THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

William O. Spencer, Jr., Special Referee

Appellate Case No. 2018-000355

JPMorgan Chase Bank, National Association, ... Respondent,

v.

Fritz A. Timmons,..... Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

(1) Whether the special referee properly ruled Chase had standing to foreclose.

(2) Whether the special referee had jurisdiction over this action.

STATEMENT OF THE CASE

On June 13, 2001, Appellant Fritz A. Timmons executed a note (the "Note") memorializing a $76,000 loan he received from Hartsville Community Bank, NA. (Note, Supp. R. 157). On the same day, Timmons executed a mortgage (the "Mortgage") securing the payment obligations under the Note. (Mortgage, Supp. R. 160). Timmons defaulted on the loan, and in November 2015, Respondent JPMorgan Chase Bank, National Association ("Chase"), as the assignee of the Mortgage, filed this action for foreclosure of the Mortgage and for claim and delivery of a mobile home located on Timmons' property. (Compl. ¶ 7, Supp. R. 69). As required by Supreme Court of South Carolina Administrative Order 2011-05-02-01 (the "Administrative Order"), Chase contemporaneously filed and served a notice of Timmons' right to foreclosure intervention. (Notice of Foreclosure Intervention, Supp. R. 102). Timmons exercised his right to request foreclosure intervention. (Request for Foreclosure Intervention, Supp. R. 103). In May 2016, the circuit court entered an order stating "FCI. Continue," which continued the case to allow Timmons to pursue a loan modification. (May 25, 2016 Order, R. 1).

Approximately one year later, Chase filed a certificate of exemption from the foreclosure intervention requirements of the Administrative Order on the ground that Timmons failed to submit a complete application for a loan modification. (May 22, 2017 Cert. of Exemption, R. 62). Upon Chase's filing of the certificate, this action resumed. At Chase's request, the clerk of court referred the case to a special referee. (Order of Reference, R. 2). In response, Timmons filed a "Motion of Default, to Dismiss, to Quiet Title and Counterclaim," arguing the case should be dismissed because Chase lacked standing to foreclose. (Mot. of Default, Supp. R. 104). In the

same motion, Timmons asserted affirmative defenses and counterclaims based on lack of standing and alleged violations of the Fair Debt Collection Practices Act[1] ("FDCPA"). (Supp. R. 106–12).

Chase moved to strike the portion of Timmons' motion purportedly seeking an entry of default against Chase and for judgment on the pleadings as to Timmons' counterclaim. (Motion to Strike Motion of Default at 1–3, Supp. R. 113–15). Chase also sought judgment in its favor on Timmons' affirmative defenses and argued the special referee should deny Timmons' motion to dismiss. (*Id.* at 3–4, Supp. R. 115–16). On the same day, Chase submitted a pleading replying to Timmons' counterclaim and asserting affirmative defenses. (Reply to Counterclaim, Supp. R. 75). Timmons never filed a responsive pleading admitting or denying the allegations in Chase's complaint.

Shortly thereafter, Chase moved for summary judgment on Timmons' defenses related to Chase's status as the real party in interest and its standing to pursue foreclosure, arguing it is the holder of the Note and the assignee of the Mortgage and therefore had standing to foreclose. (July 19, 2017 Mot. for Summary J. at 2, Supp. R. 118–22). On August 15, 2017, Chase served a notice of hearing on Timmons, notifying him that the special referee would hear Chase's motion to strike, Chase's motion for summary judgment, and Timmons' "Motion of Default, to Dismiss, to Quiet Title and Counterclaim" on September 6, 2017. (Aug. 15, 2017 Notice of Hearing, Supp. R. 123). On August 30, 2017, Timmons filed a response to the notice of hearing, arguing that he did not consent to the case being referred to a special referee and that the special referee lacked jurisdiction over the case. (Resp. to Notice of Hearing, Supp. R. 136–39). He also accused Chase's counsel and the special referee of violating a variety of civil and criminal statutes. (*Id.*). At the same time,

[1] *See* 15 U.S.C. §§ 1692 *et seq.*

Timmons filed a demand for a jury trial "[d]ue to the unlawful 'Notice of Hearing' filed by the plaintiff." (Demand for Jury Trial, Supp. R. 135). The special referee heard Chase's motions on September 6, 2017. (Sept. 6, 2017 Hearing Tr., Supp. R. 85). Timmons failed to appear at the hearing. (*Id.* at 2, Supp. R. 86).

