT NATIONSTAR'S MORTGAGE IS A VALID ENCUMBRANCE ON THE PROPERTY.

It has long been acknowledged that "Courts [in this State] have the inherent power to do all things reasonably necessary to ensure that just results are reached **to the fullest extent**

possible." *Ex parte Dibble*, 310 S.E.2d 440, 442, 279 S.C. 592, 595 (Ct. App. 1983) [Emphasis added]. In exercising these inherent equitable powers, at least four equitable maxims recognized by South Carolina case law should apply: **1) Equity will not suffer a wrong without a remedy**, **2) Equity abhors a forfeiture, 3) Equity considers that done what ought to be done, and 4) Good guys should win and bad guys should lose**. *Suem—Spitz's Ultimate Equitable Maxim: In Equity, Good Guys Should Win and Bad Guys Should Lose*, 55 S.C. L. Rev 175, 188 (Fall 2003)

As noted above, the Subject Mortgage was never designed to benefit the Remaindermen: Countrywide never inquired as to David's reason for taking out a mortgage. Despite being advised that David held a life estate by virtue of Roberta's Will, Countrywide never requested or reviewed a copy of the Will. In doing so, Countrywide deliberately turned a blind eye to the express limitations left by Roberta in her Will: It ignored that "David **shall not in any event** be entitled, directly or indirectly, to consume or otherwise retain any principal of this estate absolutely as his own, or have or possess any substantially equivalent powers or rights." (Will, R. p. 431) It ignored Roberta's instructions that the provisions of Article V **and the Will in general** (including any purported testamentary trust language) shall be construed in accordance with this express limitation. (Will, R. p. 431). It ignored that David could only mortgage the Property **in furtherance of** his obligation to protect the Remaindermen taking after him. (Will, R. pp. 431-432). Countrywide, who according to Nationstar had "suffered a black eye" and went out of business due to its business practices, **never contacted any of the Remaindermen about placing a $620,000.00 mortgage on the Property**.

Nationstar, a sophisticated loan servicing company, purchased the Subject Mortgage after Countrywide went out of business despite being fully aware of Countrywide's mortgage practices. It now wishes to enforce the Subject Mortgage against the completely innocent

Remaindermen and foreclose on the Property. There is both ample power and authority for this Court to correct Countrywide and Nationstar's disgraceful attempt to divest and disinherit the innocent Remaindermen of their property interest. The Subject Mortgage is an equitable wrong because (1) it was never designed or intended to benefit the Remaindermen, (2) Countrywide willfully turned a blind eye to the existence Roberta's Will (including the express limitations contained therein), **and** (3) Countrywide never contacted any of the Remaindermen about placing a $620,000.00 mortgage on the Property. Given the inequitable nature of the mortgage and the untenable acts and pursuits of Countrywide and Nationstar, this Court is authorized to invalidate the wrongfully-created instrument. See *Kirkham v. First Nat. Bank*, 149, S.C. 545, 147 S.E. 648, 649 (1929), and *Des Champs v. Mims*, 145 S.E.2d 623 (1926), cited supra. The trial court should be reversed and the Mortgage should be declared invalid.

CONCLUSION

For each of the foregoing reasons, the circuit court erred in finding that Subject Mortgage is a valid encumbrance on the Property. It was error for the circuit court to find that a valid mortgage exists because (1) Countrywide received notice that the life tenant and remaindermen's interests were subject to the terms of a Will, (2) Countrywide willfully ignored and failed to even review the Will, including the express restrictions contained therein on the life tenant's ability to mortgage the property, (3) Countrywide failed to make any inquiry as to the life tenant's *reason* for the mortgage so as to ascertain whether it was permissible, (4) the mortgage was not obtained for the benefit of the Remaindermen, (5) Countrywide failed to notify **any** of the innocent remaindermen as to its placement of a $625,000.00 mortgage on the property, (6) the entire $625,000.00 is gone and not a single dollar was obtained for nor went to the remaindermen, (7) Nationstar purchased the mortgage after Countrywide went out of business, knowing that

Countrywide had suffered a "black eye" due to its business practices. Further, Nationstar is not without remedy because Countrywide obtained title insurance in case there was just such a mistake with the mortgage (i.e. the title insurance company "took the risk"). It is inequitable for Nationstar to seek enforcement of the mortgage against the innocent remaindermen and foreclose on the Property. Such an act would have the perverse result of undermining Roberta Grant's intentions by divesting and disinheriting here children through no fault of their own.

Respectfully submitted,

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October 13, 2020
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001732
Case No. 2017-CP-10-04445

Kathleen A. Grant; Dylan T. Grant; Devin D. Grant; and Andrea J. Grant, Appellants,

v.

Nationstar Mortgage, LLC Respondent.

APPELLANTS' RULE 211(b) CERTIFICATION

The undersigned certifies that the Final Brief of Appellants and Appellants' Final Reply Brief comply with Rule 211(b), SCACR.

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