

The South Carolina Court of Appeals

Farmers & Merchants Bank of South Carolina,
Respondent,

v.

Curtis R. Tucker; Ashley Tucker; SC Housing Corp.,
acting through South Carolina State Housing Finance and
Development Authority's South Carolina
Homeownership and Employment Lending Program; and
South Carolina Federal Credit Union, Defendants,

Of whom Ashley Tucker is the Appellant.

Appellate Case No. 2019-001957

The Honorable James E. Chellis
Dorchester County
Trial Court Case No. 2019CP1800302

RECEIVED

Oct 30 2020

SC Court of Appeals

ORDER

Appellant moves the Court for an order granting an extension of time to file the transcript order. No return to the motion has been filed. The motion is hereby Granted. Within twenty (20) days of the date of this order, appellant must provide proof of ordering the transcripts and making satisfactory arrangements (including agreement regarding payment for the transcript), pursuant to Rule 207, SCACR.

FOR THE COURT

BY

V. Claire Allen

CLERK

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Fwd: Receipt for Payment for

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Ashley Tucker

nevaehzmir@gmail.com + Add to contacts



Ashley Felder <nevaehzmir>

Fri, Oct 30 at 3:50 PM

To: zamirnevaehcurt@yahoo.com

Forwarded message
From: <noreply@slimcd.com>
Date: Wednesday, September 30, 2020
Subject: Receipt for Payment for
To: nevaehzmir@gmail.com

https://ws4.veritextllc.com/creditcardapp/images/veritext_logo.png

Veritext Legal Solutions
http://www.Veritext.com

** Payment Receipt **

Type: SALE

Order Id: 4556158|129.40

Amount: 129.40

Receipt#: 493058847

Card # XXXXXXXXXXXX8494
Account: Visa

Date: 9/30/2020 9:46:04 AM

Ref Num: 9A0DA38BDEF145E4772374D7149BF7 9C8835F685

Auth Code: 123097

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curtis tucker <curtistuckervip@gr...> Fri, Oct 30 at 3:03 PM
To: zamirnevaehcurt@yahoo.com

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Begin forwarded message

From: Valerie Blackwood <calendar-awr@veritext.com>
Date: October 23, 2020 at 2:38:18 PM EDT
To: curtis tucker <curtistuckervip@gmail.com>
Subject: transcript
Reply-To: calendar-awr@veritext.com

Valerie Blackwood

Calendar Services
calendar-carolinas@veritext.com
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1 STATE OF SOUTH CAROLINA
2 COUNTY OF DORCHESTER COU
3 FARMERS & MERCHANTS BANK OF SOU
4 Plaintiff,
5 vs. CASE NO. :
6 CURTIS R. TUCKER; ASHLEY TUCKER
7 CORP., ACTING THROUGH SOUTH CAR
8 SOUTH CAROLINA HOMEOWNERSHIP AN
9 LENDING PROGRAM; AND SOUTH CAROI
10 CREDIT UNION,
11 Defendants.
12 HEARING BEFORE: JUDGE JAMES CHI
13 DATE: December 3, 20
14 TIME: 10:18 AM
15 LOCATION: Dorchester Cou
16 5200 E. Jim Bi
17 St. George SC
18 REPORTED BY: MARIE MCCOLLUN,
19
20 A. WILLIAM ROBER
21
22 Fast, Accurate & Fi

EveryWord, Inc
1130 POINT VIEW RD
CHAPIN, SC 29036-7923 US
scheduling@EveryWordInc.com
www.EveryWordInc.com

Sales Receipt

BILL TO
Ashley Tucker
155 Shady Lane
Summerville, SC 29485

SALES #	DATE
1001	10/06/2020

PMT METHOD
MasterCard - xxxxxxxxxxxx5365

SERVICE	DESCRIPTION	QTY	RATE	AMOUN
Transcript	Job 17693 & 18515	1	449.28	449.2

TOTAL 449.2
BALANCE DUE \$0.0

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----- Sales Receipt -----

1130 POINT VIEW RD
CHAPIN, SC 29036-7923 US
+1 8883411114
www.EveryWordInc.com

Sale #: 1001
Date: 10/06/2020
\$0.00

Sold To:

Ashley Tucker
155 Shady Lane
Summerville, SC 29485

Payment Method: MasterCard - xxxxxxxxxxxx5365

Service	Description	Qty	Rate
TranscriptJob	17693 & 18515	1	449.28

Total:
Amount Received:

Balance Due:

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curtis tucker <curtistucke...>
To: zamirnevaehcurt@yahoo.c

Fri, Oct 30 at 3:46 PM

Sent from my iPhone

Begin forwarded message:

From: Linda Brifnek <lbrifnek@veritext.com>
Date: September 25, 2020 at 1:51:59 PM EDT
To: "curtistuckervip@gmail.com" <curtistuckervip@gmail.com>
Subject: FW: COD Notification for Invoice 4556158

Dear Mr. Tucker:

Thank you for your transcript order in the above-referenced case. The transcript is ready for delivery upon receipt of payment.

I have attached a copy of your invoice #4556158 in the amount of \$129.40

Payment can be made in one of three ways:



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1 STATE OF SOUTH CAROLINA
2 COUNTY OF DORCHESTER

COURT OF COMMON PLEAS

3 FARMERS & MERCHANTS BANK OF SOUTH CAROLINA,
4 Plaintiff,

5 vs. CASE NO. 2019-CP-18-00302

6 CURTIS R. TUCKER; ASHLEY TUCKER; SC HOUSING
7 CORP., ACTING THROUGH SOUTH CAROLINA STATE
8 HOUSING FINANCE AND DEVELOPMENT AUTHORITY'S
9 SOUTH CAROLINA HOMEOWNERSHIP AND EMPLOYMENT
10 LENDING PROGRAM; AND SOUTH CAROLINA FEDERAL
11 CREDIT UNION,

12 Defendants.

13 HEARING BEFORE: JUDGE JAMES CHELLIS

14 DATE: December 3, 2019

15 TIME: 10:18 AM

16 LOCATION: Dorchester County Courthouse
17 5200 E. Jim Bilton Blvd.
18 St. George SC

19 REPORTED BY: MARIE MCCOLLUM, Court Reporter

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24

25

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1 APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF

2 FARMERS & MERCHANTS BANK OF SOUTH
CAROLINA:

3

TURNER PADGET GRAHAM & LANEY, PA

4 BY: ELIZABETH A. BLACKWELL

PO Box 22129

5 Charleston, SC 29413

(843) 579-8303

6 eblackwell@turnerpadget.com

7

8 ALSO PRESENT:

9 KELLEY Y. WOODY, ATTORNEY AT LAW, LLC

BY: KELLEY Y. WOODY

10 PO Box 6432

Columbia, SC 29260

11 (803) 787-9678

kwoody@kelleywoody.com

12

13 Ashley Tucker, Defendant

14

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1 THE COURT: This is in the matter of
2 Farmers & Merchants Bank of South Carolina,
3 Plaintiff, against Curtis Tucker, Ashley Tucker,
4 and others as Defendants. The Case Number is
5 2019-CP-18-00302.

6 We're here today on what has been
7 styled as an emergency motion to stay pending
8 appeal purportedly filed on behalf of the Defendant
9 Curtis Tucker by Ashley Tucker, signed Ashley
10 Tucker, Power of Attorney for Curtis Tucker,
11 Appellate, with the address 155 Shady Lane,
12 Summerville, South Carolina. The motion indicates
13 that she served Ms. Blackwell, who is present here
14 today on behalf of the Plaintiff.

15 And before we get started on this

16 particular case, Ms. Tucker, I'll give you an
17 opportunity to discuss the propriety of your motion
18 as a procedural matter. The motion, to me, appears
19 to be defective on its face inasmuch as it was
20 filed by you as an attorney in fact on behalf of
21 Curtis Tucker.

22 I think we established at the
23 hearing -- merits hearing on this case that you are
24 not an attorney at law; is that correct?

25 MS. TUCKER: No. No, sir. No, sir.

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1 I'm not an attorney.

2 THE COURT: You're not an attorney at
3 law. What is the basis upon which you believe or
4 can establish that you have the right to file this
5 motion as a non-attorney representing a party under
6 a power of attorney?

7 MS. TUCKER: What do you mean by that,
8 sir?

9 THE COURT: Exactly what I asked you.

10 MS. TUCKER: Curtis Tucker -- Curtis
11 Tucker gave me a power of attorney over him, over

12 his finances and everything that has to do with
13 him.

14 THE COURT: All right. Do you recall,
15 Ms. Tucker, when you were at the previous hearing
16 that I informed you that as an agent under a power
17 of attorney, you do not have the power or the right
18 to appear on behalf of the principal since you're
19 not an attorney licensed to practice law in the
20 State of South Carolina?

21 MS. TUCKER: I'm not sure.

22 THE COURT: You don't remember me
23 telling you that?

24 MS. TUCKER: You could have told me
25 that. I can't remember.

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1 THE COURT: Well, I expressly remember
2 informing you that as an agent under a power of
3 attorney, that South Carolina is fairly clear on
4 the fact that agents under powers of attorney would
5 not or do not have the power to appear on behalf of
6 a principal as their -- or as a pro se litigant on
7 behalf of the principal.

8 And nonetheless, I did allow you to
9 testify, I think without objection of the
10 Plaintiff, as to circumstances related to the debt
11 and your position as a mortgage -- as a Defendant
12 in the case because you had received a deed
13 subsequent to the execution of the mortgage lien
14 and were therefore a party to the lawsuit by virtue
15 of having a subordinate interest in the mortgage.

16 So to that extent, you are allowed to
17 testify, but you were not allowed to represent the
18 principal as a pro se litigant because you're not
19 an attorney licensed to practice law in the State
20 of South Carolina.

21 MS. TUCKER: But I can represent
22 myself, correct?

23 THE COURT: You could -- you did
24 represent -- I think you did appear on behalf of
25 your own self, but this motion that's before me

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1 today is a motion signed, as I indicated in my
2 opening remarks, as Ashley Tucker, power of
3 attorney for Curtis Tucker, Appellate.

4 MS. TUCKER: Okay.

5 THE COURT: This motion is not by you
6 individually. Do you have any justification for
7 filing this particular motion pro se on behalf of
8 your principal, Curtis Tucker?

9 MS. TUCKER: Yes.

10 THE COURT: What is it?

11 MS. TUCKER: I live in the home. He's
12 my husband.

13 THE COURT: Okay. And --

14 MS. TUCKER: I have first knowledge to
15 the home, everything that's going on with the
16 house.

17 THE COURT: But he's different than
18 you; isn't that correct? He's a different person
19 than you are?

20 MS. TUCKER: Yes.

21 THE COURT: So under our rules of law
22 in South Carolina, an individual who is not
23 licensed to practice law in the State of South
24 Carolina does not have the authority to appear on
25 behalf of another person. That's known as the

1 unauthorized practice of law. And so I'm
2 addressing initially the defect I see in the
3 motion. And so far, I don't hear any reason from
4 you that would legally support the basis of the
5 motion as an agent under a power of attorney.

6 MS. TUCKER: So basically you're saying
7 because in the paperwork I put power of attorney of
8 Curtis Tucker, and you're saying that that's why
9 it's not going to be able to be heard?

10 THE COURT: Well, here's what I'm --
11 I'm going to put on the record before we get any
12 further -- too much further, I'm going to put in
13 the record the basis of my view of your position as
14 a person unable to represent Curtis Tucker in a --
15 with a motion before this court. But I'm telling
16 you that you are not authorized to submit a motion
17 on his behalf. That has to be done by an attorney.

18 Let me ask you this question: Do you
19 believe that because the document that you are
20 utilizing to show your authority states that you're
21 an attorney for -- you have a power of attorney for
22 Curtis Tucker?

23 MS. TUCKER: Yes, I do.

24 THE COURT: The concept of the word

25 attorney in that title is what's confusing you? Or

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1 is what -- the basis of your claim that you have a
2 right to appear on his behalf?

3 MS. TUCKER: Yes.

4 THE COURT: Okay. The 2005 case
5 entitled Brown versus Suzanne E. Coe, Respondent,
6 addresses whether a nonlawyer personal
7 representative of an estate has the right to file
8 an appeal in a probate matter. The South Carolina
9 Supreme Court held that a nonlawyer personal
10 representative engaged in the unauthorized practice
11 of law, but that the supreme court would not
12 dismiss the appeal, and instead allow the personal
13 representative a reasonable time to retain counsel
14 to continue the appeal.

15 In this circumstance, the -- an agency
16 under a power of attorney establishes that you have
17 the power to represent your principal in matters
18 pertaining to the various and sundry documented
19 statements that are set forth in the power of
20 attorney that was before me in the prior hearing.

21 And I will here take judicial notice of that power
22 of attorney, which has been recorded in the clerk
23 of court's office -- or rather the Register of
24 Deeds Office in Dorchester County. I'll take
25 judicial notice of the power of attorney.

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1 I have read it before, correct?

2 MS. TUCKER: Yes.

3 THE COURT: Okay. An agent under a
4 power of attorney is a fiduciary. The powers of
5 attorney under the statutory law of South Carolina
6 are generally the power to enforce the power of
7 attorney, the power to enunciate the power of
8 attorney, the power to -- acts done by the agent
9 under the power of attorney is generally covered
10 under the probate code and by the probate judge.

11 An agent under a power of attorney is
12 essentially the same thing as a personal
13 representative in representing an estate of a
14 decedent. In other words, the agent under the
15 power of attorney acts and has the power to act on
16 behalf of the party during the lifetime of the

17 principal -- in this case, Curtis Tucker -- during
18 his lifetime. You have the power to act on his
19 behalf in matters pertaining to the financial
20 decisions that are -- or financial matters that are
21 set forth in the power of attorney.

22 However, it does not reach the point at
23 which you have the right to represent him in court
24 as an attorney, as a pro se litigant. And I'm
25 going to read from -- I take the agency of a

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1 personal representative under an estate, which is
2 the power to represent a decedent. And to do what
3 needs to be done financially on behalf of the
4 decedent is very much parallel to an agency under a
5 power of attorney, except that you have to be dead
6 in order to have the agency of a personal
7 representative or an estate.

8 MS. TUCKER: So, Your Honor, can I ask
9 you a question? If that was the case, why did
10 they -- why did they file like that? Because I
11 went to the court of appeals in Columbia and I had
12 the same thing as well. And they did not file it.

13 They told me I had to fix it. They allowed me time
14 to fix it.

15 THE COURT: All right.

16 MS. TUCKER: So if that was the case
17 here, the same thing here, I had to fix where I put
18 A in your name instead of E. I had some other
19 deficiencies in the letter as well, and they
20 allowed me to fix it. So if that was a problem,
21 why wasn't -- why did they allow me to fix it? Why
22 did they file it, is what I'm asking.

23 THE COURT: Well, they're going to file
24 it. The question is whether or not they're going
25 to hear it. But that's not a matter for me to

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11

1 decide. I don't have -- I don't operate in that
2 court. I cannot -- my jurisdiction is this court.

3 MS. TUCKER: Right.

4 THE COURT: And I will -- I'm pointing
5 out this case, Brown versus Coe, which is cited as
6 365 South Carolina 137, 16 S.E.2d 705. It's a 2005
7 case. The case has some very pertinent language in
8 it that I'd like to state.

9 It begins with: South Carolina
10 constitution provides that the Supreme Court of
11 South Carolina has the duty to regulate the
12 practice of law in South Carolina. The practice of
13 law is limited to attorneys authorized to practice
14 law. No person may solicit -- may practice or
15 solicit the cause of another in a court in this
16 state unless he has been admitted and sworn as an
17 attorney.

18 That's Code Section 40-5-310, 2001.
19 The general understanding -- the generally
20 understood definition of the practice of law
21 embraces the preparation of pleadings and other
22 papers incident to actions and special proceedings
23 and the management of such actions and proceedings
24 on behalf of clients before the judges and
25 courts -- citing different cases.

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1 The decision goes on to say that the
2 adjudicative power of the court carries with it an
3 inherent power to control the order of its business
4 to safeguard the rights of litigants. The goal of

5 the prohibition against the unauthorized practice
6 of law is to protect the public from incompetent,
7 unethical, and irresponsible representations --
8 citing cases.

9 The court -- the supreme court has held
10 that non-attorneys may not prepare legal documents
11 for others to present in family court when such
12 representation involves giving advice,
13 consultation, explanation, or recommendations on
14 matters of law -- citing the case.

15 The court noted its holding was for the
16 protection of the public from the potentially
17 severe economic and emotional consequences which
18 may flow from the erroneous preparation of legal
19 documents or the inaccurate legal advice given by
20 persons untrained in the law.

21 In the case involving the Lexington
22 County Transfer Court, the court stated that --
23 this is what the citation holds -- that
24 non-attorneys cannot negotiate guilty pleas on
25 behalf of a party or represent a party on a guilty

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1 plea.

2 The court in State v. Wells held that a
3 corporation must act through licensed attorneys in
4 legal matters. The holding was modified in re
5 Unauthorized Practice of Law -- citation given --
6 in which the court held a nonlawyer, officer,
7 agent, or employee may represent a business entity
8 pursuant to South Carolina Code Section 40-5-80,
9 1986, in civil magistrate's court proceedings.

10 The court stated further that the
11 magistrate shall require a written authorization
12 from the entity's president, chairman, general
13 partner, owner, or chief executive officer.

14 And finally, in Renaissance versus
15 Summit Teleservices, Inc., the court held a
16 nonlawyer cannot represent a corporation in circuit
17 or appellant actions, and once again held that
18 corporations may appear pro se only in magistrate's
19 court.

20 In this particular case, the Coe case,
21 the appellate -- the personal representative, who
22 is the appellate in this case, correct -- stated
23 that the court had never specifically addressed
24 whether a nonlawyer executor or personal
25 representative can represent an estate in matters

1 such as the appeal that this particular case was
2 speaking of.

3 It goes on to state the courts have
4 addressed the issue -- that have addressed the
5 issue have conducted such -- have concluded that
6 such conduct constitutes the unauthorized practice
7 of law, citing ex parte Ghafary, an Alabama case.

8 The court goes on to cite cases from
9 Arkansas, a case from Illinois, a case from Maine,
10 Nebraska, New Jersey, and Wisconsin, as well as a
11 Connecticut case, an Idaho case, a Minnesota case,
12 a Washington case. All in essence say that an
13 executor or a personal representative does not have
14 the power -- or rather that a nonlawyer executor of
15 estate to compel the lower court to consider an act
16 on petitions presented by executor on the ground
17 that presentation of probate matters to the court
18 for adjudication, when done on behalf of others, is
19 the practice of law.

20 That's an example of the type of
21 rulings that have been in these other states. So

22 this court goes on to say that this holds true in
23 this state, and the case at hand -- this is the Coe
24 case -- the filing of a notice of appeal on behalf
25 of the estate and preparation of briefs that will

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1 be required to further perfect the appeal clearly
2 constitutes the practice of law as defined by this
3 court. Section 40-5-310 prohibits appellant who,
4 while administratrix of the estate, is not a
5 lawyer, from taking such actions on behalf of the
6 estate because the estate is a separate legal
7 entity with interests other than Ms. Brown alone --
8 the appellate -- or the personal representative.

9 Moreover, the further reasoning
10 employed by this court in previous opinions that
11 such a prohibition is necessary to protect the
12 public from representations of those unlearned in
13 the law, also applies to the situation at hand as
14 noted by many of the courts cited above.

15 MS. TUCKER: Excuse me, Your Honor.

16 THE COURT: Hold on. I'm not finished.

17 The court goes on to discuss issues

18 relating to the fact that the court had not -- that
19 this issue had not been before the court before.
20 Both parties arguing that because it hadn't been
21 before the court before and hadn't been raised
22 before, that that particular issue had been
23 basically waived.

24 The response to that was that it was
25 still the practice of law. The question is whether

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1 or not filing the notice of appeal and the
2 subsequent matters that had to be filed under the
3 Coe case would be a nullity or was it simply a
4 matter that could be corrected by the filing party.

5 And in Coe, the decision of the court
6 was that based on the circumstances of the case,
7 they denied the motion to dismiss the appeal and
8 allowed the appellant -- now listen to this,
9 Ms. Tucker, because this is exactly what applies to
10 you: Based on the facts and circumstances of the
11 Coe case, the court -- the supreme court denied the
12 motion to dismiss the appeal and allowed the
13 appellate reasonable time to retain counsel to

14 continue with the appeal. They base their decision
15 on the fact that the appellate had represented the
16 estate in three previous appellate proceedings
17 leading her to believe that such was acceptable.

18 In this case, I did not lead you to
19 believe that you had the right to appear on behalf
20 of your husband as his pro se litigant. In fact, I
21 specifically told you in the hearing on the merits
22 that you were not authorized to practice law; and
23 therefore, were not authorized to appear on his
24 behalf pro se.