Chase moved to strike Timmons' jury trial demand on the grounds that it was untimely and that Timmons had no right to a jury trial. (Motion to Strike Jury Demand, Supp. R. 140). On September 12, 2017, the special referee entered an order granting Chase's motion for judgment on the pleadings and summary judgment as to standing and real party in interest, and striking Timmons' request for default and dismissal of Chase's complaint. (Sept. 12, 2017 Order, R. 3–9). The special referee found Chase was the holder of the Note and Mortgage; therefore, it had standing and was the real party in interest. (*Id.* at 6, R. 8). The special referee also rejected Timmons' FDCPA argument on the ground that Chase is not a debt collector as defined in 15 U.S.C. § 1692a(6). (*Id.* at 4–5, R. 6–7). The special referee also struck Timmons' jury demand on the grounds that it was untimely and therefore waived, and that Timmons did not have a right to a jury trial. (*Id.* at 3–4, R. 5–6). Timmons has not appealed the September 12, 2017 order.

Approximately one month later, Timmons filed a "Motion to Show Cause and to Strike and Disregard Exemption, Order of Reference, Order/Referred, Second Foreclosure Action, and Order of 9/12/2017." (Oct. 12, 2017 Motion, Supp. R. 147). In that motion, Timmons repeated arguments raised in his previous motions, accused Chase of pursuing two foreclosure actions simultaneously, and argued he did not receive notice of a hearing on May 25, 2016.[2] (Supp. R. 147–52).

[2] No hearing took place on May 25, 2016.

Chase filed a motion for summary judgment on the merits of its claims. (Jan. 2, 2018 Mot. for Summary Judgment, R. 27; Memo. in Supp. of Jan. 2, 2018 Mot for Summary Judgment, Supp. R. 153). Chase served a notice of hearing on Timmons on January 18, 2018, notifying Timmons that the special referee would hear the summary judgment motion on January 29, 2018. (Jan. 18, 2018 Notice of Hearing, Supp. R. 194–96). On the day of the hearing, Timmons filed a response to Chase's summary judgment motion, which largely repeated his previous arguments. (Resp. to Chase's Mot. for Summary J., Supp. R. 197–204). For the first time, Timmons argued Chase could not foreclose on Timmons' mobile home. (*Id.* at 5, Supp. R. 201). After the hearing, the special referee granted Chase's motion in full, finding Chase was entitled to foreclose and Timmons waived his right to contest the mobile home issue because he failed to file a responsive pleading denying the allegations in Chase's complaint. (Jan. 29, 2018 Hearing Tr., R. 28; Jan. 29, 2018 Order at 5–6, R. 17–18). Timmons filed this appeal of the January 29, 2018 summary judgment order.

STANDARD OF REVIEW

"A foreclosure action is an equitable action." *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014). In an equitable action, this court applies a de novo standard of review. *Id.* (citing *Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017)); *see also Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 614, 799 S.E.2d 310, 315 (Ct. App. 2017) ("The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence."). Although a de novo standard allows this court to take its own view of the evidence and make its own findings of fact, this court still recognizes the special referee is in a superior position to assess witness credibility and the appellant still has the burden of showing this court that the preponderance of the evidence is against the findings of the special referee. *Id.*

ARGUMENT

As an initial matter, Timmons' brief does not include a statement of issues on appeal. The brief therefore does not comply with Rule 208 of the South Carolina Appellate Court Rules. Rule 208(b)(1)(B), SCACR. Because this court ordinarily will not consider any point not set forth in the statement of issues on appeal, the court should not consider any of Timmons' arguments. *See id.*

Timmons raises numerous arguments in his brief, the majority of which are difficult to decipher. Timmons appears to raise two primary issues: (1) whether Chase had standing to foreclose; and (2) whether the special referee had jurisdiction to decide this case. Timmons also presents a mixture of additional arguments—including those accusing the special referee, the lawyers involved in the case, and Chase of committing criminal acts, perjury, and fraud—all of which are either meritless or unpreserved.

Importantly, Timmons never filed a responsive pleading denying the allegations in Chase's complaint. He filed only a "Motion of Default, to Dismiss, to Quiet Title and Counterclaim" in which he asserted several affirmative defenses and counterclaims but did not admit or deny the allegations in the complaint. *See generally* (Mot. of Default, Supp. R. 104–12). Each of Timmons' affirmative defenses and counterclaims is based on arguments that Chase lacked standing to foreclose, was not a real party in interest, or could not foreclose because it committed FDCPA violations. *See* (*id.*). Because Timmons never denied the allegations in Chase's complaint—other than the standing-related allegations—he is deemed to have admitted the allegations. Rule 8(d), SCRCP. Timmons therefore admitted, among other things, the existence of the debt, that he defaulted on the debt, and that Chase is entitled to claim and delivery of his mobile home. *See generally* (Compl., Supp. R. 68–74). This court should decline to consider any arguments that Timmons waived by failing to file an appropriate responsive pleading.

