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STATE OF SOUTH CAROLINA  
In the Court of Appeals

NOV 18 2020

APPEAL FROM CLARENDON COUNTY **SC Court of Appeals**  
Court of Common Pleas

W.B. McCullough, Special Referee

Case Number: 2018-002199

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

v.

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

Patrick A Wheeler and Maria D. Williams, Intervenors ..... Respondent.

**APPELLANT'S REPLY TO RESPONDENTS' JOINT MOTION TO DISMISS APPEAL  
AND MEMORANDUM IN SUPPORT**

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Land Parker Welch LLC  
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Attorney for Appellant Hooks

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Atty. for Respondent Wheeler and Williams

The Respondents argue that the Appeal in this matter should be dismissed pursuant to South Carolina Appellate Court Rule 269 because "the Appeal is moot, and proceeding with the same is frivolous and taken solely for the purposes of delay." (Motion, p. 2).

### ARGUMENT

#### Improper attempt to argue a new theory on appeal.

The Motion by the Respondents is an improper attempt to argue the theory of "*bona fide* purchaser" that was not raised in the Respondents' brief. At best the Motion is an improper attempt to provide a "Supplemental Citation" to the Court that should have been submitted pursuant to South Carolina Appellate Court Rule 208(b)(7). The rule states:

When pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations.

The Motion by the Respondents attempts to introduce the theory of "*bona fide* purchaser" to this appeal for the first time by citing to Shirey v. Bishop and Robinson, Opinion No. 5718, filed April 22, 2020, but the Respondents did not argue "*bona fide* purchaser" in its brief submitted to the Court. The "*bona fide* purchaser" theory has been around for many years as demonstrated by the citations in the Shirey case. See S.C. Tax Comm'n v. Belk, 266 S.C. 539, 225 S.E.2d 177, (1976); Smith v. McClam, 289 S.C. 452, 346 S.E.2d 720 (1986); Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006); and Robinson v. Estate of Harris, 378 S.C. 140, 662 S.E.2d 420 (Ct. App. 2008).

The Respondents should not be allowed to argue a new theory for their case a year and a half after Final Briefs were submitted by all parties. The Motion should be dismissed.

**The appeal by the Appellant is not moot, frivolous, or taken solely for the purposes of delay.**

Respondents' Motion argues that Respondents Wheeler and Williams are "*bona fide* purchaser" and under the holding in Shirey v. Bishop and Robinson, Opinion No. 5718, filed April 22, 2020, the appeal should be dismissed. The Respondents reliance on Shirey is misplaced and the holding in Shirey does not apply to the facts in the present appeal.

Shirey dealt with a dispute between the seller of real estate and two potential purchasers. The seller, Bishop, entered into a land sale contract with the first would be purchaser, Robinson, but the sale was never completed. On a later date Bishop agreed to sell the property to the second would be purchaser, Shirey. Shirey tendered a check to Bishop's attorney, but a deed was not issued. Bishop then agreed to sell the property to Robinson on different terms than originally agreed to and Bishop signed a deed transferring the property to Robinson. Shirey then filed an action against Bishop and Robinson demanding specific performance of the contract of sale that Shirey had entered into with Bishop.

The Special Referee that heard the case found that Shirey was a *bona fide* purchaser, set aside the Robinson deed, and Shirey was entitled to specific performance of his contract of sale. The Court of Appeals found that Shirey was a *bona fide* purchaser and found that Robinson received the property free of the claim by Robinson.

The factual and legal issues involved in Shirey and the present case are vastly different. Shirey dealt with a dispute between the seller of property and two potential buyers. The issue in the present case is whether the Court should set aside the Order and Judgment of Foreclosure and Sale pursuant to Rules of Civil Procedure Rule 60(b) because a Guardian *ad litem* had not been appointed for Appellant Hooks pursuant to Rules of Civil Procedure Rule 17(c). In the present case the Order of the Special Referee is void due to lack of jurisdiction over the Appellant because the Appellant was an incompetent person and a Guardian *ad litem* had not been appointed as required by Rule 17(c).

The controlling case for mootness in foreclosure actions is Wachesaw Plantation East Comm. Serv. Assoc., Inc. V. Alexander, 414 S.C. 355, 778 S.E.2d (2015). The Respondents attempt to distinguish the present appeal from the facts in Wachesaw by claiming the “instant case involves *bona fide* purchasers for value.” (Motion, p. 5). The facts of Wachesaw and the present case are very similar. In both cases an absentee owner’s property was foreclosed on and a sale occurred. The only difference between Wachesaw and the present case is that a deed was not issued immediately to the buyer in Wachesaw as was done in the present case. The Respondents seem to believe that this difference somehow makes Wachesaw inapplicable to the present case; however, it is clear from the holding in Wachesaw that when a deed is issued is of no concern to the mootness issue. The Court found that “Our jurisprudence establishes that, despite the master-in-equity’s issuance of a deed, an appellate court may reach the merits of the appeal.” (Id. at 901). The Court then sets forth the following list of cases to support its conclusion:

Antrum v. Hartsville Prod. Credit Ass'n, 228 S.C. 201, 89 S.E.2d 376 (1955) (deciding on petition to set aside foreclosure sale and declaring deed to purchaser void); Nichols v. Andrews, 157 S.C. 334, 154 S.E. 305 (1930) (deciding appeal from foreclosure and sale of property where deed was issued and no bond posted); Ex Parte Andrews, 152 S.C. 325, 150 S.E. 313 (1929) (explaining that purchaser of property was entitled to possession of property pending appeal because no bond was posted; remanding the case to be heard on the merits); Muckenfuss v. Fishburne, 68 S.C. 41, 46 S.E. 537 (1903) (deciding defendant's appeal from order to set aside judgment of foreclosure where deed was executed to the purchaser); Scott v. Scott, 29 S.C. 414, 7 S.E. 811 (1888) (deciding an action to enjoin the foreclosure of a mortgage for the sale of a mortgaged property after a deed was issued to plaintiff); Heritage Fed. Sav. & Loan v. Eagle Lake & Golf Condominiums, 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995) (deciding homeowners' association appeal from foreclosure and sale where a master deed was issued). Id. at 901.

The Wachesaw Court does not place any importance on when the deed was issued to the buyer, nor do any of the cases that support the ruling. If it was the intent of the Shirey Court to overturn Wachesaw and the long line of supporting cases, then the Court would have cited those cases and made it clear to the bench and bar that Wachesaw is no longer the standard for determining mootness in foreclosure appeals.

It should also be noted that the Respondents appear to misunderstand the affect of posting a bond pursuant to South Carolina Code §18-9-170. The Respondents state: "Further, despite the Special Referee's issuance of an Order for Supersedeas Bond to Stay Appellant's ejection 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." (Motion p. 4). Section 18-9-170 is not a requirement to proceed with an appeal from a foreclosure action. The only affect of posting bond is that the original owner can remain on the property during the pendency of the appeal. In the present case the Appellant, a disabled veteran, did not have the Thirty Two Thousand Two Hundred Thirty Three and 11/100

Dollars (\$32,233.11) required for the bond, so the Respondents were able to take possession of the property, but that does mean that if the Appellant is successful in the appeal and the sale is overturned that the Respondents will “not [be] divested of ownership or possession of the subject property.”

### CONCLUSION

The Respondents make an improper attempt to raise the theory of *bona fide* purchaser for the first time in their Motion. The theory of *bona fide* purchaser was not argued in the Respondents' brief submitted to the Court and should not be allowed by way of their Motion to Dismiss.

The Respondents have failed to demonstrate that the *bona fide* purchaser rule in Shirey v. Bishop and Robinson, Opinion No. 5718, filed April 22, 2020, is now the new standard for mootness in foreclosure appeals. The standard for mootness in foreclosure appeals remains the holding in Wachesaw Plantation East Comm. Serv. Assoc., Inc. V. Alexander, 414 S.C. 355, 778 S.E.2d (2015). The appeal presently before the court is not “moot, and proceeding with the same is” not “frivolous and taken solely for the purposes of delay.” The Respondents' Motion to Dismiss Appeal should be denied.



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WILLIAM CETH LAND  
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POST OFFICE BOX 138  
MANNING, SOUTH CAROLINA 29102  
ATTORNEY FOR APPELLANT

November 13, 2020

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CLARENDON COUNTY  
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Patrick A Wheeler and Maria D. Williams, Intervenors ..... Respondent.

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**CERTIFICATE OF SERVICE**

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I hereby certify that due and proper service of the documents described below was made on the 13th day of November, 2020, by depositing a true copy of same in the United States mail at Manning, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon and addressed to:

Chad W. Burgess, Esquire  
3800 Fernandina Road, Suite 110  
Columbia, S.C. 29210  
803-454-3540  
Attorney for Respondent Wilmington Savings

Andrew T. Shepherd, Esquire  
204 Brighton Park Blvd., Suite B  
Summerville, SC 29486  
843-900-3575  
Atty. for Respondent Wheeler and Williams

**DESCRIPTION OF DOCUMENTS:**

**Appellant's Reply to Respondents' Joint Motion to Dismiss Appeal and Memorandum in Support.**

A handwritten signature in black ink, appearing to read 'Ceth Land', is written over a horizontal line.

WILLIAM CETH LAND  
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November 13, 2020

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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RE: Wilmington Savings Fund Society, FSB, d/b/a Christina Trust as Owner Trustee of the Residential Credit Opportunities Trust V vs. Leroy Hooks, II and Ford Motor Credit Co. Inc. and Patrick Wheeler and Maria D. Williams.  
Case No: 2018-002199

Dear Ms. Kitchings:

Please find enclosed for filing the following in regards to the above matter:

Appellant's Reply to Respondents' Joint Motion to Dismiss Appeal and Memorandum in Support - Original and 6 copies.

I am by copy of this letter serving the same on Chad W. Burgess, Esquire, attorney for Respondent, Wilmington Savings, and Andrew T. Shepherd, Esquire, attorney for Wheeler and Williams.

With warm regards, I am

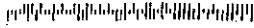
Sincerely,

  
William Ceth Land

WCL/sr

Encls.

Cc: Chad W. Burgess, Esquire  
Andrew T. Shepherd, Esquire



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<p>Land Parker Welch LLC Attorneys At Law Post Office Box 138 29 South Mill Street Manning, South Carolina 29102</p>
<p>To: The Honorable Jenny Abbott Kitchings South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211</p>

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