25 Nonetheless, given that this is a court

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17

1 of equity, and I want to do what is fair and proper
2 and just, I'm going to give you, Ms. Tucker, an
3 opportunity -- a reasonable time to hire a lawyer
4 to file a proper motion before this court in order
5 that the motion can be heard.

6 So what that ultimately results in is
7 that today I'm going to withdraw the case from the
8 sale today, but I'm going to require that you have
9 a lawyer representing Mr. Tucker and filing a

10 proper motion before the court no less than 15 days
11 from today's date.

12 MS. TUCKER: Okay.

13 THE COURT: Let me back up on that.
14 Ms. Blackwell, what date would be necessary for you
15 to advertise this for sale on the -- for the
16 December -- for the January sales date?

17 MS. BLACKWELL: Your Honor, I would
18 have to check on that. But may I have an
19 opportunity to respond to her motion before a
20 decision is made?

21 THE COURT: All right. I'll be glad to
22 have you -- well, first of all, before you do that,
23 I'm going to let Ms. Tucker speak to what my
24 decision is at this point. And if I need to modify
25 it after hearing from both of you, I will consider

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18

1 that.

2 MS. BLACKWELL: Thank you, Your Honor.
3 I appreciate that.

4 THE COURT: All right. Ms. Tucker, do
5 you have anything that you'd like to address with

6 me at this time?

7 MS. TUCKER: I would appreciate it if
8 you would allow for me to get a lawyer. When I
9 went to the court of appeals, they did tell me that
10 I didn't have to change -- take Curtis Tucker's
11 name off and stuff like that, so I did do that.

12 THE COURT: Okay.

13 MS. TUCKER: But, you know, I'm just
14 going to try my best because I don't want to lose
15 my house.

16 THE COURT: All right. Well, I pretty
17 much decided that that's what I'm going to do is
18 allow you to hire a lawyer. But at this point, I
19 want to hear from Ms. Blackwell on the issue before
20 going forward.

21 MS. BLACKWELL: Thank you, Your Honor.
22 I appreciate that. I just want to point out that
23 this hearing was first heard in June, and the Court
24 did express to Ms. Tucker and actually encouraged
25 her to hire an attorney. We even put on the record

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↑

19

1 that Russ DeMott would be a great attorney. So

2 even from then, she knew that she needed to hire
3 someone. Again, at the second hearing, it was made
4 very clear that she needed to hire an attorney
5 before filing any pleadings.

6 I have from the court of appeals a
7 letter specifically stating one of the deficiencies
8 in her appeal was the fact that she is not an
9 attorney licensed to practice law.

10 Under the rules of civil procedure, she
11 was in default under Rule 60 of the original
12 foreclosure; and therefore, under Rule 8 under the
13 rules of civil procedure, everything in our
14 complaint was admitted.

15 I have this case from the district
16 court that says a power of attorney may not be used
17 to circumvent state law prohibitions and the
18 unauthorized practice of law. And I believe that
19 is what's happening here today.

20 This is Myers versus AT&T Corp, 2013,
21 U.S. District, 129068. I would also like to
22 further add that even if this motion had been filed
23 appropriately, which the Plaintiff denies
24 expressly, the court of appeals also noted that a
25 bond has not been posted under South Carolina Code

1 189-170; and, therefore, in order to stay the
2 foreclosure, that can't happen because it's
3 inequitable for the Plaintiff.

4 We have done everything under the law
5 that we are supposed to. She has not posted a bond
6 with the surety; and therefore, the foreclosure
7 sale must go forward.

8 THE COURT: Read that --

9 MS. BLACKWELL: I'm happy to introduce
10 this order from the court of appeals as an exhibit
11 as well as the letter from the court of appeals for
12 the court's consideration. I'm also happy to
13 submit a supplemental brief on these issues.

14 I was out of the country this week, so
15 I appreciate, you know, you allowing me to
16 verbalize the Plaintiff's response to her motion.
17 For these reasons, we would ask that the sale go
18 forward.

19 THE COURT: Ms. Blackwell, you cited a
20 U.S. district court opinion.

21 MS. BLACKWELL: Yes, it is, Your Honor.

22 THE COURT: Read that citation again --

23 or read the case again, the point of law in that
24 case that you're alluding to.

25 MS. BLACKWELL: Absolutely. It's Myers

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21

1 versus AT&T Corp, and it is a District of South
2 Carolina case that is recognizing the case of
3 Jacobs versus the Department of Defense, Number
4 5-06-CB-182, 2007, U.S. District Lexis, 181, 2007.
5 I'm happy to hand this up as well if you'd like to
6 see.

7 THE COURT: Well, before you do that,
8 would you tell me what that case says again?

9 MS. BLACKWELL: This case says: A
10 power of attorney may not be used to circumvent
11 state law prohibitions on the unauthorized practice
12 of law.

13 THE COURT: Right. I agree with that.

14 MS. TUCKER: Can I say something,
15 Judge?

16 THE COURT: You have a reply to her
17 comments?

18 MS. TUCKER: Yes. The court of appeals

19 did deny it only because my case was still pending
20 in this court right here. That's the only reason
21 why they denied it. If you look it up on
22 SCcourts.org, they say a reason why. I just left
23 the letter at home. That's the only reason why
24 they denied it.

25 THE COURT: That's a good reason why

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▲

22

1 you shouldn't be here on his behalf as an attorney
2 because you don't know what to do when you come to
3 court.

4 MS. TUCKER: Well, when I went down --
5 when I went downstairs, they told me that I would
6 have to get in contact with court of appeals, and
7 that's what I did.

8 THE COURT: Thank you, Ms. Tucker.

9 Would you let me look at that case?

10 MS. BLACKWELL: Your Honor --

11 THE COURT: Well, let me look at the
12 letter from the court of appeals on the notice of
13 appeal.

14 MS. BLACKWELL: Absolutely. And I

15 would like to clarify, Ms. Tucker is speaking about
16 the order. It's listed as a footnote with respect
17 to the bond issue.

18 THE COURT: Ms. Blackwell, I want to
19 thank you for bringing my attention to the June
20 hearing. I did not recall that in my preparation
21 for the motion today that we had had a prior
22 hearing in June at which time I also advised
23 Ms. Tucker that she did not have the power to
24 represent her husband pro se in the foreclosure
25 litigation itself.

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23

1 And you are correct that we addressed
2 that several times, I believe, in the last hearing
3 that resulted in my order and decision; is that
4 correct?

5 MS. BLACKWELL: Yes, Your Honor. That
6 is correct.

7 THE COURT: Well, did you -- this is a
8 letter addressed to Ashley Tucker. Did you show
9 this to her?

10 MS. BLACKWELL: Your Honor, I believe

11 she has a copy directly from the South Carolina
12 Court of Appeals, but I have...

13 THE COURT: Okay. Ms. Blackwell has
14 handed me a letter dated November 27th, 2019,
15 addressed to Ashley Tucker, 155 Shady Lane in
16 Summerville, regarding this case with an appellate
17 Case Number of 2019001957. Court of appeals gave
18 her ten days to correct this.

19 MS. TUCKER: Today would have been the
20 tenth day.

21 THE COURT: How many days is that,
22 Ms. Blackwell?

23 MS. BLACKWELL: Your Honor, even if she
24 were to correct it, it still doesn't change the
25 fact that she has to post a bond under statutory

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24

1 law.

2 THE COURT: I'm going to get to that.

3 So we're still within the ten days for her to
4 correct? Still within ten days of this letter,
5 correct?

6 MS. TUCKER: Yes, sir.

7 MS. BLACKWELL: I believe so.

8 THE COURT: Okay. This would be the
9 sixth day.

10 MS. TUCKER: And, Your Honor, I already
11 posted bond. I already paid for everything. It
12 just was denied because of the fact that I had to
13 wait to go to this court case first. They couldn't
14 grant me a motion to stay without getting a motion
15 from you guys first, and I didn't know that.

16 THE COURT: Another reason why you
17 shouldn't be representing Mr. Tucker in the
18 proceedings.

19 MS. TUCKER: Before you apply for a
20 motion to be granted, you have to pay for the --
21 you have to pay the money before, right away.

22 THE COURT: Have you -- do you have --
23 I mean, the problem with this catch-22,
24 Ms. Blackwell, she doesn't have the authority to
25 post the bond because she's not a lawyer

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25

1 representing Mr. Tucker. Now, only he can do the
2 bond.

3 MS. BLACKWELL: Correct. And therefore
4 all the pleadings are defective and should be
5 stricken from the record.

6 THE COURT: That's exactly my point.

7 MS. BLACKWELL: And the equitable
8 remedy would be to allow the Plaintiff to go
9 forward given the multiple delays in this case.

10 THE COURT: Right.

11 MS. TUCKER: Why should I be stricken
12 from the record when I'm on the deed and I live in
13 the house?

14 THE COURT: Ms. Tucker, would you give
15 me an opportunity to review -- when I'm reading
16 something, please don't interrupt me. Okay.

17 MS. TUCKER: Okay.

18 THE COURT: That's another reason why
19 you shouldn't be in front of the court pro se
20 because you don't understand the rules of
21 procedure.

22 MS. TUCKER: Okay.

23 THE COURT: Ms. Blackwell, I'm
24 convinced by your argument that the matter should
25 not be delayed, particularly in view of the fact

1 that we've had two -- we had two matters in which
2 the case is brought for a hearing on the merits,
3 both of which times Ms. Tucker was adequately
4 warned of her necessity to have an attorney
5 represent Mr. Tucker.

6 And I think that this particular
7 defective motion has the, not only appearance, but
8 I think substantively has the effect of delaying
9 the rights that your client have or has to the
10 foreclosure sale going forward. There is nothing
11 that has been brought before me that resembles any
12 sort of a bond that would be sufficient to stay the
13 proceeding.

14 And I think given -- I'm particularly
15 impressed by the fact that what we have done here
16 is on several occasions discussed with Ms. Tucker
17 the fact that she needs a lawyer to represent
18 Mr. Tucker, that the power of attorney is not
19 sufficient. She has been -- she has basically
20 stubbornly ignored the rulings from the bench on
21 that particular issue.

22 And I don't think it's fair to your
23 client that she be allowed to continue to -- to

24 continually attempt to obstruct your client's
25 rights by filing or appearing and making

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27

1 appearances on behalf of the principal she
2 represents under a power of attorney.

3 For that reason, I'm going to proceed
4 today with the sale of the property. And the
5 motion that has been filed will be deemed defective
6 for the reason that it has not been filed by an
7 attorney licensed to practice law in the State of
8 South Carolina.

9 MS. WOODY: Your Honor, may I speak,
10 please?

11 THE COURT: You would like to speak to
12 this issue?

13 MS. WOODY: Yes, sir, thank you.

14 THE COURT: Thank you. Go ahead.

15 MS. WOODY: Kelley Woody, guardian ad
16 litem -- appointed guardian ad litem for
17 Mr. Tucker. I just wanted to make sure, Your
18 Honor, that it's on the record my exhibits that I
19 filed October 29th in this case as a result of the

20 last time we were here that, you know, I did reach
21 out and try to be -- you know, to reach out to
22 Mr. Tucker and explain to him that I, you know, was
23 his guardian ad litem and could help in any way.

24 And, you know, I just got: We don't
25 want you, we don't want you, we have a power of

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28

1 attorney.

2 So I want that on the record just for
3 my sake, and they are in there.

4 THE COURT: Yes, ma'am. I do remember
5 that in the prior hearing, Ms. Kelley, that you had
6 received correspondence from, I believe, Mr. Tucker
7 who had stated he didn't want anything -- he didn't
8 want you to have anything to do with his
9 representation --

10 MS. WOODY: Yes, sir.

11 THE COURT: -- before the court; he
12 didn't want a public attorney.

13 MS. WOODY: Yes, sir.

14 THE COURT: And, again, it would have
15 been helpful for him to have understood that you

16 were acting as a guardian ad litem to protect his
17 rights in the foreclosure proceeding only for
18 purposes of the proceeding, that you were not
19 representing him as an attorney.

20 MS. WOODY: Yes, sir.

21 THE COURT: But nonetheless, again, it
22 just goes to the reticence that they have shown
23 for -- and the utter disregard they've shown for
24 the procedures that govern the proceedings in the
25 court.

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29

1 And I'm particularly persuaded by
2 Ms. Blackwell's argument, again, that we've covered
3 this ground several times with Ms. Tucker, and I do
4 think it would be disadvantageous to the Plaintiff
5 to delay the sale. There has been no proffer --
6 not even a proffer of a bond that would act as a
7 means of supersedence that would protect your
8 client in the event that the moving party were
9 unsuccessful in the appeal.

10 I do think it's the proper thing to do.
11 We'll proceed today with the hearing. All right.

12 Ms. Tucker, anything else from you?

13 MS. TUCKER: I don't understand why you
14 would think that it's proper when the -- if you
15 look on SCcourts.org, the only reason why it was
16 denied is because I had to go to this court case
17 first. Like after I leave here, I'm going to still
18 send my paperwork to the court of appeals to stop
19 the stay -- the motion. I'm going to still do
20 that.

21 THE COURT: You do what you think you
22 need to do. But as far as this court's concerned,
23 the pleading before today is a defective pleading
24 because it lacks -- it's not presented to the court
25 by a licensed attorney to practice law in the State

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30

1 of South Carolina; and therefore, it has no -- the
2 motion -- the substance of the motion has no basis
3 for being heard.

4 And secondly, the motion is not
5 accompanied by any proffer of a bond that would
6 protect the Plaintiff in the event that you failed
7 on appeal.

8 MS. TUCKER: How did I fail, Your
9 Honor, when I paid for the bond? The bond was
10 \$300. I paid for it.

11 THE COURT: There is no bond. I see no
12 bond.

13 MS. TUCKER: Sir, in order to file
14 anything in the court of appeals, for them to even
15 look at a motion, you have to pay 250 -- \$250. And
16 after that, you have to pay \$50 for -- you know,
17 for the motion. And then it's 250 for the
18 appearance to appeal to the court.

19 THE COURT: I believe you're referring
20 to the filing fees.

21 MS. TUCKER: Yes.

22 THE COURT: Okay. Those are not bonds.

23 MS. TUCKER: Okay.

24 THE COURT: Is that correct,
25 Ms. Blackwell?

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31

1 MS. BLACKWELL: That is correct, Your
2 Honor. And I would also like to state for the
3 record that Ms. Tucker asking questions after the

4 ruling has been issued is an attempt to seek legal
5 advice, and I would respectfully request that this
6 hearing end.

7 MS. TUCKER: Everything that I say has
8 been stricken. My paperwork that I asked you --
9 that you said you were going to, you know, look at
10 to see if it was organic or whatever, you never did
11 that. You never looked at my paperwork that was
12 sent. You said it wasn't filed, but I have proof
13 that it was filed, that it was sent here. I mean,
14 everything that I tried to do has just been put
15 down.

16 THE COURT: All right. I have nothing
17 further to say. My ruling stands. And I'm going
18 to enter a Form 4. I've only got a few minutes to
19 do that. So we'll do that in a few minutes
20 denying -- or declaring that the motion is out of
21 order and defective on the bases that I've stated.

22 MS. BLACKWELL: Thank you, Your Honor.

23 MS. WOODY: Thank you, Your Honor.

24 (This hearing was concluded at 11:02
25 AM.)

1 CERTIFICATE OF REPORTER

2
3 I, Marie McCollum, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 10th day of January,
13 2020 at Charleston County, South Carolina.

14
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21
22 <%21866,Signature%>

23 _____
24 Marie McCollum,
Court Reporter

25

My Commission expires
November 8, 2027

↑

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(No Information Requested)

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(No Exhibits Proffered)

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF DORCHESTER

COURT OF COMMON PLEAS

3 - - -

4 FARMERS & MERCHANTS BANK OF :
SOUTH CAROLINA, : CIVIL ACTION NO. :
5 :
Plaintiff, : 2019-CP-18-302
6 :
vs. :
7 :
CURTIS R. TUCKER; ASHLEY TUCKER; :
8 SC HOUSING CORP., ACTING THROUGH :
SOUTH CAROLINA STATE HOUSING :
9 FINANCE AND DEVELOPMENT :
AUTHORITY'S SOUTH CAROLINA :
10 HOMEOWNERSHIP AND EMPLOYMENT :
LENDING PROGRAM; AND SOUTH :
11 CAROLINA FEDERAL CREDIT UNION, :
12 Defendants. :

13
14 HEARING
15

16 BEFORE: HONORABLE JUDGE JAMES E. CHELLIS,
Master In Equity
17
18 DATE TAKEN: Tuesday, October 29, 2019
19
20 TIME BEGAN: 10:58 a.m.
21
22 TIME ENDED: 12:12 p.m.
23
24 LOCATION: Dorchester County Master In Equity
5200 East Jim Bilton Boulevard
St. George, South Carolina
25
26 REPORTED BY: Deidre Osborne
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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18
19
20 ASHLEY TUCKER
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23 Pro Se Defendant

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PROCEEDINGS

BAILIFF: All rise. Court is in session.
Now the Judge Chellis presiding.

THE COURT: Good morning. How is everybody
doing?

GUARDIAN AD LITEM: Good morning.

THE COURT: Ms. Blackwell, how are you?
Ms. Kelley.

GUARDIAN AD LITEM: Yes, sir.

THE COURT: Goodness, gracious.
And we must have some people named Tucker
here too. Is that right?

THE DEFENDANT: Yes, sir.

THE COURT: And who would be -- who is who
over here?

THE DEFENDANT: This is my mother.

THE COURT: And your name is Ashley?

THE DEFENDANT: My name is Ashley.

21 THE COURT: You're Ashley. And your mama's
22 name is what?

23 THE DEFENDANT: Pat.

24 THE COURT: Can't hear you.

25 THE DEFENDANT: Pat.

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5

1 THE COURT: Pat?

2 THE DEFENDANT: Uh-huh.

3 THE COURT: Okay. Well, everybody, come up.
4 Let's get started.

5 I have eleven o'clock on my computer. Is
6 that what everybody says -- sees on their
7 computers? Everybody is agreeable that we're on
8 time?

9 All right. This is a matter between Farmers
10 and Merchants Bank of South Carolina as plaintiff
11 against Curtis R. Tucker; Ashley Tucker; South
12 Carolina Housing Corporation, acting through the
13 South Carolina State Housing Finance and
14 Development Authority's South Carolina
15 Homeownership and Employment Lending Program; and
16 the South Carolina Federal Credit Union, the
17 defendants. The civil action is
18 2019-CP-18-00302.

19 We have present today on behalf of the
20 plaintiff Ms. Elizabeth A. Blackwell, an attorney
21 in Charleston. We also have present today the
22 guardian ad litem appointed for Curtis R. Tucker,
23 Ms. Kelley --

24 GUARDIAN AD LITEM: Woody.

25 THE COURT: I had Yarborough in my head.

↑ 6

1 GUARDIAN AD LITEM: That's my middle name.

2 THE COURT: That's your middle name.

3 Ms. Kelley Yarborough Woody who is appointed
4 guardian ad litem to provide assistance during
5 the pendency of the action for Curtis Tucker who
6 we found out to be incarcerated in the State of
7 the Commonwealth of Pennsylvania. I'm not sure
8 what they call it, but up there in Pennsylvania.

9 So at this time I'm ready to hear from you,
10 Ms. Blackwell, if you would like to present your
11 case.

12 MS. BLACKWELL: Yes, Your Honor. Thank you.
13 Would you like us to continue from the last
14 hearing or start from scratch?

15 THE COURT: Let's just start fresh. Okay?

16 MS. BLACKWELL: Okay. Sounds good. So we
17 are here today to foreclose on a piece of

18 property owned by Curtis R. Tucker and Ashley
19 Tucker. Mr. Curtis Tucker is the only one on the
20 note and mortgage. It was subsequently conveyed
21 via quitclaim deed to -- half-interest to Ashley
22 Tucker.

23 Mr. Tucker is past due for his June 2018
24 payment forward. We have attached true and
25 accurate copies of the note and mortgage to our

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7

1 complaint and would ask at this time that they be
2 admitted into evidence.

3 THE COURT: All right.

4 MS. BLACKWELL: The total debt as of today's
5 date is 93,026.20. We are demanding a deficiency
6 at this point as well.

7 THE COURT: All right.

8 MS. BLACKWELL: I also have with me here
9 today Brian West on behalf of Farmers and
10 Merchants Bank of South Carolina.