In a foreclosure action, the party seeking to foreclose on a mortgage generally has the burden of establishing the existence of the debt and the mortgagor's default on that debt. *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 221, 746 S.E.2d 478, 481 (Ct. App. 2013). "Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." *Id.* Timmons never denied the existence of the debt or his default on the debt. He does not dispute that he executed the Note with Hartsville Community Bank, NA listed as the originating "Lender," (Note, Supp. R. 157), or that he executed the Mortgage on the same day, securing the payment obligations under the Note, (Mortgage, Supp. R. 160–75). Therefore, he is deemed to have admitted the existence of the debt and default on the debt, and the burden shifted to him to establish a defense to foreclosure. *See Draper*, 405 S.C. at 221, 746 S.E.2d at 481. Timmons' three affirmative defenses and

counterclaim in this case are all based on the grounds that Chase could not foreclose because it lacked standing, was not the real party in interest, and allegedly violated the FDCPA (Timmons' FDCPA argument appears to fall under the umbrella of his standing issue). *See* (Mot. of Default, Supp. R. 106–10). The special referee properly found Timmons' standing defenses failed as a matter of law. Thus, Timmons failed to establish a defense to foreclosure, and he cannot establish that the preponderance of the evidence is against the special referee's findings.

The circuit court and special referee followed all required procedures in this case. This is a standard foreclosure case, and Timmons has presented no meritorious issues. This court should summarily affirm the special referee's rulings.

I. The special referee properly ruled Chase has standing to foreclose.

Timmons raises a variety of arguments challenging Chase's standing to foreclose. Timmons' primary argument appears to be that Chase is not a holder of the original Note and Mortgage and therefore lacked standing. Contrary to Timmons' arguments, there is no question that Chase had standing to foreclose in this case.[3]

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Michael P. v. Greenville Cty. Dep't of Soc. Servs.*, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009) (citing *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008)). For a party to have standing, "a litigant must have a personal stake in the subject matter of the litigation." *Id.* at 415–16, 665 S.E.2d at 241. Similarly, Rule 17(a) of the South Carolina Rules of Civil Procedure provides that "[e]very action shall be

[3] Timmons' unclean hands argument appears to be predicated on a purported lack of standing. *See* (App. Br. 9). That argument fails for the reasons explained in this section.

prosecuted in the name of the real party in interest." Rule 17(a), SCRCP. "The purpose of the real party in interest provision is to assure that a defendant is required only to defend an action brought by the proper party and that such an action need be defended only once." *Bardoon Props., NV v. Eidolon Corp.*, 326 S.C. 166, 169, 486 S.E.2d 371, 373 (1997).

The holder of a note has standing and is a real party in interest for foreclosure purposes. *Draper*, 405 S.C. at 220–23, 746 S.E.2d at 481–82. A "holder" is defined as "the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession." S.C. Code Ann. § 36-1-201(b)(21)(A).

Chase had standing and is the real party in interest because Chase is the holder of the Note. The Note bears two indorsements. *See* (Note at 3, Supp. R. 159). The first indorsement is a special indorsement from the originating lender, Hartsville Community Bank, NA, to Crescent Bank and Trust Company. (*Id.*); *see also* S.C. Code Ann. § 36-3-205(a) (providing a special indorsement identifies the person or entity to which the instrument is made payable). The second indorsement, made by Crescent Bank and Trust Company, is in blank. (Note at 3, Supp. R. 159). An indorsement in blank renders the Note bearer paper, meaning any person or entity in possession of the Note is entitled to enforce the Note. *See* S.C. Code Ann. § 36-3-109(c) ("An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3-205(b)."); S.C. Code Ann. § 36-3-205(b) ("When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed."). The Note, therefore, is payable to bearer and may be enforced by the entity that possesses it. *See* S.C. Code Ann. § 36-1-201(b)(21)(A); *Draper*, 405 S.C. at 220–23, 746 S.E.2d at 481–82.

Chase presented the original Note to the special referee, thus proving it was in possession of the Note indorsed in blank. *See* (Sept. 6, 2017 Hearing Tr. at 10, Supp. R. 94); *see also* (Sept. 12, 2017 Order at 6, R. 8) ("During the September 6, 2017 hearing, Plaintiff, through its counsel, presented the original note to the undersigned for inspection.").[4] Therefore, Chase proved that it was entitled to enforce the Note. Although Timmons claims to be the holder of the original Note, the special referee examined the documents presented by Timmons and found them to be copies. (Jan. 29, 2018 Hearing Tr. at 10–11, R. 37–38).

