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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

NOV 04 2020

**SC Court of Appeals**

W.B. McCullough, Special Referee

Case No.: 2018-002199

Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the  
Residential Credit Opportunities Trust V ..... Respondent,

v.

Leroy hooks, II and Ford Motor Credit Company, LLC ..... Appellant,

Patricia A Wheeler and Maria D. Williams..... Respondents.

RESPONDENTS' JOINT MOTION TO DISMISS APPEAL AND MEMORANDUM  
IN SUPPORT

Chad W. Burgess, Esquire  
Brock & Scott, PLLC  
3800 Fernandina Road, Suite 110  
Columbia, South Carolina 29210  
(803) 454-3540  
Attorney for Respondent Wilmington Savings Fund  
Society, FSB, D/B/A Christiana Trust as Owner  
Trustee of the Residential Credit Opportunities  
Trust V

Andrew T. Shepherd, Esquire  
Shephard Law Firm, LLC  
204 Brighton Park Blvd., Suite B  
Summerville, SC 29486  
(843) 900-3575  
Attorney for Respondents Patricia A Wheeler and  
Maria D. Williams

Other Counsel of Record:

William Ceth Land, Esquire  
Land Parker Welch LLC  
Post Office Box 138  
Manning, SC 29102  
(803) 435-8894  
Attorney for Appellant Hooks

**NOW COMES** Respondents Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Owner Trustee of the Residential Credit Opportunities Trust V, Patricia A. Wheeler, and Maria D. Williams (“Respondents”) by and through their respective undersigned attorneys, will move before this Court for an Order dismissing the instant appeal pursuant to South Carolina Appellate Court Rules 269 on the grounds that the Appeal is moot, and proceeding with the same is frivolous and taken solely for the purposes of delay.

### **BRIEF PROCEDURAL HISTORY**

The instant action is one of foreclosure of a Mortgage on real property located in Clarendon County, South Carolina. The foreclosure complaint was filed on February 5, 2018. The case was referred to The Honorable W.B. McCullough, as Special Referee, on March 12, 2018. Following a foreclosure hearing held on May 3, 2018, the Special Referee entered an Order and Judgment of Foreclosure and Sale on May 14, 2018. The Special Referee conducted a judicial foreclosure sale on June 4, 2018. Respondents Patricia A. Wheeler and Maria D. Williams (hereinafter “Wheeler and Williams”) were the successful purchasers. The Special Referee’s deed into Wheeler and Williams was recorded July 11, 2018.

Appellant filed a motion for a New Trial or for Relief from Order pursuant to SCRCP Rules 59 and 60 on July 19, 2018. Appellant's Motion was heard on October 17, 2018. The Special Referee denied Appellant's Motion in an Order filed November 29, 2018. This appeal followed.

Appellant sought a writ of supersedeas through a Motion to Determine Bond filed February 13, 2019. Appellant's Motion was heard on January 27, 2020 and the Special Referee entered an Order for Supersedeas Bond to Stay on February 6, 2020. Appellant has not posted the bond. Wheeler and Williams have taken possession of the property.

### ARGUMENT

The subject property is in the possession of bona fide purchasers for value, without notice, and, as such, no relief can be granted to Appellant and the appeal is moot. This Court recently had occasion to take up the issue of bona fide purchaser status in the case of *Shirey v. Bishop*, Opinion No.: 5718, filed April 22, 2020. In *Bishop*, this Court set forth the following framework for determining bona fide purchaser status:

To claim the status of a bona fide purchaser, a party must show (1) actual payment of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase, 'i.e., in good faith and with integrity of dealing, without notice of a lien or defect.'

*Robinson v. Estate of Harris*, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (Ct. App. 2008) (quoting *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006)). "The bona fide purchaser must show all three conditions...occurred before he had notice of a title

defect or other adverse claim, lien, or interest in the property.” *Spence*, 368 S.C. at 117, 628 S.E.2d at 875.

In the case at bar, Wheeler and Williams are bona fide purchasers of the subject property through the foreclosure sale held on June 4, 2018. Wheeler and Williams fully complied with their bid and took title to the property through the Special Referee’s deed recorded in the Clarendon County Registry on July 11, 2018. Wheeler and Williams were without notice of any challenge to the foreclosure action as Appellant’s Motion for a New Trial [and Relief from the foreclosure Order] was not filed until July 19, 2018. Further, despite the Special Referee’s issuance of an Order for Supersedeas Bond to Stay Appellant’s ejectment from the property on January 29, 2020, Appellant has posted no bond. Therefore, regardless of the outcome of this appeal, Wheeler and Williams cannot be divested of ownership or possession of the subject property.