11 THE COURT: How are you doing today,
12 Mr. West?

13 MR. WEST: Fine, sir. Thank you.

14 THE COURT: Good to see you.

15 All right. So, Ms. Blackwell, you have

16 pre-filed a number of exhibits. I've been
17 through them. They consist of the note and the
18 mortgage, an affidavit of attorney's fees, an
19 affidavit of verified statement of account and --
20 note, mortgage. There was the note.

21 MS. BLACKWELL: The notice --

22 THE COURT: Oh, record of hearing. And at
23 this time, I'm going to move all those pre-filed
24 exhibits into the record so that they're now a
25 part of the record before me.

↑ 8

1 Ms. -- Ms. Tucker, do you have any dispute
2 about the amount of money that's due or that's
3 claimed to be due from the -- from the bank?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Pardon me?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You do dispute it?

8 THE DEFENDANT: Yes.

9 THE COURT: What do you -- do you have some
10 proof of the basis upon which that amount is not
11 due?

12 THE DEFENDANT: That's a copy document. I
13 need a certified original -- I need an original
14 document.

15 THE COURT: An original document. Of what?

16 THE DEFENDANT: Of the note or the mortgage
17 that she's claiming that we owe.

18 THE COURT: All right.

19 MS. BLACKWELL: Your Honor, we do have
20 originals with us here today. I would like to
21 state for the record that at the last hearing
22 Ms. Tucker was given the opportunity to question
23 Mr. West under oath, and to revisit that again
24 might be a waste of judicial economy, but we are
25 happy to produce original copies of the affidavit

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9

1 as well as the loan documents.

2 THE DEFENDANT: Original with the certified
3 copy?

4 THE COURT: I'm sorry? You got to speak
5 louder, Ms. Tucker. I can't hear you.

6 THE DEFENDANT: The original document?

7 THE COURT: Is that -- is her microphone on?

8 THE DEFENDANT: Hello?

9 BAILIFF: Let's check that.

10 THE DEFENDANT: No, it's not. Yes, sir.

11 I'm asking for the original document that she's
12 saying that was signed.

13 THE COURT: Okay. Do you have a copy of the
14 original document, Ms. Blackwell?

15 THE DEFENDANT: No, not a copy of it. The
16 original.

17 THE COURT: Do you have the original
18 document? Excuse me.

19 MS. BLACKWELL: I do, Your Honor.

20 THE COURT: All right. Let me take a look
21 at that, please.

22 THE COURT: Ms. Tucker's not on that note --
23 on the original note as I recall. Is that
24 correct?

25 MS. BLACKWELL: That's correct, Your Honor.

↑ 10

1 THE COURT: Well, this is the affidavit of
2 verified statement of account, the original
3 affidavit. The note? Do you have a copy of the
4 original note?

5 MS. BLACKWELL: Oh, a copy of the note. I'm
6 sorry.

7 THE COURT: All right. Okay.
8 Ms. Blackwell, the original note that you have
9 handed to me for review is identical to the copy
10 that is a part of the record. I'm going to allow
11 the substitution of the copy to stand for the

12 original so that your client will keep in its
13 possession the original note.

14 THE DEFENDANT: Can I see that?

15 THE COURT: Since Ms. Ashley is not a party
16 to the note, she has no right to look at it.

17 MS. BLACKWELL: Thank you, Your Honor.

18 THE DEFENDANT: Under what grounds, Your
19 Honor?

20 THE COURT: You're not a party to it.

21 THE DEFENDANT: I'm here with the power of
22 attorney.

23 THE COURT: What kind of power of attorney?

24 THE DEFENDANT: Over Curtis Tucker.

25 THE COURT: Well, you are here -- do you

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11

1 have -- are you a lawyer?

2 THE DEFENDANT: No, I'm not a lawyer.

3 THE COURT: So you're here without a lawyer?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: Okay. Well, if you want to --

6 would you both approach? And I want to see your

7 power of attorney. I'm talking about Ms. Tucker.

8 GUARDIAN AD LITEM: Oh, I'm sorry.

9 THE COURT: That's fine.

10 Your power of attorney.

11 THE DEFENDANT: You should have this on
12 record, sir.

13 THE COURT: I'm sorry?

14 THE DEFENDANT: I gave this last -- to you
15 last time. It should be on the record.

16 THE COURT: All right. Well, I want to see
17 it again. Thank you.

18 THE DEFENDANT: Uh-huh.

19 THE COURT: All right. For the record, I
20 want to state that I've been reviewing a document
21 entitled Durable Power of Attorney for Finance of
22 Curtis Tucker. This document includes a stamp
23 file recorded sticker dated December 13, 2016,
24 Dorchester County Register of Deeds.

25 It also has the first page of the instrument

↑ 12

1 showing that it's been recorded in book 10,569 at
2 pages 62 through 79, a total of 18 pages, under
3 Provision I of Article 3, the Powers Provision.
4 This particular -- these particular powers
5 enumerated 1 through 8 include the power of
6 Ms. Ashley Tucker to defend against a legal
7 entity, including suits to recover property or
8 other things of value or to recover damages,

9 etcetera, and to seek an -- so she has the power
10 to defend against the bank.

11 MS. BLACKWELL: And, Your Honor, I would
12 object to that. Based on case law, the power to
13 defend yourself pro se is non-transferable.

14 THE COURT: Right.

15 MS. BLACKWELL: What she's attempting to do
16 here is the unauthorized practice of law.

17 THE COURT: I understand that.

18 THE DEFENDANT: I object.

19 THE COURT: I -- well, hold on a second.

20 I agree with you. But based on -- just
21 based on the powers under the -- she's not -- she
22 can't -- she can't represent Mr. Curtis in the
23 court of law. She stands in his stead but not as
24 a -- but she cannot serve -- the power of
25 attorney doesn't give her the power to represent

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13

1 him.

2 MS. BLACKWELL: Correct.

3 THE COURT: Okay? So with -- I do think
4 that the -- that the power does give her the
5 ability to look at the note, the original note.
6 Okay?

7 MS. BLACKWELL: Okay.

8 THE COURT: So I'm going to allow her to do
9 that under provision Article 3(i), Number 1.
10 Okay.

11 So Ms. -- Ms. Curtis, I'm going to allow you
12 to look at this instrument --

13 THE DEFENDANT: Uh-huh.

14 THE COURT: -- and compare it to the
15 original that was -- or it is the original.
16 Compare it to the documents already been filed
17 with the Court.

18 THE DEFENDANT: I object. This isn't his
19 signature.

20 THE COURT: Well, you may object. I hear
21 your objection, but it's not going to have any
22 effect because there's no -- well, anyway, I'm
23 allowing the substitution of the copy of the
24 power -- of the note for the original note, and
25 I'm going to allow Ms. -- Ms. Blackwell to take

↑ 14

1 the original note back with her -- back to her
2 client.

3 THE DEFENDANT: I don't know if that's --

4 THE COURT: And I think this is part of what
5 you gave me.

6 All right. I'll let you have that.

7 Okay. Now you can have a seat back down at
8 your table.

9 Now, let me -- let me just add some
10 additional information to the record of this
11 case. There has been only the answer of the
12 guardian ad litem to the complaint which
13 basically sets forth a statement that she lacks
14 sufficient information at this time to make a
15 determination as to the allegations set forth in
16 the complaint and just denies them as a -- in the
17 form of a general denial.

18 She further creates reference to the loan
19 documents which are subject of the plaintiff's
20 action, and the public records of Dorchester
21 County denies anything that's inconsistent
22 therewith, and she contented to the reference to
23 me. So the answer of the defendant does not
24 contain any allegation that the note has been --
25 that the note does not contain the original

↑ 15

1 signature of Mr. Tucker.

2 All right. Now, so I want to also say that
3 there's been no -- so in other words, there's

4 nothing affirmatively asserting concerning the
5 note being fraudulently or -- fraudulently or
6 otherwise forged by Mr. Tucker.

7 Now, Ms. Blackwell, do you have anything
8 else you want to add to your record before I let
9 Ms. Tucker speak?

10 MS. BLACKWELL: Your Honor, I would ask that
11 the documents filed by Ms. Tucker on behalf of
12 Mr. Tucker be stricken from the record due to the
13 fact that she's not an attorney licensed to
14 practice law --

15 THE COURT: Okay.

16 MS. BLACKWELL: -- and I would also like to
17 reiterate that she is in default on her behalf.

18 THE COURT: Yeah, I saw that as well. The
19 instrument that she filed was a notice of special
20 strict appearance, but it was filed after the --
21 after an order had been entered that she was in
22 default as I recall.

23 THE DEFENDANT: Can I speak, Your Honor?

24 THE COURT: Hold on one second. Let me
25 review something.

↑ 16

1 Ms. Blackwell, do you have your -- was there
2 ever an entry of default or just simply the

3 failure to answer put her in default?

4 MS. BLACKWELL: There was default. Let me
5 see if I can find it. Your Honor, I do have a
6 certificate of default and non-military service
7 that was filed with this Court on April the 11th.

8 THE COURT: I do see that now. It was
9 hidden behind that word "certificate." And the
10 affidavit of or your certificate of service, do
11 you have a copy of that for Ms. Cooper --
12 Ms. Tucker? Excuse me.

13 THE DEFENDANT: Can I speak, Your Honor?

14 THE COURT: Ms. Tucker, would you give me an
15 opportunity to get the procedure straight before
16 I --

17 THE DEFENDANT: Okay.

18 THE COURT: I'm going to give you -- I'm
19 going to give you plenty of opportunities to
20 speak.

21 THE DEFENDANT: Okay.

22 THE COURT: Okay? I'm just -- I have a few
23 questions of Ms. Blackwell. It's her case right
24 now. Hadn't been -- hadn't been -- she hadn't
25 closed her case, and until that time, I'm -- give

1 me an opportunity to -- to review.

2 I think I see it now. All right. This was
3 entered March the 14th. Okay. This is the
4 certificate of service that was filed on March
5 the 14th, an affidavit certifying under oath that
6 Ms. Ashley Tucker was served on February 27,
7 2019, at 155 Shady Lane in Summerville.

8 All right. Now, Ms. Tucker, you wanted to
9 speak to the -- to the affidavit of service?

10 THE DEFENDANT: Yes. I'm not understanding
11 where you're saying that I was in default. I'm
12 not understanding that.

13 THE COURT: Okay. Well, I'll explain that
14 to you which was what I was trying to get to.
15 What -- what it means is that you failed to
16 answer the complaint in a timely manner, and,
17 therefore, having failed to answer the complaint,
18 you have admitted the allegations of the
19 complaint that are set forth there. The purpose
20 of this hearing is to determine the damages, that
21 is to say the amount of the debt that's due, and
22 we'll also discuss the remedy that's being sought
23 by the bank.

24 So there was a late entry in the record that
25 was stated to be a notice of special strict

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1 appearance that was entered in the record that
2 was apparently filed by Ashley Tucker. I'm not
3 sure what -- you want to tell me about this
4 document?

5 Do you mind if I ask her a few questions
6 about it, Ms. Blackwell?

7 MS. BLACKWELL: No, Your Honor.

8 THE COURT: All right. Tell me -- you've
9 moved to have it stricken from the record, and so
10 now she's responding to that motion. Okay?

11 THE DEFENDANT: Yes. I want you to take
12 judicial notice, mandatory judicial notice, to my
13 paperwork.

14 THE COURT: Ms. Tucker, I really appreciate
15 you being here, but you have got to speak up
16 because I can't hear you. You sound like you're
17 whispering.

18 THE DEFENDANT: I want you to take mandatory
19 judicial --

20 THE COURT: Why don't you pull -- do me a
21 favor.

22 Susan, put the microphone in front of the
23 witness, please.

24 THE DEFENDANT: I got it.

25 THE COURT: And you can sit down,

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1 Ms. Tucker. You don't need to stand up.

2 THE DEFENDANT: Can you hear me?

3 THE COURT: I can hear you a little bit
4 better now.

5 THE DEFENDANT: Okay. I don't think this is
6 working correctly.

7 THE BAILIFF: Is it still on?

8 THE DEFENDANT: Oh, now it's on. Can you
9 hear me now?

10 THE COURT: I hear you much better now.
11 Thank you.

12 THE DEFENDANT: Okay. I want -- I'm asking
13 for you to take mandatory judicial notice to my
14 paperwork that I sent -- that I had sent in to
15 your clerk. Also, in April I sent Ms. Blackwell
16 a response to her paperwork that she sent to me.

17 The last time that we were in court, I
18 didn't know that I had five days to send it to
19 the Court. We talked about the last time in June
20 when I was here. She said that she didn't want
21 me to put it on, and at first you didn't, but
22 then when she came back inside the room, she said

23 that she did want you to overrule and go ahead
24 and let my paperwork as far as the power of
25 attorney be accepted into the book onto the

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20

1 Court, and that's when you accepted the rest of
2 my paperwork. As far as the consulta- -- the
3 South Carolina Constitution, the power of
4 attorney, and there was other paperwork also.

5 THE COURT: All right. So what I'm looking
6 at is a special appearance.

7 THE DEFENDANT: Yes.

8 THE COURT: And what are you actually --
9 what -- she's moved to have it -- have it
10 stricken from the record. Why shouldn't it be
11 stricken from the record?

12 THE DEFENDANT: Why should it be not in the
13 record, sir?

14 THE COURT: Yes, ma'am.

15 THE DEFENDANT: It should be in the record.

16 THE COURT: Why should it be in the record?

17 THE DEFENDANT: Because I'm not -- I'm
18 Curtis Tucker's wife, but I'm also his power of
19 attorney. I'm not here to come underneath. You
20 know, I'm looking at mandatory judicial. I'm
21 following the US Constitution.

22 THE COURT: Oh, you are?

23 THE DEFENDANT: Yes --

24 THE COURT: Okay.

25 THE DEFENDANT: -- I am.

↑ 21

1 THE COURT: How?

2 THE DEFENDANT: I have a Rule 5.1.

3 THE COURT: What's Rule 5.1?

4 THE DEFENDANT: Did you get those paperworks
5 that I sent to you?

6 THE COURT: I read what you filed with the
7 Court.

8 THE DEFENDANT: Yes.

9 THE COURT: Yes, ma'am, I read it.

10 THE DEFENDANT: Okay.

11 THE COURT: What is a Rule 5.1?

12 THE DEFENDANT: It's questions from the US
13 Constitution.

14 THE COURT: Well -- okay. Well, tell me
15 about it. I don't --

16 THE DEFENDANT: I'll get the paper for you
17 if you need me to.

18 THE COURT: I've never heard of Rule 5.1. A
19 rule -- it says here that a Rule 5.1

20 Constitutional challenge has been sent to Allen
21 Wilson who is the state attorney general, and you
22 assert these to the defendant's attorney in this
23 paper.

24 THE DEFENDANT: That's what it is. I also
25 sent it to you too. It's questions.

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22

1 THE COURT: All right. Well, I don't think
2 there's anything in this -- that's been stated in
3 this notice of special strict appearance that was
4 filed in this -- in the record in this case --
5 and it looks like September 30, 2019. There's
6 nothing in the -- in this notice that is
7 responsive to the allegations of the complaint,
8 and, therefore, I'm going to -- I'm going to
9 sustain Ms. Blackwell's motion to have it
10 stricken from the record.

11 THE DEFENDANT: Under what ground?

12 THE COURT: It's irrelevant.

13 THE DEFENDANT: Huh?

14 THE COURT: It's irrelevant.

15 THE DEFENDANT: Okay.

16 THE COURT: It doesn't -- I just said it.
17 It doesn't speak to the -- to the allegations
18 contained in the complaint.

19 All right. Anything -- now, have you
20 finished your side of the case, Ms. Blackwell?

21 MS. BLACKWELL: Yes, Your Honor. The
22 plaintiff rests.

23 THE COURT: All right.

24 Now, Ms. Tucker, I'll be happy to hear from
25 you concerning your circumstances. You

↑ 23

1 indicated -- I mean, you do live on the property
2 that's -- that's covered by the mortgage; is that
3 correct?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: All right. Who lives there with
6 you?

7 THE DEFENDANT: Me and my children.

8 THE COURT: How many children do you have?

9 THE DEFENDANT: Three.

10 THE COURT: And how old are your children?

11 THE DEFENDANT: 5, 9 and 14.

12 THE COURT: Okay. And, again, you're
13 getting way back from that microphone. I can't
14 hardly hear you.

15 THE DEFENDANT: 5, 9 and 14.

16 THE COURT: 5, 9 and 14. What are their --

17 are they -- is the 5-year-old a girl or a boy?

18 THE DEFENDANT: A boy.

19 THE COURT: A boy. And is he in school?

20 THE DEFENDANT: Yes.

21 THE COURT: School where?

22 THE DEFENDANT: Flowertown.

23 THE COURT: Okay. By the way, where is the
24 property we're talking about? Shady Lane?

25 THE DEFENDANT: Shady Lane.

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24

1 THE COURT: Where is that?

2 THE DEFENDANT: Off Dorchester Road.

3 THE COURT: Is it -- I think I maybe
4 discussed this last time. Was it -- it's -- if
5 you were going into Dorchester County from
6 Charleston on Dorchester Road, the -- I think
7 it's Fort Dorchester Baptist Church or a Baptist
8 church right there?

9 THE DEFENDANT: Uh-huh. Yes.

10 THE COURT: And if you turn back to the
11 right, is that Shady Lane or Shady Road?

12 THE DEFENDANT: Yes.

13 THE COURT: It's up -- it's in that
14 neighborhood back there?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I know where it is.
17 So how old is the 9-year-old?
18 THE DEFENDANT: How old is the 9-year-old?
19 THE COURT: The 9-year-old is a -- what sex
20 is -- are they?
21 THE DEFENDANT: A girl.
22 THE COURT: She's a little girl. And where
23 does she go to school?
24 THE DEFENDANT: Flowertown.
25 THE COURT: Both at Flowertown.

↑ 25

1 THE DEFENDANT: Uh-huh.
2 THE COURT: And the 14-year-old?
3 THE DEFENDANT: Greg. Greg Elementary
4 School.
5 THE COURT: Greg Elementary?
6 THE DEFENDANT: Uh-huh.
7 THE COURT: Greg Elementary? Greg Middle
8 School.
9 THE DEFENDANT: Greg Middle School. I'm
10 sorry.
11 THE COURT: Okay. Boy or girl?
12 THE DEFENDANT: Boy.
13 THE COURT: Little boy. Now, is the

14 14-year-old involved in any extracurricular
15 activities in school?

16 THE DEFENDANT: Not in school, but he's --
17 he plays basketball for the church.

18 THE COURT: Which church is that?

19 THE DEFENDANT: My church, Rock of Faith.

20 THE COURT: All right. Ms. Tucker, are you
21 employed?

22 THE DEFENDANT: Yes.

23 THE COURT: Where do you work?

24 THE DEFENDANT: Reddy Ice.

25 THE COURT: I'm sorry. I can't hear you?

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1 THE DEFENDANT: Reddy Ice.

2 THE COURT: Reddy Ice. Okay. Yeah. I
3 remember you told me you were a driver for Reddy
4 Ice.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And I sort of asked you about
7 that. You had a lot of deliveries because it was
8 hot.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. It's coming to me. So
11 Reddy Ice. You still working for them?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. When do you anticipate
14 that your husband will be home?

15 THE DEFENDANT: In five to ten years.

16 THE COURT: From what date?

17 THE DEFENDANT: I don't know, sir. I'm not
18 sure.

19 THE COURT: That was --

20 THE DEFENDANT: Oh, from what date did he
21 get arrested? 2017.

22 THE COURT: 2017 he was arrested. And the
23 sentence was five to ten years or --

24 THE DEFENDANT: Five to ten.

25 THE COURT: All right. Now, it's just you

↑ 27

1 and the three children that live in the home?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. All right. Anything else
4 that I need to know about your circumstances
5 concerning where you live, your children,
6 participation in school, other activities,
7 anything like that, that you want to tell me?

8 THE DEFENDANT: They go to church every
9 Sunday and every Wednesday. They're in choir and
10 stuff like that.

11 THE COURT: All right. So Ms. -- my
12 question now is to Ms. Blackwell. When are you
13 seeking to have this property sold?

14 MS. BLACKWELL: Your Honor, this matter has
15 been pending for quite a while, since February,
16 and so we are asking for the first available
17 judicial sale in December.

18 THE COURT: In December. Okay.

19 Ms. Woody, do you have anything you would
20 like to add to --

21 GUARDIAN AD LITEM: Yes, sir. If it pleases
22 the Court. I -- I was appointed after Ms. Tucker
23 brought it to your attention that Mr. Tucker is
24 incarcerated at the last hearing. I reached out
25 to them several times, wrote to them, and I

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1 was -- and I spoke with Ms. Tucker on the phone,
2 and they are both very adamant that they do not
3 want me involved whatsoever, that it is, you
4 know, violating their due process of law, and
5 they're threatening to sue if I -- you know, I
6 keep doing anything else, but I do have copies as
7 exhibits if you would allow them to be admitted
8 into evidence. I'm certainly happy to e-file
9 them, but just my correspondence with them, just,

10 you know --

11 THE COURT: Okay.

12 GUARDIAN AD LITEM: -- for the record
13 stating they just really don't want me, so --

14 THE COURT: Okay. Here's what I'm going to
15 have you do. If you'll just -- you can -- why
16 don't you -- have you showed that to
17 Ms. Blackwell?