Chase is also the assignee of the Mortgage. The Mortgage named Mortgage Electronic Registration Systems, Inc. ("MERS") as the mortgagee, solely as the nominee for the originating lender and the originating lender's successors and assigns.[5] (Mortgage at 3, Supp. R. 162). As is

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[4] Timmons failed to appear at the September 6, 2017 hearing. Although he complains that he did not receive notice of the hearing, the record shows Chase served a notice of hearing on Timmons on August 15, 2017. (Notice of Sept. 6, 2017 Hearing, Supp. R. 123–25). Chase therefore complied with the notice requirements under Rule 6 of the South Carolina Rules of Civil Procedure. Rule 6(d), SCRCP (providing, for written motions, notice of a hearing "shall be served not later than ten days before the time specified for the hearing").

[5] MERS did not own the Note or Mortgage. Rather, MERS simply held the Mortgage as nominee for the lender. In a recent lawsuit against MERS and its parent company, the South Carolina Supreme Court explained how MERS works:

> MERS is a subsidiary of MERSCORP and is a member-based organization made up of lenders and investors, including mortgage banks, title companies, and title insurance companies. When MERS member-lenders issue a mortgage and promissory note, MERS is listed as the mortgagee, specifically as "nominee" in place of the lender. The mortgage is then recorded in the county where the real property is located, and internally, the loan is registered in the MERS system. Accordingly, MERS becomes the grantee in the public index, despite the fact that MERS holds no security interest in the promissory note. This allows the lender to retain priority with MERS as the nominee without having to record each time there is an assignment of the mortgage when the promissory note is transferred. MERS essentially provides a convenient framework

standard practice in the mortgage industry, MERS—because it merely held the Mortgage as nominee and did not own a security interest in Timmons' property—properly assigned the Mortgage to Chase in April 2015, prior to Chase instituting this foreclosure action.[6] (Assignment of Mortgage, R. 58). Importantly, a borrower does not have standing to challenge a mortgage assignment. *See Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8–9 (D.S.C. Apr. 30, 2012) ("Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity."); *see also Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004) ("Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract."). Timmons therefore lacked standing to contest the assignment of the Mortgage, and his contention that the assignment was invalid or fraudulent fails as a matter of law and does not affect Chase's standing.[7] *See* (App. Br. 17–18). Moreover, South Carolina recognizes "the familiar and uncontroverted proposition . . . that the assignment of a note secured by a mortgage carries with it an assignment of the mortgage." *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112, 115 (1930); *see also Draper*, 405 S.C. at 220, 746 S.E.2d at 481. Thus, when Chase became the holder of the Note, it also gained the right to foreclose on the

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> through which members can transfer notes amongst themselves without having to record each exchange.

Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 166, 785 S.E.2d 595, 597–98 (2016).

[6] The assignment was recorded on April 20, 2015, (Assignment of Mortgage, R. 58), though there is no requirement that an assignment of mortgage must be recorded, *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (2012) ("[T]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee.").

[7] Counsel for Chase presented the original assignment of mortgage to the special referee at the Sept. 6, 2017 hearing. *See* (Sept. 12, 2017 Order at 6, R. 8) ("The original Mortgage Assignment was also presented during the September 6, 2017 hearing.").

Mortgage. *See Draper*, 405 S.C. at 220–21, 746 S.E.2d at 481 ("A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action."). There is no question that Chase had standing to foreclose on the property secured by the Mortgage.[8]

A real party in interest is "a party with a real, material, or substantial interest in the outcome of the litigation." *Draper*, 405 S.C. at 220, 746 S.E.2d at 481; *see also* Rule 17(a), SCRCP (requiring every action to be "prosecuted in the name of the real party in interest"). As the holder of the Note and assignee of the Mortgage, Chase has a material interest in enforcing the instruments and is therefore a real party in interest. *See Draper*, 405 S.C. at 220, 746 S.E.2d at 481 ("It is ownership of the right sought to be enforced which qualifies one as a real party in interest . . . ." (quoting 4 S.C. Jur. *Action* § 23 (1991)).