Since possession of the property is in the hands of bona fide purchasers, this Court can grant no practical relief to Appellant related to this matter and the appeal is moot. “A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for [a] reviewing [c]ourt to grant effectual relief.” *Mathis v. South Carolina State Highway Dep’t*, 260S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Because the Court of Appeals will not pass on moot and academic questions or make adjudications where no actual controversy exists, this appeal must be dismissed. *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996). *See also Jones v. Dillon-Marion Human Resources Dev. Comm’n*, 277 S.C. 533, 291 S.E.2d 195 (1982). While the Supreme Court for South Carolina held in *Wachesaw Plantation E. Cmty. Servs. Ass’n, Inc. v. Alexander* that issuance of a deed does not moot the appeal of a foreclosure sale and that the appellate court may reach the

merits, the instant case is distinguishable from *Wachesaw* and from the line of cases upon which the Court based its holding. 414 S.C. 355, 360, 778 S.E.2d 898, 901 (2015). Unlike *Wachesaw* and the precedent upon which it relied, the instant case involves bona fide purchasers for value who received a deed (i) after the entry of the judgment and order of foreclosure, (ii) after due publication of notice of the entry of said decree and of the foreclosure sale, and (iii) prior to any notice by the Appellant of an alleged lien or defect within the time proscribed by statute or by rule to effectively procure a stay or give notice sufficient to defeat the status of a bona fide purchaser.

### CONCLUSION

For the reasons set forth above, Respondents jointly request this Court to dismiss the present appeal as moot.

Respectfully Submitted,

s/Chad W. Burgess  
Chad W. Burgess, Esquire  
Brock and Scott, PLLC  
3800 Fernandina Road, Suite 110  
Columbia, South Carolina 29210  
Telephone: (803) 454-3540  
Attorney for Respondent Wilmington Savings Fund  
Society, FSB, D/B/A Christiana Trust as Owner  
Trustee of the Residential Credit Opportunities  
Trust V

Dated: November 2, 2020  
Columbia, South Carolina

Respectfully Submitted,

s/Andrew T. Shepherd

Andrew T. Shepherd, Esquire

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204 Brighton Park Blvd., Suite B

Summerville, SC 29486

(843) 900-3575

Attorney for Respondents Patricia A Wheeler and

Maria D. Williams

Dated: November 2, 2020  
Summerville, South Carolina

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v.

Leroy hooks, II and Ford Motor Credit Company, LLC ..... Appellant,

Patricia A Wheeler and Maria D. Williams, Intervenors ..... Respondents.

CERTIFICATE OF SERVICE

I hereby certify that due and proper service of the documents described below as made on  
the 2<sup>nd</sup> day of November, 2020, by depositing a true copy of the same in the  
United States mail in an envelope with adequate first-class postage duly affixed and  
return address clearly indicated thereon and addressed to:

William Ceth Land, Esquire  
Land Parker Welch LLC  
Post Office Box 138  
Manning, SC 29102  
(803) 435-8894  
Attorney for Appellant Hooks

DESCRIPTION OF DOCUMENTS:

Motion to Dismiss Appeal and Memorandum in Support



Chad W. Burgess, Esquire  
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November 2, 2020

Clerk of Court  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: Wilmington Savings Funds Society, FSB v. Leroy Hooks, II, et al.  
Appellate Case Number: 2018-002199  
B&S file Number: 17-16410

Dear Sir or Madam,

Enclosed for filing in the above-referenced action please find the Respondents' Joint Motion to Dismiss Appeal and Memorandum in Support together with a Certificate of Service by Mail, and check in the amount of \$50.00 for the filing fee.

Thank you in advance for your assistance in this matter.

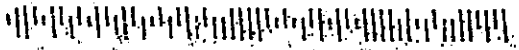
Sincerely,

Chad W. Burgess, Esq.  
Brock & Scott, PLLC

Enclosures

CC: Andrew T. Shepherd, Esquire  
William Ceth Land, Esquire

\*\*\*THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN BANKRUPTCY, AND YOU HAVE NOT REAFFIRMED THIS DEBT, THIS NOTICE CONSTITUTES NEITHER A DEMAND FOR PAYMENT NOR A NOTICE OF PERSONAL LIABILITY\*\*\*



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