18 GUARDIAN AD LITEM: Yes, sir, I have.

19 THE COURT: Do you have any objection to me
20 seeing them?

21 MS. BLACKWELL: No, Your Honor.

22 THE COURT: Ms. Ashley, do you have any --
23 Ms. Tucker, do you have any objection to me
24 seeing them?

25 THE DEFENDANT: I do.

↑ 29

1 THE COURT: You do?

2 THE DEFENDANT: Yes.

3 THE COURT: What is your basis of your
4 objection?

5 THE DEFENDANT: Because I am the power of
6 attorney over Curtis Tucker.

7 THE COURT: Okay. All right. I'm going to

8 overrule your objection.

9 Let me take a look at that correspondence.

10 Well, first of all, I want you to
11 understand, Ms. Tucker, that Ms. Yarborough has
12 not been appointed as an attorney to represent
13 you or your husband. She's simply a guardian to
14 make sure that the process that has been taking
15 place falls within the due process laws of the US
16 and State Constitutions of South Carolina.

17 I'm going to allow her to submit these as
18 exhibits. I'm going to just for the record state
19 what they are so that the record will be clear.
20 The first exhibit consists of a letter from
21 Ms. -- Ms. Woody addressed to Mr. Tucker and
22 Ashley Tucker advising them -- it's dated August
23 29th, advising them that she is in the process of
24 being appointed to serve as a guardian ad litem
25 nisi in the referenced action only.

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1 The Exhibit Number 2 is a -- appears to be a
2 copy of a letter signed by Curtis Tucker. Does
3 not have a date on it, but it in essence says
4 that Mr. Tucker do not want -- quote, "Do not
5 want any appointed public attorney to have
6 guardianship over me." It states that

7 Ms. Tucker -- "Ashley Tucker is my power of
8 attorney over me. She is handling everything
9 concerning my mortgage. I don't want any
10 contact. Any continuation or proceeding of an
11 attempt to appoint a public attorney is a
12 violation of my right to do" -- to do, d-o, not
13 d-u-e, but d-o process of the law.

14 The third exhibit is a -- is a letter
15 addressed to Ashley Tucker and Curtis Tucker
16 dated September 12th. That letter can speak for
17 itself.

18 The fourth exhibit is a letter attached
19 to -- it is a -- an envelope with a certified
20 mail sticker on it. Number 7017145000230089850
21 is the certified mail number, and it's addressed
22 to Ms. Woody, and it's from Ashley Tucker, power
23 of attorney, and Curtis Tucker. She's denying
24 any court-appointed attorney in this matter. No
25 contract. Well, she's not a court-appointed

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31

1 attorney. So that couldn't -- "any continuation
2 or proceeding of intent to appoint a public
3 lawyer is a violation of the right to due
4 process."

5 Again, she is not a public lawyer.

6 I don't know this Trinsey vs. Pagliaro. Do
7 you know that case?

8 THE DEFENDANT: Yes. Trinsey vs. Pagliaro.

9 THE COURT: I'm speaking to Ms. Woody.

10 GUARDIAN AD LITEM: Oh, no, sir.

11 MS. BLACKWELL: Your Honor, I did print it
12 just in case you wanted to see it.

13 THE COURT: Oh, did you? What does it say?

14 MS. BLACKWELL: Completely unrelated. I'm
15 not quite sure why it's cited. It's a
16 Pennsylvania case from the '60s.

17 BAILIFF: May I approach, Your Honor?

18 THE COURT: Sure. Thank you.

19 I've been handed a copy of the case entitled
20 Trinsey vs. Pagliaro. It's a US District Court,
21 Eastern District of Pennsylvania, entered May 28,
22 1964. Civil number 34873.

23 All right. I've read that case.

24 Thank you very much, Ms. Blackwell.

25 I don't -- based on the language of the

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1 letter that's in Exhibit 4, I don't think Tinsley
2 addresses the issue stated in the letter. That
3 states that counsel and brief or argument are not

4 based on facts before the Court. Therefore, it's
5 insufficient for a motion to submit a summary
6 judgment. I mean, that issue is not before us.
7 Tinsley really doesn't address that.

8 It really is an issue concerning whether or
9 not a federal court could exercise jurisdiction
10 over parties when it had both in personam and in
11 rem jurisdiction over the parties. That happens
12 occasionally but doesn't anything to do with the
13 letter -- the statement contained in the letter
14 of Exhibit 4 submitted by Ms. Kelley.

15 Now, Ms. Kelley, what I'm going to ask you
16 to do for me is please just upload these --

17 GUARDIAN AD LITEM: Yes, sir.

18 THE COURT: -- as the master's exhibits. I
19 think that's how you do it. Although, you're not
20 attaching a proposed order.

21 GUARDIAN AD LITEM: Okay. As a master's --

22 THE COURT: You may want to check with the
23 clerk on how to --

24 GUARDIAN AD LITEM: I'll check.

25 THE COURT: -- enter it into the record.

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1 GUARDIAN AD LITEM: Thank you.

2 THE COURT: Okay. All right. I'm now about
3 ready to rule.

4 Ms. Ashley -- Ms. Tucker, do you have
5 anything else you would like to tell me?

6 THE DEFENDANT: Yes. This lawyer is a
7 witness. She can't even be a witness because she
8 didn't see Curtis sign any mortgage or any --

9 THE COURT: Well, she's not acting as a
10 witness.

11 THE DEFENDANT: Yes, she is. She's acting
12 as an attorney for a witness and paperwork.

13 THE COURT: Who -- who's -- who you are
14 speaking of, "this attorney"?

15 THE DEFENDANT: Ms. Blackwell.

16 THE COURT: Ms. Blackwell?

17 THE DEFENDANT: Yes.

18 THE COURT: Ms. Blackwell is a lawyer for
19 the bank.

20 THE DEFENDANT: Yeah, she is a lawyer.

21 THE COURT: Right.

22 THE DEFENDANT: But in the US Constitution
23 that she signed, she knows the laws. She
24 cannot -- she cannot bear any paperwork or
25 anything of that nature under the law.

1 THE COURT: Okay. Anything else you would
2 like to tell me?

3 THE DEFENDANT: I would like for you to make
4 mandatory judicial notice to the paperwork in
5 this courtroom.

6 THE COURT: All right. Well, I've already
7 denied that motion. I have stricken it from the
8 record, the statement that was entitled Notice of
9 Special Strict Appearance.

10 THE DEFENDANT: Yeah, you stricken that one,
11 but you didn't say anything about a judicial --
12 mandatory judicial notice.

13 THE COURT: Of what?

14 THE DEFENDANT: What do you mean "of what,"
15 sir? You don't have the paperwork?

16 THE COURT: I don't know what you're talking
17 about. I'm not -- I'll take judicial notice of
18 the power of attorney that's been reported in the
19 records of Dorchester County. I take judicial
20 notice of the recorded deed. I take judicial
21 notice of the recorded mortgage.

22 THE DEFENDANT: Did you get any of this
23 paperwork right here, sir?

24 THE COURT: I don't know what you're
25 speaking of. What is it entitled?

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1 THE DEFENDANT: Can I give this to you?
2 Can you give this to him, please?

3 THE COURT: Show it to Ms. Kelley, show it
4 to Ms. Blackwell, before you hand it up to me.

5 GUARDIAN AD LITEM: Can I see it for a
6 second? I have seen some of this, Your Honor
7 already. I'll pass it down over to
8 Ms. Blackwell. I'm not really sure how it
9 relates.

10 MS. BLACKWELL: Your Honor, these documents
11 have already been ruled upon, and, therefore, we
12 would for the record object to entry into the
13 record, but we have no problem submitting them
14 for --

15 THE COURT: Ma'am, is that the -- is this
16 the same thing as the special notice?

17 MS. BLACKWELL: And the letter to Allen
18 Wilson and -- it's fine. You can take it up.

19 BAILIFF: All right. May I approach?

20 THE COURT: All right. Let me see what it
21 is and...

22 All right. For the record, just so that we
23 have a clear record of what I'm ruling on, these

24 papers are jumbled up pretty badly, but I'm
25 trying to put them back into order. These are

↑ 36

1 unreport- -- unfiled documents or copies of
2 documents.

3 The first one that I see is a notice of
4 special appearance which I've already ruled on.
5 That document was filed on -- in this case --
6 let's see. Was filed on September 30, 2019.

7 The next document -- the only way I can make
8 any sense of the documents are that they are
9 numbered. But, first of all, they're called
10 notice to -- principal is notice to agent.
11 Notice to agent is notice to principal. Court
12 Rule 5.1 Constitutional challenge to a statute,
13 28 US Code 2403. And the questions can -- there
14 are ten questions. This particular document has
15 not been filed in the record of this case, so
16 it's not before me, and I am not going to take
17 judicial notice of it at the request of
18 Ms. Tucker.

19 A third document is a stand-alone
20 acknowledgment dated the 28th of September, 2019,
21 with the page number 24. I don't know what it's
22 attached to, but there are no documents here

23 consisting of 24 pages, and then the -- excuse
24 me. There is a -- excuse me. There was a --

25 THE DEFENDANT: Can you take this to him,

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1 ma'am?

2 THE COURT: -- an additional question 11 and
3 question 12 that goes to -- it's not been filed
4 in the record of the case. And then there is a
5 stand-alone statement which is a Defendant's
6 Motion For Mandatory Judicial Notice, Motion to
7 Be Heard, and that is not filed in the record.

8 Is there anything else, Ms. Tucker?

9 THE DEFENDANT: I don't understand how it
10 wasn't filed in the record when you stated the
11 last time I was in the court I had five days to
12 get you the paperwork to the Courts, and I sent
13 that document to the -- the court lady. I also
14 sent it to the lawyer as well too.

15 THE COURT: Well, I mean, you have to file
16 them. I don't know. How did you do that?

17 THE DEFENDANT: I sent it to this courtroom.

18 I also sent record -- copies to the lawyer as
19 well. I have proof right here. I have proof.
20 Just like I sent her a letter, I have stamps

21 where I got a green card back.

22 THE COURT: Okay. Well --

23 THE DEFENDANT: I sent it to the lawyer as
24 well. I sent everything.

25 THE COURT: I don't -- I don't have anything

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1 in the -- in the record. I don't know. You must
2 have -- you must not have filed it properly, and
3 I don't know that you would even have the right
4 to file it on behalf of Mr. Tucker because you're
5 not a lawyer, and a pro se non-lawyer doesn't
6 have the power or authority to file documents on
7 behalf of -- of another defendant.

8 The appointment of US agent under a power of
9 attorney rarely allows you to speak on behalf of
10 your agent -- on behalf of your principal. It
11 doesn't give you the right to represent them in
12 court. You are -- you -- you can stand in his
13 shoes --

14 THE DEFENDANT: Right.

15 THE COURT: -- in court, but you cannot
16 represent him as if you are a lawyer before the
17 Court. You cannot stand for him pro se as his
18 lawyer in this court.

19 THE DEFENDANT: Right. I'm standing as him

20 in this court.

21 THE COURT: You can't do it. You can't do
22 that.

23 THE DEFENDANT: Where is there a law that
24 says I can't?

25 THE COURT: Well --

↑

39

1 THE DEFENDANT: With the power of attorney,
2 that's where it said I could.

3 THE COURT: The power of attorney only
4 appoints you as his agent.

5 THE DEFENDANT: Okay.

6 THE COURT: As his agent, then you would
7 have the right, just like he would, to go hire a
8 lawyer, but because you're not a lawyer, you --
9 as his agent, you cannot represent him in the
10 court as a lawyer pro se, and that's -- that's
11 the rules of the South Carolina Supreme Court.

12 THE DEFENDANT: Well, I did the same exact
13 rules, sir, that I did last time, and you guys
14 accepted my paperwork. There's nothing that I
15 didn't do this time that I didn't do last time.
16 The only thing is I sent it within five days.

17 THE COURT: Do you have filed copies of what

18 you submitted to the Court?

19 THE DEFENDANT: Do I have filed -- no. I
20 don't -- I did the same thing I did last time,
21 and you guys said would -- if it was within five
22 days of the court, you said that -- and I had to
23 submit it to the lawyer as well. If you go back
24 and you read the records, that's what you stated.

25 THE COURT: Okay. Well, these -- these

↑ 40

1 particular documents are not in the record of the
2 file of the Court. Therefore, I am -- I'm unable
3 to read them from the record that's before me,
4 and based on your position that you are
5 attempting to file them as Mr. Tucker's -- on
6 Mr. Tucker's behalf pro se, I'm not going to
7 allow you to do that because that would be the
8 unauthorized practice of law.

9 THE DEFENDANT: So are you taking my South
10 Carolina Constitution? Are you keeping that on
11 file?

12 THE COURT: I'm sorry?

13 THE DEFENDANT: Are you taking in
14 consideration as my -- of my South Carolina
15 Constitution?

16 THE COURT: What do you mean by that? I'm

17 not sure. That's not a very clear question to
18 me.

19 THE DEFENDANT: The South Carolina
20 Constitution that I gave you last time, are you
21 keeping -- are you taking that into
22 consideration?

23 THE COURT: You mean the -- is this the
24 Constitution that was dated like in the 1700s?

25 THE DEFENDANT: That's what you swore under,

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41

1 right, sir?

2 THE COURT: I'm not sure I'm following you,
3 Ms. Tucker.

4 THE DEFENDANT: It's the law, right? 1868,
5 South Carolina Constitution?

6 THE COURT: Well, the Constitution is the
7 South Carolina Constitution which I -- I follow.

8 THE DEFENDANT: Right.

9 THE COURT: You need to show me what you're
10 talking about because I -- I get lots of papers
11 before me, and I can't recall whether it was your
12 case or not.

13 THE DEFENDANT: Well, you took my original
14 document, and I would -- you know, I would like

15 to have that one back. This was a copy that I
16 originally made for you. You said that you were
17 going to authenticate it to see if it was the
18 original, to see if it was organic. You don't
19 recall that?

20 THE COURT: I don't recall it.

21 THE DEFENDANT: Yes.

22 THE COURT: Do you have a copy of it?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Let me look at it.

25 Do you know what she's talking about,

↑ 42

1 Ms. Blackwell?

2 MS. BLACKWELL: Your Honor, I believe there
3 was a question about whether or not the South
4 Carolina Constitution could be entered as
5 evidence, and we agreed that it was okay to take
6 judicial notice of the Constitution --

7 THE COURT: Okay.

8 MS. BLACKWELL: -- but there was a relevance
9 issue as far as anything else --

10 THE COURT: Right. Okay.

11 MS. BLACKWELL: -- concerned with that.

12 THE COURT: Now that I see this, it's
13 ringing bells.

14 So, yes, I will take judicial notice of this
15 Constitution for what it's worth.

16 THE DEFENDANT: Okay. Now, how can I get my
17 original back? Because that's not the original.
18 You took my original to -- to authenticate it --

19 THE COURT: I think you --

20 THE DEFENDANT: -- because --

21 THE COURT: -- admitted it into evidence.

22 THE DEFENDANT: No. I -- yeah, because
23 you -- because you asked her which one was the
24 copy and which one was authentic, and she said
25 she couldn't tell, so you asked me which one was

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1 original, and I gave it to you, and you took it
2 into evidence.

3 THE COURT: Okay. So for the purpose of
4 this hearing, I've taken judicial notice of the
5 document. If it was submitted in a prior hearing
6 as a part of the file, you can't take the
7 evidence out of the file. So it's in the -- in
8 the permanent file of the Court.

9 THE DEFENDANT: Okay.

10 THE COURT: Anything else?

11 THE DEFENDANT: No.

12 THE COURT: Okay. All right.
13 Ms. Blackwell, you submitted a proposed order.
14 I'm going to review that order at this time.
15 MS. BLACKWELL: Thank you, Your Honor.
16 THE COURT: Before I go any further,
17 Ms. Kelley, do you have -- Ms. Woody, do you have
18 anything further?
19 GUARDIAN AD LITEM: No, sir, Your Honor,
20 unless it would be appropriate even though --
21 because I have been appointed as guardian ad
22 litem to ask for an extra month for them to be
23 able to get their belongings out of the house
24 just on behalf -- that's all I would ask as far
25 as the sale date.

↑ 44

1 THE COURT: Okay. Thank you.
2 THE COURT: Ms. Blackwell, I thank you for
3 submitting the proposed order. Based on the
4 record that's before me, both the documentary
5 evidence as well as your presentation,
6 Ms. Blackwell, and also taking into account the
7 statements made by Ms. Tucker, I am going to
8 adopt the findings of fact, the conclusions of
9 law, set forth in the proposed order.
10 Specifically, I am making a finding that the

11 attorney's fees of \$6,039 are reasonable in the
12 circumstance of this case and should be added to
13 the principal due under the note. I'm also
14 making a specific finding that the accrued
15 interest on the loan through today's date is
16 \$14,780.34. That is on the principal balance of
17 66,807.34.

18 The bank has incurred late charges of
19 \$400.78 and has expensed or escrowed advanced
20 escrows for insurance and property taxes in the
21 amount of \$3,136.95. The cost of the litigation,
22 which I also find to be reasonable, has been
23 itemized in the affidavit of attorney's fees and
24 costs by Ms. Blackwell. I find those costs to be
25 reasonable in the amount of \$1,861.79, so that

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1 the total amount due when I add those numbers
2 together is \$93,026.20. Interest accrues on the
3 judgment at the rate of \$14.69.

4 Now, I'm going to be signing this judgment
5 today, so that will become the -- the interest
6 will accrue at the rate of 7.25 percent on the
7 unpaid balance of the judgment which I'm
8 determining today.

9 The plaintiff has expressly demanded a right
10 to a deficiency judgment against Mr. Curtis R.
11 Tucker pursuant to the statute in South Carolina.
12 Plaintiff may waive its right to this personal
13 deficiency judgment at any time prior to the
14 foreclosure sale.

15 There are some parties added to the lawsuit
16 because they have subordinate interest in the
17 property, The Housing Corporation and South
18 Carolina Federal Credit Union. And Ms. Ashley
19 Tucker is named as a party because a
20 half-interest in the property was conveyed to her
21 after the execution of the mortgage, and,
22 therefore, she's a proper party to the suit.

23 The -- based on the findings of the amount
24 of debt, I'm concluding that it is a proper
25 remedy in South Carolina to foreclose the lien of

↑ 46

1 the mortgage by way of a sale of the real estate
2 that secures the note by way of the mortgage
3 lien, the terms and conditions of the order being
4 adopted as well which set forth the terms and
5 conditions of the sale, and I will follow those
6 terms and conditions as I sell this property.

7 I'm going to direct that the sale occur on

8 the first available sales date in December. That
9 date is December the 3rd of 2019.

10 Ms. Woody, I've taken into account your
11 request that the sale be postponed for 30 days to
12 allow the defendants the opportunity to gather
13 things and so forth. But since the plaintiff is
14 seeking a deficiency judgment, the final sale
15 won't occur until the first -- until 30 days
16 after the 3rd which would be January the 2nd,
17 2020, which should give the Tuckers adequate time
18 over the holidays and school to move their
19 belongings and get into a different location.

20 The foreclosure of the lien includes the
21 foreclosure of the 2003 Champion Modular Home
22 which is approximately 2,400 square feet, and it
23 will be sold along with the real estate upon
24 which it rests. At this time I'm going to sign
25 the order.

↑

47

1 Notice of sale is in the order. I'm going
2 to now sign that.

3 Ms. Blackwell, ask that you have this
4 advertised for me in the Summerville Journal
5 Scene three weeks preceding the date of the sale

6 December the 3rd.

7 Any questions about that?

8 MS. BLACKWELL: Your Honor, the
9 Summerville -- I'm sorry. What was that?

10 THE COURT: Journal Scene.

11 MS. BLACKWELL: Okay.

12 THE COURT: It's a local newspaper in
13 Summerville. You can use the Post and Courier if
14 you desire, but it may be a little cheaper and
15 less expensive to use The Journal Scene.

16 MS. BLACKWELL: Okay. Thank you.

17 THE COURT: It's owned by the same company.

18 All right. That concludes the matter.

19 Thank you very much. I appreciate everybody's
20 attendance.

21 GUARDIAN AD LITEM: Thank you, Your Honor.

22 THE COURT: Thank you.

23 - - -

24 (Hearing concluded at 12:12 p.m.)

25 - - -

↑ 48

1 CERTIFICATE OF REPORTER

2 I, Deidre Osborne, Court Reporter and Notary

3 Public for the State of South Carolina at Large, do

4 hereby certify:

5 That the proceedings and evidence are
6 contained fully and accurately in the notes taken by
7 me in the above cause and that it is a correct
8 transcript of the same.

9 I further certify that I am neither related
10 to nor counsel for any party to the cause pending or
11 interested in the events thereof. Witness my hand, I
12 have hereunto affixed my official seal this 1st day
13 of December, 2019, at Lexington County, South
14 Carolina.

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Deidre Osborne,
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
June 13, 2029

1 STATE OF SOUTH CAROLINA
2 COUNTY OF DORCHESTER MASTER IN EQUITY COURT

3 FARMERS & MERCHANTS BANK
4 OF SOUTH CAROLINA,

5 Plaintiff

6 V.

TRANSCRIPT OF RECORD
2019-CP-18-003802

7 CURTIS R. TUCKER, ET. AL.,

8 Defendants.

9

10 June 17, 2019
11 St. George, South Carolina

12 B E F O R E:

13 THE HONORABLE JAMES E. CHELLIS, JUDGE

14

15

16 A P P E A R A N C E S:

17 ELIZABETH A. BLACKWELL, ESQ.
18 Attorney for the Plaintiff

19

Ashley Tucker
20 Defendant appearing pro se

21

22

23

24

24

25

2

1

I N D E X

2

Page

3

Introduction of the case

3

Brian West:

4

Direct examination by Ms. Blackwell

5

6

7

8

E X H I B I T S

9

Plaintiff's:

10

No. Description

I.D./EVD.

11

A Affidavit of attorney's fees

3/28

B N/A

12

C Promissory note

3/24

D Mortgage

3/25

13

E Affidavit of debt

3/28

14

Defendant's:

15

1 S.C. Constitution

12/69

2 Power of Attorney

12/65

16

3 Letter

12

17

18

** Uh-huh = Affirmative

Huh-uh = Negative

19

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3

1 (Plaintiff Exhibits Letters A, C, D, and E were
2 premarked for identification only.)

3 THE COURT: Farmers & Merchants Bank
4 of SC against Curtis R. Tucker and Ashley Tucker,
5 South Carolina Housing Corporation Act, South
6 Carolina State Housing And Finance and Development
7 Authorities, South Carolina Leadership and
8 Defendant Lending Program, and South Carolina
9 Federal Credit Union. The civil action number is
10 2019-CP-18-0003802. Present today on behalf of
11 plaintiff is Ms. Elizabeth Ann Blackwell with the
12 law firm of Nexsen Pruet. She has also brought a
13 witness with her, Brian West of Moncks Corner with
14 Farmers & Merchants Bank. And we also have
15 present in the courtroom today Ashley Tucker who
16 is a named defendant.

17 So, as we were getting started in,
18 before the, I officially announced the case, I
19 noted that I had received some correspondence from

20 what appeared to be Curtis Tucker, and then I
21 had -- there's another letter that was delivered
22 to us. I guess you sent it, Ms. Tucker -- by
23 now -- what was -- how did you deliver this to me?

24 MS. TUCKER: I sent it, it was sent by
25 mail.

4

1 THE COURT: Okay. So I received some
2 correspondence. I don't know what was in the
3 package; it was just delivered to my office.

4 COURT REPORTER: I'm sorry to
5 interrupt. I'm having a hard time hearing.

6 THE COURT: Okay. Have you got these
7 microphones on?

8 THE CLERK: I'll check and see.

9 COURT REPORTER: They're on, but
10 they're not on very loud.

11 THE CLERK: This one's on? Is it on?

12 COURT REPORTER: Yeah, they're all on.
13 I checked them this morning when I came in. And
14 you were talking about receiving the package.

15 THE COURT: Yeah, I was informing --
16 before we got started I indicated that I received
17 a package in the mail. Ms. Tucker confirms that

18 she sent it certified mail. I, what I do when I
19 get something like that is, normally if my -- and
20 Ms. Gause will open it. We got this
21 correspondence. What they do with it, I simply
22 stick it on a -- put it back in the envelope and
23 we'll deal with it when we get to the case. And
24 so that's what happened, that's why it's an open
25 package that you saw.

5

1 Ms. Blackwell, have you been able to
2 review what was in the package?

3 MS. BLACKWELL: Briefly, Your Honor,
4 yes. And we would object to it being entered into
5 evidence as it was not timely, nor properly served
6 upon us, and it's a default case. The defendants
7 were served in February of 2019 so the time to
8 file it and time to answer has expired. It looks
9 to be -- I'm fine with handing it up for judicial
10 review, but I just ask it not be entered into
11 evidence.

12 THE COURT: All right. So Ms. Ashley,
13 let me do this. I'm just gonna enter -- I'm gonna
14 state for the record what was offered by, through
15 the mail, so I can have a record of what it is so

16 if you'll just hand it up, I'm gonna publish the
17 documents. Or Ms. Ashley, I'm gonna have you
18 publish the documents so it's your documents.
19 Tell me what they consist of Ms. Ashley --
20 Ms. Tucker.

21 Hand those to Ms. Tucker.

22 And Ms. Tucker, if you'll tell me what
23 it is that was in the package that you sent to me.

24 MS. TUCKER: In this, the power of
25 attorney.

6

1 THE COURT: What is it dated? You'll
2 need to state the title of the instrument.

3 MS. TUCKER: The title of this
4 instrument --

5 THE COURT: The date of the
6 instrument.

7 MS. TUCKER: Okay. The title --

8 THE COURT: Hold on a second. Maybe,
9 just be -- I know you're representing yourself. I
10 believe it might be quicker if I put it on the
11 record probably, okay --

12 MS. TUCKER: Okay.

13 THE COURT: -- since you're

14 representing yourself.

15 MS. TUCKER: That's fine.

16 THE COURT: Do you have any objection
17 on that?

18 MS. TUCKER: Yes, I do.

19 THE COURT: You object to me doing
20 that?

21 MS. TUCKER: No, not of you doing
22 that, but I object.

23 THE COURT: You object to her
24 objection.

25 MS. TUCKER: Yes.

7

1 THE COURT: I understand that, okay.
2 I'll let you speak too. Hand it up to me.

3 MS. TUCKER: All this too, Sir, I'm
4 sorry.

5 THE COURT: All right. What I'm gonna
6 do is publish these documents that were sent to
7 me.

8 MS. TUCKER: This too, Sir.

9 THE COURT: All right. Sent by
10 certified mail to me as James E. Chellis at my
11 address here at the courthouse from Curtis Tucker

12 under power of attorney Ashley Tucker. At 155
13 Shady Lane, Summerville, South Carolina 29485 is
14 the return address on this certified mail package.
15 That was -- has a certified mail identification
16 number 70181130000105597356, and it was postdated
17 June the 10th, 2019. Received, or marked
18 received, by the Clerk's Office on June 11th,
19 2019.

20 The first instrument in this package
21 consist of a recorded document entitled "Durable
22 Power of Attorney Finance of Curtis Tucker." It
23 is recorded in the Clerk of Court's Office of
24 Dorchester County in, on December 13th, 2016, Book
25 10569, Pages 16 through 79. Seems to be signed by

8

1 Curtis Tucker as a principal, naming Ashley Tucker
2 as attorney-in-fact. The document was returned to
3 Curtis and Ashley Tucker at 155 Shady Lane,
4 Summerville, South Carolina 29485.

5 The next document, attached to the
6 next document is a Certificate of Acknowledgment
7 dated February 28th, 2019. A notary by the name
8 of Charles Aaron, A-A-R-O-N, Kelley, states that
9 Ashley Tucker proved to him on the basis of

10 satisfactory evidence to be the person whose name
11 is subscribed to within, to the within instrument
12 and acknowledged to me, acknowledged that she
13 executed the same on the instrument. That is
14 a cer-- I guess, a certificate of acknowledgment.
15 At the very last page of this document, it's
16 entitled the Constitution of the State of South
17 Carolina, of the ordinances thereunto appended,
18 adopted by the constitutional convention which was
19 held at Charleston and adjourned on the 17th of
20 March 1868. The very last page of this instrument
21 which appears to be -- where did you get this
22 document, Ms. Tucker?

23 MS. TUCKER: I got it from Columbia
24 and I ordered it --

25 THE COURT: You ordered it from

1 Columbia.

2 MS. TUCKER: Yes.

3 THE COURT: Where did you order it
4 from?

5 MS. TUCKER: From the archives.

6 THE COURT: From the?

7 MS. TUCKER: From the archives.

8 THE COURT: The state archives?
9 MS. TUCKER: Yes.
10 THE COURT: And they sent this to you?
11 MS. TUCKER: Yes, sir.
12 THE COURT: And then at the very last
13 page you put your signature on it?
14 MS. TUCKER: Yes.
15 THE COURT: All right. So that is
16 what that, this document consists of is -- I don't
17 know how many pages it says, but it --
18 MS. TUCKER: I think it's 37, sir.
19 THE COURT: 37 pages?
20 MS. TUCKER: Yes, sir.
21 THE COURT: There is a -- the title
22 page is what I read and it's marked 46983, and
23 then the next page begins with the number 4.
24 MS. TUCKER: I, I have the original
25 one which is the one I ordered from them. That's

↑
1 a copy.

2 THE COURT: This is a copy.

3 MS. TUCKER: Yes, sir.

4 THE COURT: All right. Well, is the
5 original one --

6 MS. TUCKER: This is the original.
7 THE COURT: -- Exemplified, or is it
8 in any way certified as being a --
9 MS. TUCKER: Yes. That one, yes, it
10 is. It's certified.
11 THE COURT: Well, I mean, is it
12 exemplified?
13 MS. TUCKER: What do you mean is it
14 exemplified?
15 THE COURT: Let me see what you have
16 and I'll determine if it's been exemplified.
17 Stated on this packet which Ms. Tucker handed up
18 states, "Reproduced from microfilm of the South
19 Carolina Department of Archives, the history under
20 South Carolina Constitution and organic documents,
21 the South Carolina Constitution 1868 with the
22 number S--" I believe it may be S131096, pages 3
23 through 34. Then the last num--- then it's S7744,
24 or 64. It's difficult to read the handwriting.
25 Again, I'm gonna let Ms. Blackwell take a look at

11

1 that and see if that looks to be the same thing
2 that was sent by way of a copy.
3 Ms. Blackwell, this is a copy that was

4 handed up.

5 MS. BLACKWELL: Your Honor, in brief
6 review, this does appear to be the same, a copy of
7 the same document based on my initial review, not
8 going through it page by page.

9 MS. TUCKER: Sir, I have the envelope
10 where it came in where I ordered it so that's just
11 a -- it's not a copy.

12 THE COURT: All right. Well, we're
13 just gonna mark it for identification only now and
14 then I'll wait till I hear from you as to -- so,
15 if the court reporter would mark this as
16 defendant's exhibit.

17 MS. TUCKER: Can I get my original
18 back, though, please.

19 THE COURT: Tell you what we'll do.
20 I'm gonna give you both back and you decide what
21 you want to do, and I'm gonna give it to you. I
22 was just trying to identify them.

23 MS. TUCKER: Oh, that's fine. That's
24 fine.

25 COURT REPORTER: Which one was the

1 original? The one with the stapled page on the

2 front?

3 MS. TUCKER: They both have the
4 stapled pages. The one that has -- can I come up
5 there and show you?

6 THE COURT: Come on up, Ms. Tucker,
7 and identify which one is the original that you
8 got from the state office.

9 MS. TUCKER: This was the original.
10 No, this is the original.

11 (Pause.)

12 THE COURT: All right. Mark the
13 original for identification only as the South
14 Carolina Constitution 1868. And then this Power
15 of Attorney that was recorded, mark that as
16 Defendant's Exhibit No. 2. That is Ashley
17 Tucker's Exhibit Number 2, Defendant Ashley
18 Tucker's Exhibit Number 2 for identification
19 purposes only.

20 (Whereupon, Defendant Exhibit Nos. 1, 2, and 3
21 were marked for identification only.)

22 THE COURT: And now I have a third
23 document that is preceded by a notary certificate
24 of service. If you will explain this third
25 document to me, Ms. Tucker.

1 MS. TUCKER: Yes, sir.

2 THE COURT: Go ahead.

3 MS. TUCKER: I'm just -- I'm the power
4 of attorney of Curtis Tucker and I'm here in the
5 defense for him.

6 THE COURT: Okay. All right. Is that
7 what that document is saying?

8 MS. TUCKER: It's saying, it's saying
9 that I'm appearing under strict appearance.

10 THE COURT: Go ahead. What is it?

11 MS. TUCKER: It's basically stating
12 that I'm appearing underneath strict appearance, a
13 special appearance.

14 THE COURT: All right. Well, first of
15 all, let me clear up a few things, Ms. Tucker, for
16 you. Are you a licensed, licensed attorney in the
17 state of South Carolina?

18 MS. TUCKER: No, I'm not.

19 THE COURT: All right. You can -- as
20 a individual you cannot appear in court for
21 another person. You may have another person's
22 agency power, but you can't appear in court to
23 represent a principal under general rule of power
24 of attorney unless you're an attorney at law or

25 licensed by the South Carolina Supreme Court and a

14

1 member of the South Carolina bar. Now, you can --
2 I will allow you to testify. You can represent
3 yourself, but you can't represent Mr. Curtis --

4 MS. TUCKER: Yes.

5 THE COURT: -- Tucker. Okay?

6 MS. TUCKER: Okay.

7 THE COURT: All right. So do you want
8 to identify that document for purposes of the
9 record? You want me to identify it as I did the
10 other two. It would probably be a good idea.

11 MS. TUCKER: Yeah, you can.

12 THE COURT: Okay, I can do that.

13 Have you seen this, Ms. Blackwell?

14 MS. BLACKWELL: No, Your Honor. I've
15 seen the power of attorney, but I've not seen the
16 other documents presented today.

17 MS. TUCKER: All of those documents
18 was inside that package that I sent to you, Sir.

19 THE COURT: They were all in the
20 package?

21 MS. TUCKER: Yes, even that one.

22 THE COURT: All right. This is

23 identified -- I'm gonna -- let's for purposes of
24 identification, this is a third exhibit proffered
25 by Ashley Tucker. It's preceded by a notary

15

1 certificate of service. Again, it's signed by a
2 notary whose name is Charles Aaron Kelley. It's
3 dated April 20th, 2019. It designates notice of
4 special strict appearance. Attached to that
5 acknowledgment is a document entitled Notice of
6 Special Appearance in County Court and in court of
7 Dorchester County, South Carolina civil division.
8 It gives the following statement which is styled:
9 In the Circuit Court of the Thirteenth Judicial
10 Circuit of the State of South Carolina and before
11 Dorchester County in the Civil Division, law
12 court, James E. Chellis, d/b/a circuit judge;
13 Cheryl Graham, d/b/a clerk of court. And the
14 court case number is 2019 -- cited at
15 2019-CP-18-00302. And the title of the Document,
16 "Notice of Special Strict Appearance," is
17 underlined and then underneath that in the title
18 of the document is not general-unconstitutional
19 unsanctioned non-common. This document consists
20 of two pages. All right, so that's identified for

21 the record. It doesn't really make a lot of sense
22 to me just getting through it, and I'll take
23 another look at it if it's necessary.

24 Now Ms. Blackwell, you had indicated
25 in your objection that you -- you objected to this

16

1 being made a part of the record of the case based
2 on the fact that the defendant Curtis Tucker and
3 defendant Ashley Tucker are in default. Is that
4 correct?

5 MS. BLACKWELL: That's correct, Your
6 Honor, and I would also argue improper foundation
7 and relevance.

8 THE COURT: All right, thank you very
9 much.

10 Now you have a response to that,
11 Ms. Tucker?

12 MS. TUCKER: Yes.

13 THE COURT: You admit that you're in
14 default?

15 MS. TUCKER: Yes, sir.

16 THE COURT: Now you're admitting --
17 when you say in default, do you mean in default of
18 pleading this case? That's what we're referring

19 to. The word "default" referring to is that you
20 have failed to answer the Complaint.

21 MS. TUCKER: No, sir, I answered the
22 Complaint.

23 THE COURT: Where is that? When did
24 you file that?

25 MS. TUCKER: I have, I have also sent

17

1 her paperwork that I had sent to the Attorney
2 General Office as well. I sent her paperwork.

3 THE COURT: Well, I'm looking at the
4 file, Ms. Ashley, the Court's file.

5 MS. TUCKER: Yes.

6 THE COURT: And I don't see where you
7 filed an answer to court.

8 Ms. Blackwell, did you receive
9 anything in the form of what may have appeared to
10 be an answer?

11 MS. BLACKWELL: Your Honor, we did
12 receive in February a copy of what looks to be a
13 letter to the Attorney General Alan Wilson. This
14 was not filed with the Court. This was two months
15 after service and did not appear to be an answer
16 so.

17 THE COURT: Okay. I have before me an
18 order of reference, an order of reference filed --
19 it was filed on April the 11th, 2019, where this
20 matter was referred to me. Certification -- filed
21 by Ms. Blackwell, that it was entered in the
22 record with this case on April the 11th indicating
23 that the defendants failed to participate in
24 foreclosure intervention; and that was served
25 with, along with the order of reference and she --

18

1 default -- in non-willfully service. And then we
2 have also April 11th, 2019, Ms. Blackwell's
3 certificate that more than 30 days elapsed since
4 the service of the summons and complaint upon the
5 defendants and that the defendants Curtis R.
6 Tucker and Ashley Tucker, South Carolina Federal
7 Credit Union have not answered, failure to
8 otherwise defend this action pursuant to Rule
9 55(a) of South Carolina Rules of Civil Procedure
10 and is in default.

11 All right. So I'm gonna make, just to
12 clarify, the defendants Tucker are in default of
13 the pleading this case so, therefore, what that
14 means, Ms. Tucker, for you is that under the rules

15 of civil procedure you have admitted the
16 allegations that are contained in the Complaint.
17 However, at this stage Ms. Blackwell is required
18 to prove the amount of her damages and also to
19 seek the remedy that of foreclosure which is what
20 she's asking the Court. What I'm gonna do is
21 allow her to go forward at this point. And once
22 she had completed her case, I'll give you an
23 opportunity to speak to me about the damages that
24 she's asserting and the remedy. Okay?

25 (There was no response.)

19

1 THE COURT: So before we get there
2 though, I need to address her inquiry of motion,
3 or your objection to the record being entered that
4 she submitted, okay?

5 MS. TUCKER: Okay.

6 THE COURT: So Ms. Tucker, tell me why
7 I should make the records you submitted that I've
8 identified for information only as part of the
9 record in this case.

10 MS. TUCKER: Because by U.S.
11 Constitution it states in the U.S. Constitution
12 that I have rights.

13 THE COURT: And what rights are you
14 speaking of?

15 MS. TUCKER: I have rights to my home.
16 I don't have --

17 THE COURT: Has anybody denied you
18 your right to your home?

19 MS. TUCKER: You got -- basically
20 they're trying to take it away from me.

21 THE COURT: Okay.

22 MS. TUCKER: My questions have not
23 been answered from the attorney general Alan
24 Wilson. They have not answered my questions.
25 Nobody has not yet responded to me.

20

1 THE COURT: Okay. Well, you're gonna
2 get an opportunity to answer, to proceed -- here's
3 the problem that you're facing is that the
4 allegations that are contained in the Complaint,
5 that is, that you executed a note, or rather
6 Curtis executed a note against -- let me hear
7 from -- the allegations contained in the Complaint
8 have been deemed admitted. Ms. Blackwell now is
9 gonna have to show me the basis for her damages
10 that she's claiming, that is, the amount of money

11 that's owed to the bank. And she'll seek the
12 remedy of foreclosure which is typically a case of
13 this nature because this is -- she's alleged that
14 you've, you're -- that Curtis Tucker signed the
15 mortgage. Subsequently to the signing of that
16 mortgage, apparently Curtis conveyed a half
17 interest of the property to you based on her
18 argument. But I'm gonna need to hear her put that
19 evidence before me so I can take a look at it, and
20 then I'll make a decision in terms of the amount
21 of debt after I've heard from you, okay?

22 So go ahead, Ms. Blackwell.

23 MS. BLACKWELL: Thank you, Your Honor.
24 We are here today on behalf of Farmers Merchant's
25 Bank with respect to a note entered into by Curtis

21

1 Tucker on October the 3rd, 2013. That note is in
2 default for the June 8th, 2018, payment forward.
3 I have here with me Brian West, the chief credit
4 officer on behalf of Farmers & Merchants Bank
5 who's prepared to testify as to debt figures.

6 THE COURT: Okay. Would you like to
7 call that witness.

8 MS. BLACKWELL: I would.

9 THE COURT: All right. Mr. West, come
10 on up please.

11 Now Ms. Blackwell, while he's coming
12 up to the stand, I note in your Summons and
13 Complaint, or rather the filing of your Complaint,
14 that you attached a copy of the note as an exhibit
15 to the Complaint, as well as a copy of the
16 mortgage by Curtis Tucker. Such, Mr. Tucker
17 failed to answer the Complaint. Is it your
18 position these two documents have been admitted
19 to?

20 MS. BLACKWELL: Yes, Your Honor. And
21 also, Mr. West is also prepared to testify
22 regarding the authenticity of the pending
23 mortgage.

24 THE COURT: Okay, thank you. So
25 Mr. West, would you raise your right hand please,

22

1 sir.

2 Thereupon,

3 BRIAN WEST,
4 being first duly sworn by the Court, testified as
5 follows:

6 THE COURT: Have a seat. Answer any

7 questions Ms. Blackwell may have.

8 DIRECT EXAMINATION

9 BY MS. BLACKWELL

10 Q Good morning, Mr. West. Would you
11 please state for the record who are you employed
12 by?

13 A Farmers & Merchant's Bank of South
14 Carolina.

15 Q And what is your position at the bank?

16 A Chief credit officer.

17 Q Are you familiar with the policies,
18 procedures, and business practices of Farmers &
19 Merchants Bank of South Carolina?

20 A Yes, I am.

21 Q Do you have personal knowledge of
22 Farmers & Merchants procedures for creating and
23 maintaining records pertaining to loan payments
24 made on this loan?

25 A Yes, I do.

23

1 Q Are you familiar with a loan account
2 number ending in 6586 entered by Curtis Tucker?

3 A Yes, I am.

4 Q Was this is a consumer loan or a

5 business loan?

6 A It's a consumer loan.

7 Q When was the loan entered into?

8 A October 3rd of 2013.

9 Q What was the original amount of the
10 note?

11 A \$89,275.

12 MS. BLACKWELL: Your Honor, may I
13 approach.

14 THE COURT: Sure.

15 BY MS. BLACKWELL

16 Q Mr. West, I'm handing you what has
17 been premarked for this case hearing as
18 Plaintiff's Exhibit C for identification. Do you
19 recognize this?

20 A Yes, I do.

21 Q And what is it?

22 A It's a promissory note.

23 Q Is this a record that Farmers &
24 Merchants keeps in the ordinary course of its
25 business pursuant to the procedures which you

1 testified to?

2 A Yes, it is.

3 Q Does this document fairly and
4 accurately represent the note for this account
5 6586?

6 A Yes, it does.

7 MS. BLACKWELL: Your Honor, at this
8 point I would move that this exhibit be introduced
9 into evidence.

10 THE COURT: All right. Any objection?

11 (There was no response.)

12 THE COURT: Hearing none, I'm gonna
13 enter this into evidence as Plaintiff's Exhibit C.
14 (Plaintiff's Exhibit Letter C was admitted into
15 evidence.)

16 BY MS. BLACKWELL

17 Q Mr. West, I'm now handing you what has
18 been marked for today's hearing as Plaintiff's
19 Exhibit D. Do you recognize this document?

20 A Yes, I do.

21 Q And what is it?

22 A It's a mortgage.

23 Q And who gave the mortgage?

24 A Curtis R. Tucker.

25 Q Okay. And does it secure the note you

1 referenced earlier?

2 A Yes, it does.

3 Q What does it encumber? What is the
4 collateral?

5 A It's real estate at 155 Shady Lane,
6 Summerville, South Carolina.

7 Q Okay. And was this mortgage recorded?

8 A Yes, it was.

9 Q Is this a record that Farmers &
10 Merchants keeps in the ordinary course of its
11 business pursuant to the procedures, including
12 this, you testified to?

13 A Yes, we do.

14 MS. BLACKWELL: Your Honor, at this
15 time plaintiff would ask that the premarked
16 Exhibit D, a copy of the mortgage, be entered into
17 evidence.

18 THE COURT: Ms. Tucker, any objection?

19 MS. TUCKER: I object, Your Honor,
20 because my husband hadn't signed a mortgage with
21 this lady or this man.

22 THE COURT: All right. Objection is
23 overruled. It's entered into evidence.

24 (Plaintiff's Exhibit Letter D was admitted into
25 evidence.)

1 THE COURT: By the way, Miss -- again,
2 I'm gonna remind you, Ms. Tucker, you cannot
3 represent before this court Curtis Tucker. Only,
4 you can only represent yourself, so entering an
5 objection on behalf of Curtis Tucker is not a
6 valid objection. And moreover, I will tell you
7 that this document, let me take a look at it real
8 quick please. This document has been recorded in
9 the Clerk of Court's Office of Dorchester County.
10 It was recorded October the 9th, 2013. And in
11 addition to Mr. West's authenticity of the
12 document which creates the foundation for its
13 admissibility, I also take judicial notice of the
14 document. This is a document of Dorchester
15 County. So it's admitted into evidence as
16 Plaintiff's Exhibit D.

17 MS. BLACKWELL: Thank you, Your Honor.

18 BY MS. BLACKWELL

19 Q Mr. West, are you familiar with a
20 payment history on this account?

21 A Yes, I am.

22 Q Have all payments been made pursuant
23 to the terms of the note?

24 A No, they have not.

25 Q When was the last payment made?

27

1 A June 8th of 2018.

2 Q Okay. I have handed you what has been
3 premarked as Plaintiff's Exhibit E. Could you
4 explain to the Court what this is.

5 A It's an affidavit of verified
6 statement of account. It's the affidavit signed
7 by me that verifies the amount of the debt.

8 Q Okay. And can you state for the
9 record as of the date of the hearing, what is the
10 principal amount on the mortgage that is due
11 today?

12 A \$66,807.34.

13 Q What is the interest that has accrued?

14 A \$12,847.56.

15 Q What is the current interest rate?

16 A 7.25 percent.

17 Q Are there any late charges that are
18 being assessed to the account?

19 A Yes, there are.

20 Q And what is that number?

21 A \$383.28.

22 Q Is there any sort of escrow shortage?

23 A There is. It's \$3,136.95.

24 Q And Mr. West, are you also seeking
25 attorney's fees and costs in this matter?

28

1 A Yes. Yes, we are.

2 Q What is the total amount of the debt
3 you're asking for today?

4 A Total is \$83,175.07.

5 Q Okay. Plus, are you asking your
6 attorney to file an affidavit of fees and costs
7 for the additional fees and costs and issue for
8 that debt amount?

9 A Yes, we are.

10 MS. BLACKWELL: And Your Honor, I will
11 say I have prepared an affidavit of attorney's
12 fees that has been marked as Exhibit A.

13 THE COURT: That's fine.

14 MS. BLACKWELL: To establish a total
15 debt amount of \$86,792.89.

16 THE COURT: Okay, thank you. Now I'm
17 going to allow the admission of the affidavit of
18 attorney's fees and the affidavit of debt to which
19 Mr. West has testified. Do you have any other

20 questions of Mr. West?

21 (Plaintiff Exhibits Letter A and E were admitted
22 into evidence.)

23 MS. BLACKWELL: Yes, Your Honor, just
24 two more questions.

25 THE COURT: All right, go ahead.

29

1 BY MR. BLACKWELL

2 Q What are you asking the Court to do
3 today?

4 A To grant us foreclosure.

5 Q Are you seeking a deficiency judgment?

6 A Yes, we are.

7 Q And against whom?

8 A Against Curtis Tucker.

9 MS. BLACKWELL: Thank you, Your Honor.
10 That's all I have.

11 THE COURT: Thank you. Now for the
12 record, the Affidavit of Attorney's Fees is
13 entered as an exhibit prepared by the attorney for
14 the bank in support of the bank's request for
15 attorney's fees and the Affidavit of Debt which is
16 premarked as Exhibit D I believe.

17 MS. BLACKWELL: E.

18 THE COURT: E, sets forth the
19 statement of debt that Mr. West testified to.

20 All right. Now Ms. Tucker, do you
21 wish to cross-examine Mr. West on the amount of
22 the debt? I mean, there's been no indication that
23 you owe the bank anything so I don't know that
24 what you can -- I'll hear from you if you want to
25 question as to the amount of the debt; but I,

30

1 there's no allegation that, or that you owe any
2 debt to Mr. West bank -- or the Farmers &
3 Merchants Bank. So limit your questions to only
4 that those are implying you.

5 MS. TUCKER: Okay.

6 C R O S S - E X A M I N A T I O N

7 BY MS. TUCKER:

8 Q You guys sent a letter saying that --

9 THE COURT: Now when you say "you
10 guys," what does that mean?

11 MS. TUCKER: Okay, I'm sorry. Sir,
12 Ms. Elizabeth sent a letter that we owed \$79,000.

13 THE COURT: Okay. And so that's a
14 statement. Do you have a question?

15 MS. TUCKER: I don't really have a

16 question.

17 THE COURT: Okay, no questions. All
18 right, thank you for that.

19 I just want to clarify one question.
20 You did state the interest rate as a percentage.
21 I think it was seven and a quarter?

22 THE WITNESS: Yes, sir, 7.25.

23 THE COURT: And that calculation is
24 based on a per annum basis?

25 THE WITNESS: Yes, sir.

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1 THE COURT: And the per annum basis
2 was 360 days per year or 365?

3 THE WITNESS: 365.

4 THE COURT: 365 days per year, okay.

5 All right, just wanted to clear that question up.

6 Thank you, Mr. West.

7 And do you have any other questions on
8 redirect?

9 MS. BLACKWELL: No, Your Honor.

10 THE COURT: All right. You may have a
11 seat, Mr. West.

12 Do you have any other evidence or
13 testimony you might give, Ms. Blackwell?

14 MS. BLACKWELL: No, Your Honor. The
15 plaintiff rests its case at this time.

16 THE COURT: All right. I would like
17 the record to reflect that all the prefiled
18 documents that have been submitted by
19 Ms. Blackwell have been testified to upon
20 Mr. West, and I therefore, am going to have those
21 all made part of the record of this case. At this
22 time I would like to hear from Ms. Tucker who is
23 here as a, really as a junior interest in the
24 property, a junior to that of a mortgagee.

25 Ms. Tucker, tell me, tell me if you

32

1 would, what it is -- well, first of all, you
2 haven't stated, stated an objection in the amount
3 of the debt that's been testified to. You can
4 dispute it. And the remedy that Ms. West --
5 Mr. West has had asking the Court to exercise is
6 the right of foreclosure. You want to speak to me
7 about your circumstances, you as the, let's say --
8 you're the wife of Curtis Tucker?

9 MS. TUCKER: Yes, sir. Yes, Your
10 Honor.

11 THE COURT: Why don't you testify for

12 me about your circumstances and what -- can you
13 give me any indication why you would think
14 foreclosure would be an inappropriate, as a wife,
15 an inappropriate remedy for the plaintiff to seek?

16 MS. TUCKER: My answer is, in the U.S.
17 Constitution it says that all men are born free
18 and equal and with certain rights, among which are
19 the rights of enjoy and to live their lives and
20 liberties of acquired possession and protection of
21 property and of seeking and obtaining and pursuit
22 of happiness.

23 THE COURT: Okay. Now, so anything
24 else you would like to -- I understand that and I
25 appreciate that. Thank you very much. I believe

33

1 the South Carolina Constitution also states
2 something similar to that; doesn't it?

3 MS. TUCKER: Yes, it does.

4 THE COURT: Okay. So is there any
5 testimony you want to give me? That's a legal
6 argument.

7 MS. TUCKER: Well, this is a legal
8 court, right?

9 THE COURT: This is the court of

10 equity; that's correct.

11 MS. TUCKER: Right. So none of my
12 questions were answered from the attorney general.

13 THE COURT: He's not a party to this
14 lawsuit.

15 MS. TUCKER: He is a party 'cause I'm
16 a party to the U.S. Constitution.

17 THE COURT: The attorney general for
18 the state of South Carolina is not a party. I
19 note your objection, but the parties for this case
20 suppose that I named on the start of the case.
21 That includes you and your husband and the Housing
22 Department, Housing Corporation, and the South
23 Carolina Federal Credit Union. Those are the
24 parties to this lawsuit.

25 MS. TUCKER: Right, but he's the

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1 attorney in South Carolina. So for my questions
2 to get answered first, they were posting answer to
3 questions that were sent to the attorney general.

4 THE COURT: Ms. Blackwell, you --

5 MS. TUCKER: I don't think they have.

6 THE COURT: Ms. Blackwell, do you have
7 any response to that?

8 MS. BLACKWELL: Your Honor, we're
9 under no obligation to respond to a letter that's
10 not addressed to us, we received a copy of. That
11 does not have any relevance whatsoever to our
12 underlying case in chief.

13 THE COURT: Okay, thank you. So I'm
14 gonna, I note your objection. I sustain it. And
15 I'd like to hear anything else you have to tell
16 me, Ms. Tucker, about the circumstances concerning
17 foreclosure of your property.

18 MS. TUCKER: Sir, are you saying, sir,
19 that the attorney general doesn't have ruling over
20 the housing or anything, is what you're telling
21 me?

22 THE COURT: I'm telling you that the
23 attorney general has no authority to answer this,
24 anything in this lawsuit. He's not a party to
25 this lawsuit. He may answer a question you may

35

1 address to him; but it, it doesn't affect any of
2 the pleading, any of the issues that are contained
3 in this particular lawsuit. When you stated that
4 every person is entitled to life, liberty, and
5 pursuit of happiness -- that well known phrase

6 that we, as Americans, embrace heartily and as
7 South Carolinians embrace heartily, I will tell
8 you that Ms. Blackwell filed a summons and
9 complaint with this court.

10 MS. TUCKER: Uh-huh.

11 THE COURT: Subsequent to that, she
12 filed or she served both you and Curtis Tucker,
13 all right, partially served and you with the
14 lawsuit. Under the constitution that is what
15 gives you the -- that is a due process right that
16 she has given you notice of, the right to be heard
17 and any case which the subject of which is an
18 action against you either individually or against
19 the real estate that you have an interest in.
20 Foreclosure is a, what we would call a, it's a --
21 an action in equity which is the jurisdiction of
22 this court. And it's -- the remedy of foreclosure
23 is a matter to which you could, you could have if
24 you had filed an answer, raised and, in an answer
25 to this lawsuit, you could have raised the issue.

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1 We could have heard testimony or further evidence
2 concerning it. What I'm really concerned about,
3 Ms. Tucker, is first of all, so what I'm trying to

4 tell you is that you have beginning your due
5 process rights which is what you're entitled to
6 under the state and federal constitution.

7 MS. TUCKER: Okay.

8 THE COURT: But you failed to exercise
9 where your due process right by failing to answer
10 the Complaint.

11 MS. TUCKER: How? How, sir, when I
12 did send them a letter about what was filed. I
13 sent Ms. Elizabeth a letter.

14 THE COURT: That letter did not
15 address the pleadings in this particular case. It
16 was addressed to somebody else.

17 MS. TUCKER: I sent her a letter.
18 Another letter was --

19 THE COURT: Was it sent before? Was
20 it in response to the allegation of the summons?
21 I mean, the summons states that you're --

22 MS. TUCKER: I sent Brian West a
23 letter also.

24 THE COURT: Well, you didn't file
25 anything with the Court because I don't have any

1 record of it.

2 MS. TUCKER: Well, I didn't know I was
3 supposed to which, I mean, you're saying that I
4 address her. I did address her. I didn't know I
5 was supposed to address the court with the reason.
6 I never even had a court date then.

7 THE COURT: Well, if you're
8 representing yourself you are responsible for
9 knowing the law of South Carolina and just as well
10 as if you were a lawyer representing, representing
11 you. But in the Summons itself -- I'll read it to
12 you -- it states, this is the Summons. This is
13 what gives the Court jurisdiction over the
14 Complaint and gives jurisdiction over you and your
15 husband. It states that, you're required to
16 appear and defend by answering the Complaint in
17 this action of which a copy is served upon you and
18 to serve a copy of your answer on the subscribers
19 of your office in Charleston within 30 days of
20 service and -- exclusive. So accept that. And
21 this refers to the United States of America which
22 is not a party to this case. You will also take
23 notice that the plaintiff will move for an order
24 of reference, and the court may issue a general
25 order of reference of the action. And so, what

1 Ms. Blackwell did was follow the rules of
2 procedure as to summonses. Under the rules of
3 procedure, when you file an answer it's your
4 responsibility to file -- if you serve it on the
5 other party, it's your responsibility to serve it
6 with the Court, to file it with the Court. So --

7 MS. TUCKER: In her paperwork, Your
8 Honor, she only stated that she told me --

9 THE COURT: She's not required to
10 state --

11 MS. TUCKER: I understand, but in her
12 paperwork she said that I had 30 days to get back
13 with her to figure out what I was gonna -- and I
14 also talked with Ms. Blackwell on the phone as
15 well.

16 THE COURT: Ms. Blackwell, do you have
17 a letter that she sent to you directly?

18 MS. BLACKWELL: Your Honor, I do not
19 have a letter that was sent to me directly, other
20 than a copy of this letter to Mr. Wilson. There
21 was no cover letter to me or any indication that
22 it was something that she was looking for a
23 response to. The only communication that I have
24 had with her since the Complaint was filed, she

25 called and asked about the debt amount and I told

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1 her what we were asking for and she said she would
2 be hiring an attorney. I did not hear anything
3 from her after that until she requested a
4 continuance due to the flu.

5 THE COURT: Okay, thank you. Do you
6 have a copy of the letter you sent to her?

7 MS. TUCKER: I have it on my phone. I
8 don't have it --

9 THE COURT: You have a copy on your
10 phone and you don't have your attorney with you.

11 MS. TUCKER: No. I just did --

12 THE COURT: What was in the, what was
13 in the letter? What did you state in the letter?

14 MS. TUCKER: I talked to her about the
15 amount and the interest rate and when -- she asked
16 me --

17 THE COURT: I tell you what I'm gonna
18 do. I'm gonna -- Mr. Marvin, would you escort
19 this lady to her car so she can get her phone and
20 bring it up here to show me the letter.

21 MS. TUCKER: Okay.

22 THE COURT: We're off the record

23 until -- we're gonna take a short recess. You're
24 still under oath. Don't talk about this with
25 Mr. Marvin or anybody else, Ms. Tucker.

40

1 (Whereupon, a break was taken
2 from the proceedings.)

3 THE COURT: Rule 5 of the South
4 Carolina Rules of Civil Procedure, specifically
5 Rule 5, I'm just reading it. D states the
6 following, "All papers required to be served upon
7 a party except as provided in rule 26(g)(1), shall
8 be filed with the court within five days after
9 service thereof." So that is the requirement that
10 after you, you sent a letter to her that was
11 purportedly an answer, the answer had to be filed
12 within five days of you sending it to
13 Ms. Blackwell.

14 MS. TUCKER: Okay, but she sent me two
15 letters. She sent me one letter in January from
16 December 20th to January 19, December 19 to
17 January 19. I had to file an answer. I sent her
18 one back. I also sent Brian West a letter and I
19 was trying to work out a payment plan. They sent
20 my money order and stuff back. So that was my

21 first answer. I didn't, I didn't have a court
22 date then.

23 THE COURT: Yes, ma'am, I understand
24 that. What I'm telling you is once the summons
25 was filed and served on you and the complaint, if

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1 you sent a letter to Ms. Blackwell that you, that
2 purported to answer the summons and complaint,
3 that letter that you claim, the rules of procedure
4 in South Carolina, the Rules of Civil Procedure in
5 South Carolina require that that answer be filed
6 with the Court within five days of you serving it
7 upon Ms. Blackwell as counsel for the bank.

8 MS. TUCKER: Okay.

9 THE COURT: There is no such answer in
10 the Court's file. Now if I allowed you to go --
11 you say you had it on your telephone.

12 MS. TUCKER: Yeah, I'm still --

13 THE COURT: A letter that you
14 signed -- I'm just curious about what the letter
15 contained, if it was in fact an answer or simply
16 some other correspondence.

17 MS. TUCKER: It was an answer. I sent
18 them a money order for, you know, payment.

19 THE COURT: Okay. Well, that --
20 MS. TUCKER: And I'm sure she has the
21 letter.
22 THE COURT: Well...
23 MS. TUCKER: Ms. Blackwell.
24 THE COURT: Well, she's a lawyer. She
25 represents, she's under --

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1 MS. TUCKER: Right.
2 THE COURT: -- significant,
3 significant rules of respon--- professional
4 responsibility that she cannot misrepresent
5 anything to the Court, and I would find it very
6 hard to believe that Ms. Blackwell would
7 misrepresent anything to this Court but.
8 MS. TUCKER: Well, Brian West, I sent
9 the paperwork to Brian West also.
10 THE COURT: Miss --
11 MS. BLACKWELL: Your Honor, can I
12 clarify. If she's trying to say that a money
13 order was her answer --
14 MS. TUCKER: Yes.
15 MS. BLACKWELL: Is that what you're
16 trying to say?

17 MS. TUCKER: Yes. You know I did,
18 right?

19 MS. BLACKWELL: A money order was sent
20 to the bank which was immediately returned to you.

21 MS. TUCKER: No, it was not.

22 MS. BLACKWELL: That's not an answer.

23 THE COURT: Hold on, let's --

24 MS. TUCKER: Thank you.

25 THE COURT: Ms. Tucker, when you're in

43

1 court you have to address me.

2

3 MS. TUCKER: Okay.

4 THE COURT: You can't address the
5 other party directly. Okay. So what you're
6 saying is, just to clarify, you sent a money order
7 and that was what you purported to be an answer?

8 MS. TUCKER: That, and I also sent the
9 letter.

10 THE COURT: All right.

11 MS. TUCKER: When she just --

12 THE COURT: And do you have a copy of
13 it?

14 MS. TUCKER: I can't, I can't find it

15 'cause it's -- I don't know what I did with it in
16 my phone. This is another, a used phone 'cause,
17 was my old phone broke so I'm -- I was thinking
18 that it was in my iCloud, but apparently it's not.
19 It wasn't safe. She just stated that I did send
20 her.

21 MS. BLACKWELL: No, you did not send
22 it to me.

23 Your Honor, it was sent directly to
24 the bank and I sent --

25 THE COURT: Okay, thank you. All

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1 right. So let me ask you a couple of questions,
2 Ms. Tucker. You have any children that live in
3 the --

4 MS. TUCKER: I have three children.

5 THE COURT: Where -- how old are they?

6 MS. TUCKER: One is 4. The other one
7 is 9, and my oldest is 14.

8 THE COURT: Ms. Blackwell, when are
9 you anticipating the sale on this property?

10 What's your sales date request?

11 MS. BLACKWELL: We're asking for an
12 August sale with a deficiency sale to be in

13 September.

14 THE COURT: So you have three children
15 that live in the house with you, and they're your
16 children and your --

17 MS. TUCKER: Yes.

18 THE COURT: Together and Mr. Tucker
19 and you have three children --

20 MS. TUCKER: Yes, sir.

21 THE COURT: -- that live in your home?

22 MS. TUCKER: Yes, sir.

23 THE COURT: On Shady --

24 MS. TUCKER: Lane.

25 THE COURT: -- Lane. Where is that

↑

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1 actually?

2 MS. TUCKER: It's off Dorchester Road.

3 THE COURT: Is there a subdivision?

4 MS. TUCKER: Yes. It's across from
5 Ashley Baptist Church I believe.

6 THE COURT: Okay. So it's in what
7 used to be Camelot or?

8 MS. TUCKER: I think so.

9 THE COURT: Okay.

10 MS. TUCKER: It's near that area.

11 THE COURT: All right. I'm familiar
12 with the area. And your children go to which
13 school?

14 MS. TUCKER: Flowertown and Greg.

15 THE COURT: Flowertown and Greg, okay.
16 So anything else that I need to know? Where --
17 does Mr. Tucker work?

18 MS. TUCKER: Mr. Tucker, Mr. Tucker is
19 incarcerated right now.

20 THE COURT: Okay.

21 MS. TUCKER: Yes. And that's the
22 reason why this is happening.

23 THE COURT: When was he incarcerated?

24 MS. TUCKER: He was incarcerated in
25 January 2018.

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1 THE COURT: Were you aware of that,
2 Ms. Blackwell?

3 MS. BLACKWELL: I believe that had
4 been communicated to the bank, but we served him
5 personally at the home. And we also, out of an
6 abundance of caution, checked the records of
7 Dorchester County and to see if there was any sort
8 of inmate, did not find that.

9 MS. TUCKER: He's not in Dorchester
10 County. He's out of state, which I told the bank.
11 See, this is the problem, Judge. I have talked to
12 a couple of people that works at Farmers &
13 Merchants Bank; and the couple of people that I
14 had spoken to, they were no longer there. They
15 had new people in and out of the bank. So when I
16 would send them letters and stuff like that and
17 try to get a hold of them, they had me like -- we
18 only dealt with one person in the bank; they
19 handled the loan.

20 THE COURT: Yes, ma'am.

21 MS. TUCKER: So that was another
22 problem. John was one of the person's name that I
23 was dealing with and he never got back to me.

24 THE COURT: John, who is John?

25 MS. TUCKER: Some guy that worked at

1 Farmers & Merchants Bank.

2 THE COURT: Okay. You spoke to a
3 person named John that worked at Farmers &
4 Merchants Bank?

5 MS. TUCKER: Yes, sir.

6 THE COURT: He was handling your file

7 at the time?

8 MS. TUCKER: Yes, sir.

9 THE COURT: Okay.

10 MS. TUCKER: Yes, sir. So he knew
11 that, and then when I called back they said John
12 was no longer there. Then they handed me down to
13 somebody else.

14 THE COURT: Okay.

15 MS. TUCKER: I left numerous voice
16 mails on their phone and everything; nobody said
17 anything to me. Then I got a letter in the mail.
18 Once I got the letter in the mail I called them
19 again, and they told me that the person that
20 handled my case was on vacation.

21 THE COURT: Okay, go ahead.

22 MS. TUCKER: So, you know, then I got
23 a letter from Ms. Blackwell. So my thing was, the
24 communication at the bank, I couldn't even talk to
25 anybody about anything. The letters that I send,

1 they never answered my letters or anything like
2 that.

3 MS. BLACKWELL: Your Honor, I would
4 object to her testimony based on the fact of

5 relevance as far as the underlying case. Also, we
6 did send a reinstatement letter prior to
7 accelerating the loan so there was -- that
8 information was provided to allow the contact
9 information for our office.

10 MS. TUCKER: That's the letter that I
11 was saying I submitted that they never responded
12 to, sir.

13 THE COURT: All right. What I'm
14 concerned about now is the incarceration issue.
15 When was he incarcerated?

16 MS. TUCKER: January of -- well, I
17 want to say December. I think it was the end of
18 December of 2017.

19 THE COURT: Curtis?

20 MS. TUCKER: Yes.

21 THE COURT: Tucker. Where is he
22 incarcerated?

23 MS. TUCKER: Pennsylvania.

24 THE COURT: What -- what is the
25 penitentiary or the --

1 MS. TUCKER: Yes.

2 THE COURT: Is it state penitentiary

3 --

4 MS. TUCKER: It's state.

5 THE COURT: -- or federal

6 penitentiary?

7 MS. TUCKER: Yes. He's in --

8 THE COURT: Do you have the address of

9 the penitentiary?

10 MS. TUCKER: I can't use my phone; I

11 don't have no service. But he's in SCI-Fayette.

12 COURT REPORTER: I'm sorry, what was

13 that?

14 MS. TUCKER: SCI-FAYETTE,

15 F-A-Y-E-T-T-E.

16 THE COURT: S-C-I.

17 MS. TUCKER: F-A-Y-E-T-T-E.

18 THE COURT: T-T.

19 MS. TUCKER: Yes, sir.

20 THE COURT: S-C-I --

21 MS. TUCKER: I -- dash. Well, just

22 put, yeah, dash, and then "F" as in Frank,

23 A-Y-E-T-T-E.

24 THE COURT: E-T-T?

25 MS. TUCKER: E, yes, sir.

1 THE COURT: E-T-T-E.

2 MS. TUCKER: Yes.

3 THE COURT: Fayette.

4 MS. TUCKER: Yes.

5 THE COURT: What does SCI stand for?

6 MS. TUCKER: I guess that's just the
7 prison thing; I'm not sure.

8 THE COURT: So where -- when you, if
9 you correspond to him where do you -- that's the
10 mailing address?

11 MS. TUCKER: Yes, sir.

12 THE COURT: And what city or state?

13 MS. TUCKER: Pennsylvania.

14 THE COURT: It just SCI-FAYETTE,
15 Pennsylvania, and it goes to him?

16 MS. TUCKER: I know it's on Labelle
17 Road, Labelle. I don't have the address on me.
18 I'm looking through my messages to see if I give
19 it to anybody. Yeah, my phone -- I don't have no
20 service so I can't look through my messenger on
21 Facebook 'cause I know I've given a couple of
22 people that address.

23 THE COURT: Hold on a second.

24 MS. TUCKER: Okay, here we go.

25 It's -- can you look it up on the internet?

1 THE COURT: I am. Ms. Tucker, I'm
2 reading a certificate of service that was
3 submitted in this case. It indicated that the
4 substantive service was made on February the 27th
5 at 8:35 p.m. on 155 Shady Lane in Summerville, was
6 received by Curtis Tucker, age 45 to 50.

7 MS. TUCKER: You said what? What are
8 you reading, sir?

9 THE COURT: I'm reading an affidavit
10 of service that was executed by an individual
11 named Melinda Bowers and -- or rather, Travis
12 Powers, that he served Curtis R. Tucker, age 45 to
13 50.

14 MS. TUCKER: He didn't get served
15 personally.

16 THE COURT: Hold - let me finish what
17 I'm reading please, Ms. Tucker. Don't interrupt
18 me please. She -- it was by a substitute service
19 by serving a female, co-resident. Confirmed that
20 Curtis lived there, but wasn't home at the moment.

21 MS. TUCKER: May I speak, Your Honor.

22 THE COURT: Sure.

23 MS. TUCKER: The person was my mother,

24 and she didn't know who the person was coming to
25 ask for Curtis Tucker so that's why she said he

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1 wasn't home; but he, this was his residence.

2 THE COURT: Well, your mother's name
3 Pat?

4 MS. TUCKER: Yes.

5 THE COURT: All right. Ms. Blackwell,
6 based on the testimony that's been given to us by
7 Ms. Tuck-- what's your position on the fact that
8 he's in, we find out he's now incarcerated?

9 MS. BLACKWELL: Your Honor, our
10 position is that service is presumed valid on its
11 face, and it's the burden of the defendant to say
12 that's not the case. We had no knowledge of him,
13 where he was incarcerated, if that were actually
14 true. At this point we would say that we still
15 have the ability to default.

16 THE COURT: Your position is that he
17 was validly served at his place of residence.

18 MS. BLACKWELL: Based on the
19 information that we have from our process server
20 on substitute service. If the process server was
21 misinformed, then that's not something that they

22 would know, Your Honor.

23 THE COURT: How would you know someone
24 was incarcerated? I mean, how would you know that
25 ordinarily? Is there any way of knowing that in

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1 the course of procedure of service?

2 MS. BLACKWELL: I honestly don't know
3 how you would know someone was incarcerated unless
4 they told them that they were. We -- Ms. Tucker
5 did mention at some point prior to the foreclosure
6 proceeding that he was incarcerated. We asked her
7 where and weren't told anything in response and so
8 that's what we looked at in Dorchester County
9 trying to see if we could see him. And then when
10 we sent our process server out, the process server
11 provided us with this affidavit, then we did not
12 have reason to believe that he's still
13 incarcerated.

14 THE COURT: All right.

15 MS. TUCKER: I object, Your Honor.

16 THE COURT: Well, I'll take it as an
17 objection, but I'll be glad to hear from you.

18 MS. TUCKER: In case -- as I stated
19 before, Your Honor, I sent them letters to the

20 Farmers and --

21 THE COURT: Well, I really wish I had
22 a document that you could show me that said I sent
23 them a letter and what was substance of the letter
24 so I could see what you're talking about.

25 MS. TUCKER: When I finally was able

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1 to get in contact with somebody, I told them the
2 situation with Curtis Tucker.

3 THE COURT: When was that?

4 MS. TUCKER: That was like September.

5 THE COURT: Of last year on September
6 of 2018?

7 MS. TUCKER: It was back in June. As
8 I stated before, I talked -- I did pay the
9 mortgage and I talked to somebody, but -- okay, my
10 loan officer is not in Monks Corner. It is in
11 Monks Corner; but it's not at the one that's at
12 the right, but one towards 78. It's not that one,
13 which I thought my loan officer was there. Before
14 I had a loan officer, it was a lady. I think her
15 name is Jane or something like that; I can't
16 remember her name. But she was no longer there
17 which I did not know because I had South Carolina

18 help that had paid my mortgage for \$36,000. So at
19 that time my loan officer --

20 THE COURT: Help me out a little bit,
21 Ms. Tucker. This case started in, basically in
22 February of this year.

23 MS. TUCKER: Yes, sir.

24 THE COURT: You're talking about times
25 before this?

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1 MS. TUCKER: Well, I --

2 THE COURT: You're talking about SC
3 helping you. That would have been a couple of
4 years ago.

5 MS. TUCKER: Right. But what I'm
6 saying is the loan officer that I had, you know,
7 the whole time I --

8 THE COURT: And what institution are
9 you speaking of, what loan officer?

10 MS. TUCKER: The loan officer that was
11 handling my case for my mortgage.

12 THE COURT: You mean at Farmers &
13 Merchants Bank?

14 MS. TUCKER: Yes, sir. Yes.

15 THE COURT: And who was that person?

16 Some person named John?

17 MS. TUCKER: I think her name was Jane
18 or something like that. I can't remember her
19 name, but I believe it was Jane or something like
20 that.

21 THE COURT: When you refer "my loan,"
22 are you referring to the loan that Curtis has
23 or --

24 MS. TUCKER: Yeah.

25 THE COURT: -- do you have a separate

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1 loan?

2 MS. TUCKER: Just the loan for this
3 mortgage.

4 THE COURT: This case we're talking
5 about today?

6 MS. TUCKER: Yes.

7 THE COURT: Okay.

8 MS. TUCKER: And how the lawyer found
9 out that Curtis was in jail because I had
10 responded to somebody that worked at the Farmers &
11 Merchants Bank.

12 THE COURT: All right. Do you recall
13 if you told them where, where he was incarcerated?

14 MS. TUCKER: Yes, I did. I said he
15 was incarcerated in Pennsylvania.

16 THE COURT: How long is he going to be
17 incarcerated?

18 MS. TUCKER: I'm not sure at this
19 time. He --

20 THE COURT: You don't have any idea
21 what his --

22 MS. TUCKER: I want to say at least --

23 THE COURT: -- sentence was?

24 MS. TUCKER: -- like three to five
25 years maybe, but I don't know because Philadelphia

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1 is a common law state and when he got sentenced I
2 wasn't there.

3 THE COURT: You mean you've never had
4 a conversation with your husband that said how
5 long he was going to be incarcerated?

6 MS. TUCKER: Three to five years, but
7 I don't know how long he's gonna actually have to
8 do. That's what I was saying.

9 THE COURT: I see. All right.

10 Mr. West, you're still under oath. Do
11 you have any record of having received information

12 that Mr. Tucker was incarcerated?

13 THE WITNESS: There was a loan
14 officer, Zachary Sabac (ph), who handles
15 collection on a loan, and he was informed that
16 Mr. Tucker was incarcerated and where at.

17 THE COURT: All right.

18 THE WITNESS: And we passed the
19 information on to --

20 THE COURT: Right.

21 THE WITNESS: -- Ms. Blackwell.

22 THE COURT: Well, it sounds like she
23 did what was reasonable under the circumstances.
24 All right, here's what I'm gonna -- I just feel
25 like the best thing to do, Ms. Blackwell, given

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1 the information we've received, I'm gonna continue
2 this case at this time. I'm gonna give you an
3 opportunity to serve Mr. Tucker personally
4 pursuant to Rule 5, excuse me, Rule 4(d)(2). I
5 think it might be 4(d)(2). Here's what that rule
6 says. I -- I respect that what you did was
7 reasonable; I understand that. But I'm not
8 certain based on the information received from
9 Ms. Tucker that we have procured jurisdiction over

10 Mr. Tucker. Rule (d)(2) indicates that service --
11 I'm gonna just read it without the state hospital
12 language so it makes sense in this context.
13 Service on imprisoned persons in or out of this
14 state shall be made by delivering a copy of the
15 summons and complaint to the confined person
16 personally; in cases of persons imprisoned,
17 personal service process may be made by the
18 superintendent of the institution or by the
19 director of the prison system or by the assistants
20 duly designated by the superintendent or the
21 director in writing for the purpose of making
22 service of process, instead of the sheriff. The
23 superintendent or director or their designated
24 assistants shall not be entitled to any costs for
25 that, for that service. And then it goes on to

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1 say that service on confined or imprisoned persons
2 shall also conform to provisions of Section
3 15-9-510 of the S.C. Code, 1976. That particular
4 code section relates to service of legal papers on
5 patients of a state. No hospital, mental
6 facility, and duties of the director will serve --
7 since we're talking about an imprisonment, I don't

8 believe in penal institution -- I don't believe
9 that's, sanction applies in this, under rule
10 (d)(4). However, I'll let you read that
11 carefully, make sure we're -- I'll be happy to
12 hear from you on this point, Ms. Blackwell.

13 MS. BLACKWELL: Thank you, Your Honor.
14 Under the rules of equity the process server went
15 by information that they were told at the house
16 that he was still residing there at the time. So
17 it would prejudice the plaintiff to have to go
18 back and try and track him down when they were
19 lied to essentially while they thought what they
20 were being told was true. Furthermore, we would
21 ask that Ms. Tucker testify under oath as to the
22 exact location where he is because, otherwise, it
23 could be impossible to try and track this person
24 down, especially out of state when we've done our
25 due diligence with a process server who went to

1 the home.

2 THE COURT: Right. A person who seeks
3 relief from the equity court must do equity.
4 That's a doctrine of a tenet that we follow. What
5 I'm concerned about, Ms. Blackwell, is the issue

6 of jurisdiction which takes us back to the issue
7 of whether or not I can make a ruling in equity.
8 I understand that this is gonna delay the bank's
9 process. I do believe you're correct that I do
10 need to have Ms. Tucker placed under oath and give
11 me the, a specific address and institution in
12 which her husband is incarcerated. What we can --
13 will be able to do, we do have jurisdiction over
14 Ms. Ashley Tucker, so as to her, she's still in
15 default. As to him, however, I believe that we
16 need to under the, under the due process clause of
17 both the state and federal constitution, we'll
18 need to make sure he's been given proper notice of
19 these proceedings. We have a rule that indicates
20 that that needs to be done. It's somewhat, seems
21 unfair to me that the bank -- the process server
22 is told an inaccurate piece of information upon
23 which you rely on in the ordinary course of your
24 due diligence. We get to the hearing and we find
25 out that that individual is out of state

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1 incarcerated. I just think out of an abundance of
2 caution, the purpose of jurisdiction, that I'd
3 feel much more comfortable if we served him

4 through the directives under Rule 4(d) of the
5 Rules of Civil Procedure. So I note your
6 objection.

7 Ms. Tucker, I want to have you stand
8 now. Raise your right hand.

9 Thereupon,

10 ASHLEY TUCKER,
11 being first duly sworn by the Court, testified as
12 follows:

13 THE COURT: All right. You had
14 previously testified or given information to the
15 Court. Do you affirm that all the statements that
16 you've given to me previous to this moment are
17 true and accurately correct?

18 MS. TUCKER: Yes, Your Honor.

19 THE COURT: All right. And that had I
20 placed you under oath prior to this point in the
21 proceedings, you would have been speaking the
22 truth under oath; is that correct?

23 MS. TUCKER: Yes, Your Honor.

24 THE COURT: All right. Now you
25 indicated that Mr. Curtis Tucker is incarcerated.

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1 MS. TUCKER: Yes, Your Honor.

2 THE COURT: You said he was
3 incarcerated in the state of Pennsylvania.

4 MS. TUCKER: Yes.

5 THE COURT: And you gave us a, a
6 cryptic -- I call it cryptic because I'm not
7 familiar with this, but it sounds odd that his
8 address is SC1.

9 MS. TUCKER: It's SCI.

10 THE COURT: SCI?

11 MS. TUCKER: Yes.

12 THE COURT: SCI-F-A-Y-E-T-T-E.

13 MS. TUCKER: Yes. And that's the name
14 of the prison.

15 THE COURT: And that's the prison
16 name?

17 MS. TUCKER: Yes. It's -- and the
18 road is named Labelle Road; but I don't, I can't
19 remember the numbers.

20 THE COURT: So when you --

21 MS. TUCKER: Like, I believe I have --

22 THE COURT: Hold on, let me -- I want
23 to ask you some real, just simple questions. Just
24 answer my questions so I get this right, okay.
25 You also indicated that Mr. Tucker is in a prison

1 that is located on Labelle Road. Is that one word
2 or two words or?

3 MS. TUCKER: It's one word.

4 THE COURT: Labell, L-A-B-E-L-L?

5 MS. TUCKER: It's capital L-A, capital
6 B-E-L-L-E Road.

7 THE COURT: Do you know what town
8 that's in?

9 MS. TUCKER: I have his address in the
10 car.

11 THE COURT: We've already tried that.
12 We've already tried that.

13 Ms. Blackwell, if I -- Ms. Blackwell,
14 any suggestions?

15 MS. BLACKWELL: Your Honor, may we,
16 us, take a five minute brief recess to confer with
17 my client?

18 THE COURT: Sure, absolutely.

19 (Whereupon, a break was taken
20 from the proceedings.)

21 THE COURT: Yes, ma'am.

22 MS. BLACKWELL: Thank you, Your Honor.

23 THE COURT: Back on the record, ma'am.
24 Go ahead.

1 apologize for the delay. I just wanted to state
2 for the record that we do believe service was
3 valid based on the affidavit of the service that
4 if our process server was, in fact, misinformed as
5 Ms. Tucker has stated on the record, then, you
6 know, we believe that we're still entitled to go
7 forward. If we're allowed to go forward, we're
8 willing to waive the deficiency against
9 him because we believe we have jurisdiction over
10 the property that's in South Carolina.

11 THE COURT: Yes, ma'am.

12 MS. BLACKWELL: If we're gonna have to
13 track him down and find him, then obviously we're
14 not willing to waive deficiency because that's
15 going to be an additional burden and cost on the
16 bank at no fault of their own due to the fact they
17 were misinformed by the defendant. And also, we
18 would argue that because she is a power of
19 attorney for Mr. Tucker, she was on notice of the
20 proceedings and was aware of the action.

21 THE COURT: So you're gonna -- are you
22 withdrawing your objection to the power of

23 attorney that's entered into the record? Right
24 now it's just in the record for information
25 purposes only. You can either withdraw that

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1 objection and/or you can request -- I guess, you
2 can request that I take judicial notice of it. Is
3 that filed in Dorchester county?

4 MS. TUCKER: Yes, Your Honor.

5 THE COURT: Okay. Probably, I mean,
6 both theories would be an acceptable way of having
7 that instrument entered into the record. I've
8 been thinking about that issue as you've been out.
9 I -- as his agent under the power of attorney, is
10 he, in fact, on notice of the lawsuit. If she, if
11 she were served -- I think you have an issue of
12 your affidavit, the substantive affidavit with --
13 an affidavit of service would be, I would have to
14 make a finding in essence that -- let me ask you.
15 You tell me what you want to do. You want me to
16 take judicial notice, or you want to withdraw your
17 objection?

18 MS. BLACKWELL: I'll withdraw my
19 objection as far as the power of attorney since
20 it's record and filed --

21 THE COURT: It's a matter of record
22 filed in Dorchester County. I think that's a fair
23 assessment. So the power of attorney which was
24 Defendant Exhibit 2, I believe, has now been
25 admitted into the record.

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1 (Defendant's Exhibit No. 2 was admitted into
2 evidence.)

3 THE COURT: And what I'd like to do is
4 take a look at that power of attorney so I can
5 review it, how to proceed.

6 (Pause.)

7 THE COURT: All right. Have you read
8 this?

9 MS. BLACKWELL: She's pulling it up
10 right now.

11 THE COURT: All right. Under the
12 power of attorney, Ms. Tucker, under the power of
13 attorney that Curtis Tucker gave you in July of,
14 July the 6th -- this is the power of attorney that
15 we've been admitted in the record. He appoints
16 you as his attorney-in-fact. That is to say,
17 you're his agent, which has a specific legal term,
18 a legal meaning. That means he's the principal;

19 you're the agent. In the exercising of power of
20 attorney one is given the title attorney-in-fact;
21 that's what you are. Under provision -- you have
22 a copy of it in front of you?

23 MS. TUCKER: Yes, I do.

24 THE COURT: I want you to look at
25 Article 3, subparagraph I, at the very bottom of

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1 page 8 of 17, subsection I of Article 3 is
2 entitled "Power relating to claims and
3 litigation." Under subsection I there's a further
4 subparagraph number 6. This power gives you the
5 power to waive the -- what we're concerned about
6 here -- waive service of process upon the
7 principal. Your husband Curtis Tucker is your
8 principal and you can waive service of process
9 upon him. You are able to appear for the
10 principal. Now the active appearance, Ms. Tucker,
11 is distinguished from the act of representing in
12 the form of an attorney before the Court. You
13 understand the difference?

14 MS. TUCKER: Yes, sir. But I would
15 like to say earlier when we first started, she
16 said that she didn't want my instruments to be

17 entered into --

18 THE COURT: Right.

19 MS. TUCKER: So I feel as though if
20 she's going to enter this, I feel like all my
21 instruments should be entered into this, not just
22 something that she wants as far as power of
23 attorney.

24 THE COURT: Well, they're separate
25 exhibit, but I'll ask her if she desires to do

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1 that.

2 Do have any objection to the other
3 documents being entered?

4 MS. BLACKWELL: Your Honor, we have no
5 problem with using judicial notice of the
6 exhibits. We still stand by our objection as far
7 as the relevance to the matter at hand.

8 THE COURT: My problem with Exhibit 3
9 -- I don't have a problem with the constitution.
10 I mean, it's a historical document. I can take
11 judicial notice of the historical document of the
12 Constitution of South Carolina of 1868. I do have
13 concern about the Exhibit Number 3 on the basis of
14 its relevance. I don't understand, frankly. It

15 doesn't, it's non-sensible to me.

16 MS. BLACKWELL: Right.

17 THE COURT: But if it's admitted into
18 the record, I can, I can, I guess I can consider
19 for what its worth-- I mean, I didn't read the
20 entire thing word for word. It's very difficult
21 to understand. It's the kind of gibberish we see
22 with Sovereign citizens.

23 MS. BLACKWELL: Right.

24 THE COURT: It's very difficult to
25 comprehend what exactly is being said; but I think

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1 for that reason, I'm gonna sustain the objection
2 to that particular document coming into evidence
3 so I'll take -- I'll let the -- it'll be in the
4 record for information only. But as far as a
5 record of evidence in this case, it's gonna -- I'm
6 not gonna allow it in the form of evidence. All
7 right, so we're back to the power of attorney.

8 MS. TUCKER: So you're not going to
9 allow my U.S. Constitution?

10 THE COURT: It's in. It's in. The
11 Constitution of 1868, that Exhibit Number 1 is in
12 the record. Okay.

13 (Defendant's Exhibit No. 1 was admitted into
14 evidence.)

15 MS. TUCKER: I don't think that's
16 fair.

17 THE COURT: Well, I'm the judge and I
18 make that ruling.

19 MS. TUCKER: Oh, yeah, I understand
20 that.

21 THE COURT: I note your objection.
22 Now, let me ask you, I want to go back to Article
23 3, Section I, subparagraph 6, where it says that
24 you have the power under this power of attorney to
25 waive service of process. Do you desire, or will

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1 you do that?

2 MS. TUCKER: Will I waive this
3 process, Sir?

4 THE COURT: Service of process meaning
5 delivery of the exhibits to your husband by
6 serving your husband in the penitentiary in
7 Labelle, Pennsylvania. Now what they are --
8 here's the, here is the...

9 MS. TUCKER: Your Honor, can I say
10 something?

11 THE COURT: Well, let me, let me say
12 something. I'm getting very close to trying to --
13 I think this is something new and it's something
14 you need to discuss between the two of you. Now
15 here's a problem that I'm running into; it's
16 medical. I have a doctor's appointment in Mount
17 Pleasant at 1:40.

18 MS. BLACKWELL: Okay.

19 THE COURT: Which is exactly, I have
20 exactly enough time to get there. So I think what
21 I want to do is continue the case over. At this
22 point we'll -- and I can reconvene this tomorrow
23 if you like or -- I mean, we can reconvene quickly
24 if you want to or would like to. So the options
25 are to continue the case. You and Ms. Tucker need

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1 to discuss what you expressed in your comments.
2 She will have to make a decision what she wants to
3 do.

4 I will say this, that this case is
5 relatively new in terms of its filing date. It
6 was February 13th, March, April May, June. We're
7 only four months into the, just right at four
8 months since the filing of the claim. If you

9 decide to on this, in this continuance, to procure
10 the service of process on Mr. Tucker and after 30
11 days goes by from that date of service, if
12 depending on what the result of that is, we can
13 hear this case fairly quickly. It's fortunate
14 that Ms. Tucker as his agent has power to, under
15 this litigation provision, to appear on his behalf
16 which would allow her to get a lawyer on his
17 behalf as his agent to defend the action so it may
18 be helpful for everybody to take a step back and
19 let's think through what we want to do here.

20 Before I let you go, I want to ask
21 Ms. Tucker one other question. And that is,
22 Ms. Tucker, if -- are you an employed individual?
23 Are you employed?

24 MS. TUCKER: Yes, sir.

25 THE COURT: What do you do for a

1 living?

2 MS. TUCKER: I drive school buses.

3 THE COURT: You're a school bus

4 driver?

5 MS. TUCKER: Yes, sir.

6 THE COURT: How do you get -- what's

7 the wage for that?

8 MS. TUCKER: It's like 460 a week.

9 THE COURT: \$460?

10 MS. TUCKER: Yes.

11 THE COURT: A week?

12 MS. TUCKER: But now that summer is
13 out I just got another job.

14 THE COURT: What are you doing?

15 MS. TUCKER: I'm working for
16 Reddy-Ice.

17 THE COURT: You need to speak up, I'm
18 sorry.

19 MS. TUCKER: I'm working for
20 Reddy-Ice.

21 THE COURT: Reddy-Ice.

22 MS. TUCKER: Yes, sir.

23 THE COURT: Okay, you're a truck
24 driver for Reddy-Ice?

25 MS. TUCKER: Yes, sir.

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1 THE COURT: And delivering ice to
2 various stores that sell ice?

3 MS. TUCKER: Yes, sir.

4 THE COURT: And will you continue to

5 do that only through the summer and then go back
6 to school bus driving, or what's the?

7 MS. TUCKER: No, I'm gonna keep on
8 doing this job.

9 THE COURT: How much do you make for
10 Reddy-Ice.

11 MS. TUCKER: I make like \$1300 every
12 two weeks.

13 THE COURT: You make a little bit more
14 as a truck driver for them.

15 MS. TUCKER: Yes, sir.

16 THE COURT: What are the likelihoods
17 that you'll -- do they keep -- I mean, is that a
18 seasonal work appointment or you -- summer ice is
19 water that melts.

20 MS. TUCKER: Right.

21 THE COURT: And water that melts needs
22 to be replaced frequently so there's more need for
23 truck drivers, I guess, from Reddy-Ice --

24 MS. TUCKER: Yes.

25 THE COURT: -- To haul all that ice.

1 So what assurance do you have that your job will,
2 will extend beyond the summer months?

3 MS. TUCKER: Well, I talked to the guy
4 and he said that, you know, that --

5 THE COURT: Who did you talk -- who is
6 "the guy"?

7 MS. TUCKER: The boss.

8 THE COURT: Your boss.

9 MS. TUCKER: My boss, yes. And --

10 THE COURT: And what did your boss
11 tell you?

12 MS. TUCKER: It's seasonal, but --

13 THE COURT: Seasonal.

14 MS. TUCKER: After 90 days, you know,
15 once you do, you know, good work --

16 THE COURT: Well, you don't know so
17 you don't tell me you know.

18 MS. TUCKER: Well, that's why I said
19 if you do, then you'll be hired on full-time.

20 THE COURT: You last 90 days you're
21 hired full-time?

22 MS. TUCKER: Yes.

23 THE COURT: And your children are
24 taken care by your mother?

25 MS. TUCKER: Yes.

1 THE COURT: So that you have a
2 built-in daycare availability. How old is your
3 mother?
4 MS. TUCKER: My mom is 53, 52, 53.
5 THE COURT: 53? Is she employed?
6 MS. TUCKER: Yes.
7 THE COURT: And where does she work?
8 MS. TUCKER: She works with C.N.A.
9 She helps with the elderly people.
10 THE COURT: She works where?
11 MS. TUCKER: She does C.N.A. She
12 helps the elderly people.
13 THE COURT: Oh, she's a certified
14 nurse.
15 MS. TUCKER: Yes.
16 THE COURT: Registered nurse.
17 MS. TUCKER: Uh-huh.
18 THE COURT: Okay. Not certified
19 registered, certified --
20 MS. TUCKER: Nursing assistant.
21 THE COURT: Nurse, CNN, certified
22 nurse.
23 MS. TUCKER: Assistant.
24 THE COURT: Assistant, C.N.A. C.N.A.
25 is the term. She lives in the house with you?

1 MS. TUCKER: She's staying there right
2 now.

3 THE COURT: Does she contribute to the
4 fiscal management of the household?

5 MS. TUCKER: Yes, sir.

6 THE COURT: Does she pay rent?

7 MS. TUCKER: Well, no, 'cause --

8 THE COURT: What does she -- I mean,
9 how are y'all managing?

10 MS. TUCKER: Well, my mother just
11 moved in with me like two months ago.

12 THE COURT: And how long does she plan
13 on staying there?

14 MS. TUCKER: She's gonna stay there
15 with me.

16 THE COURT: Okay.

17 MS. TUCKER: Yeah. My father died so,
18 you know, she --

19 THE COURT: Well, the house is owned
20 by Mr. Tucker and you so.

21 MS. TUCKER: Yes.

22 THE COURT: All right. Is it your
23 desire to keep this house? Is that what you're

24 trying to do?

25 MS. TUCKER: Yes, sir.

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1 THE COURT: You want to keep it? You
2 want to own this house?

3 MS. TUCKER: Yes, sir.

4 THE COURT: You want to maintain it
5 and keep it --

6 MS. TUCKER: Yes, sir.

7 THE COURT: -- And live there?

8 MS. TUCKER: Yes, sir.

9 THE COURT: It's an earnest desire?

10 MS. TUCKER: Yes, sir.

11 THE COURT: If you were given an
12 opportunity by the bank -- now they're not
13 required to do this, but I'm just asking. If you
14 were able to pay all the amount of money that's
15 past due, are you able to do that? Do you have
16 funds enough to do that?

17 MS. TUCKER: Me and Ms. Elizabeth had
18 spoken about that a few months ago, and I told her
19 I was working on my credit because my credit is
20 not that good right now to be able to move along.

21 THE COURT: All right. Well, I think

22 the best thing for y'all to do then is to let's
23 take a break. You make some good -- you know, I
24 would, I'll take -- the record is what it is.

25 We will reconvene when you ask me,

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1 Ms. Blackwell, to reconvene since it's your case.
2 Certainly work with Ms. Tucker to try to arrange a
3 week and date just as you would with any other
4 would, but I'm happy to hear y'all again as soon
5 as you can come up with a strategy that makes
6 sense for both your client and Ms. Blackwell and
7 for Ms. Tucker as well. And that's not to say
8 that you shouldn't be operating on multiple
9 planes. In other words, you can continue to be
10 talking with Ms. Tucker; at the same time, you can
11 be cleaning up the process issue that I am
12 concerned about. And perhaps by the time we get
13 to the point where we're able to have the case and
14 I'm certain on jurisdiction on Mr. Tucker, we can
15 go forward on the merits on his, as to him. Maybe
16 we'll have an answer that works for everybody.
17 So, but maybe not, and then we'll go forward.

18 MS. BLACKWELL: Your Honor, may we ask
19 for an order compelling the name of the facility,

20 where it is?

21 THE COURT: Oh, yes, I have provided
22 that for you. It is -- I actually looked it up
23 while y'all were in recess. And interestingly,
24 the name of the -- the name of the prison is
25 Fayette Prison. It's on the Labelle. It's in

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1 Labelle, Pennsylvania. I entered -- they have a,
2 the prison system in Pennsylvania has a pretty
3 cool tool. You can do a inmate search and they
4 will give you -- it gives you the name of the
5 inmate. Let me start this over. Is that what you
6 asked me, can I look it up on the computer?

7 MS. TUCKER: Uh-huh, yes, sir.

8 THE COURT: So, all right. It's
9 Labelle, Pennsylvania.

10 MS. TUCKER: I can give her the
11 address. I have no problem with that. She never
12 asked me for the address. I sent the address to
13 the Farmers & Merchants Bank when I mailed them
14 the letter.

15 THE COURT: All right. It's called a
16 Fayette State Correctional Institution. You can
17 actually mail individuals to inmates in

18 Pennsylvania. There are ways -- I mean, so if you
19 go to prison and then there's an inmate search
20 function and just -- I entered Curtis Tucker,
21 selected enter, and I got his inmate number. It's
22 NF2592. He is known as Curtis Barnes, Curtis
23 Tucker, Curtis R. Tucker, Curtis Rasheed Tucker.
24 He's 32?

25 MS. TUCKER: Yes, sir.

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1 THE COURT: His date of birth is
2 February the 7th, 1987.

3 MS. TUCKER: Yes, sir.

4 THE COURT: He's a black male. His
5 height is five-ten, citizen of the United States
6 of America. Location currently is Fayette,
7 F-A-Y-E-T-T-E. Currently location Fayette. The
8 committing county is Philadelphia. And this was
9 entered at 6:17, 4:00 p.m. -- 4:00 a.m. this
10 morning. That's the most current information.

11 MS. BLACKWELL: Thank you, Your Honor.

12 THE COURT: And I, so I'm pretty
13 certain -- and when you look that correctional
14 institution up, it gives you the name of the
15 superintendent and the relevant information. And

16 she -- the address she gave us, the inmate name
17 and I.D. number is what you need on it. And then
18 that address is SCI-Fayette, P.O. Box 9999,
19 Labelle, Pennsylvania 15450.

20 MS. BLACKWELL: Is that four nines,
21 9999?

22 THE COURT: Yes, ma'am. But I think
23 you'll be able to -- if you go to that site you'll
24 be able to easily maneuver it. If I can do it,
25 you can do it.

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1 MS. BLACKWELL: Sounds good. Thank
2 you.

3 THE COURT: All right. So we got to
4 continue this for a while. And we'll get back
5 together at your request, Ms. Blackwell, as long
6 as you make sure you try to coordinate with
7 Ms. Tucker.

8 MS. TUCKER: Can I say one more thing?

9 THE COURT: Yes, ma'am.

10 MS. TUCKER: Can I make arrangements
11 to try to stay in my house?

12 THE COURT: Well, that's a matter
13 between you and the bank. Your biggest problem,

14 you really need to -- what you need to do, instead
15 of trying to do this on your own and try, and you
16 know, the stuff that you submitted, I mean, you
17 really need a lawyer. There's some real good
18 lawyers in Summerville that handle this kind of
19 work, and they're just really good, I mean. And
20 they can speak with Ms. Blackwell. They indicated
21 that they're willing to move a little bit on what
22 they want to do; but you know, that's dependent on
23 some other things so I can't -- and I don't want
24 to get into that 'cause that has to do with
25 settlement issues. It's not my job to try to get

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1 the case settled between y'all. But you just need
2 to talk with Ms. Blackwell. The best thing you
3 can do is get yourself a good lawyer. Look up --
4 you know how to use a computer, I know that. So
5 why don't you look up mortgage foreclosure defense
6 lawyers, someone in South Carolina, and see if you
7 can't find somebody that would help you.

8 Ms. Blackwell, I don't see any
9 conflict. Your client shouldn't object to this.
10 It would probably help move the case along. If
11 you were to give her a couple of names, folks that

12 do good job on that side of the bar.

13 MS. BLACKWELL: Absolutely, yeah. I
14 highly recommend Russ DeLong.

15 THE COURT: I think that's an
16 excellent choice.

17 MS. TUCKER: Can I ask you a question?
18 Would you guys be willing to work with me now
19 that I'm getting more pay, as far as the mortgage?

20 THE COURT: Let's go off the record.
21 This is beyond my scope. I'll let y'all talk.

22 (Whereupon, at 12:35 p.m.,
23 the proceedings concluded.)

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1 CERTIFICATE OF REPORTER

2 State of South Carolina

3 County of Florence

4

5 I, Roger Williamson, Court Reporter and
6 Notary Public for the State of South Carolina, do
7 hereby certify that the transcript of the
8 foregoing proceedings contains a true record of
9 the hearing in the above-captioned cause.

10 I further certify that I am neither attorney
11 nor Counsel for, nor related to or employed by any
12 of the parties connected to the action, nor am I
13 financially interested in the action.

14 Witness my hand at Florence, South Carolina,
15 this the 23rd day of October, 2020.

16

17

Roger Williamson Creel

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MY COMMISSION EXPIRES:
March 18, 2022

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