Finally, Timmons also appears to argue Chase is a debt collector under the FDCPA and is unlawfully attempting to foreclose. (App. Br. 7). The FDCPA does not apply to this case. The FDCPA exists to "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692. It defines a "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Thus, it applies only to persons attempting to collect debts owed to other persons. *See id.* Because Chase is the holder of the Note,

[8] Timmons argues Michael Leddy, the signatory of the indorsements on the face of the Note, lacked authority to assign the Note. (App. Br. 17–18). Timmons never raised this issue to the special referee, and it is therefore unpreserved. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Timmons' debt is owed to Chase. *See* S.C. Code Ann. §§ 36-3-109(c) & -205(b). Chase is therefore not a debt collector under the FDCPA, and the FDCPA does not apply to this case. *See Stoudemire v. Ray*, No. CIV.A. 3:09-2485-CMC, 2012 WL 762037, at *3 (D.S.C. Feb. 9, 2012), *report and recommendation adopted*, No. CIV.A. 3:09-2485-CMC, 2012 WL 762021 (D.S.C. Mar. 8, 2012) ("The FDCPA applies only to 'debt collectors' as that term is defined in the statute, and creditors, mortgagors, and mortgage servicing companies are not debt collectors under the FDCPA and are therefore exempt from liability under the FDCPA."). Timmons' FDCPA arguments do not affect Chase's standing to foreclose.

In apparent conjunction with his standing arguments, Timmons also argues without explanation that Chase never stated its cause of action in this case. To the contrary, Chase's causes of action are clear on the face of its complaint, (Compl., Supp. R. 68–74), and counsel for Chase restated the causes of action at the January 29, 2018 hearing where Timmons first raised this argument, (Jan. 29, 2018 Hearing Tr. at 15, R. 42). To the extent Timmons is arguing the case should have been dismissed for failure to state a claim, Chase properly pled causes of action for foreclosure and claim and delivery in its complaint. *See generally* (Compl., Supp. R. 68–74). Timmons' argument has no merit.

Finally, Timmons also argues Chase cannot foreclose because the debt has been satisfied, thus rendering the Mortgage null and void. (App. Br. 7–8). Despite Timmons' repeated assertions, there is no evidence in the record that Timmons paid off the debt, and he repeatedly refused to provide any details of the supposed payoff when pressed by the special referee. (Jan. 29, 2018 Hearing Tr. at 12–14, R. 39–41). Thus, Timmons' standing arguments failed as a matter of law, and this court should affirm the special referee's finding that Chase had standing.

II. The special referee had jurisdiction to decide this foreclosure action.

Timmons argues the special referee lacked jurisdiction to decide this case.[9] (App. Br. 10–15). He also accuses the special referee of committing perjury and fraud upon the court, apparently based on his belief that the special referee did not have the power to decide this case. (App. Br. 18–20). Timmons appears to misunderstand the procedures in foreclosure actions. Despite Timmons' protests, the procedures followed in this case conformed with the Rules of Civil Procedure, and the special referee properly decided this action. Timmons' arguments have no merit.

This case involves a cause of action for foreclosure. Rule 53(b) allows the clerk of court to refer an action for foreclosure to a special referee:

> In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court.

Rule 53(b), SCRCP (emphases added). Contrary to Timmons' arguments, Rule 53(b) does not require the parties to consent to the case being referred to a special referee. Rather, it provides alternatives—a case may be referred to a special referee if (a) the parties consent, (b), the case is

[9] In his argument attacking the special referee's jurisdiction, Timmons complains about a May 25, 2016 hearing. (App. Br. 10). There was no hearing on May 25, 2016. Instead, the circuit judge continued the case pursuant to the Administrative Order because Timmons submitted a request for foreclosure intervention. (May 25, 2016 Order, R. 1). Timmons now suggests additional reasons for the continuance, but the order states only that the case was continued for "FCI," or foreclosure intervention. (*Id.*). Any arguments Timmons raises related to a May 25, 2016 hearing are therefore meritless.

a default case, or (c) the case is an action for foreclosure. This is an action for foreclosure; therefore, Timmons' consent was not required for reference to the special referee. *See id.*; *see also* Rule 71(a), SCRCP ("Actions to foreclose liens . . . should ordinarily be referred to a master pursuant to Rule 53."). Although this case also involves a cause of action for claim and delivery, Rule 53(b) expressly allows the clerk of court to refer "all of the causes of action" to a special referee.[10] *Id.*

Timmons' request for a jury trial does not save his argument. To the extent Timmons had a right to a jury trial, he waived it when he failed make a timely demand for one. Rule 38(b) requires a jury trial demand to be served no later than ten days after service of the last pleading directed to such an issue. Rule 38(b), SCRCP. The last pleading in this case was Chase's reply to Timmons' counterclaim, which Chase served on July 12, 2017. *See* (Reply to Counterclaim, Supp. R. 75, 84). Timmons had until July 24, 2017, to serve a jury trial demand.[11] Timmons failed to serve his demand for a jury trial until August 25, 2017, more than a month after the deadline expired. *See* (Demand for Jury Trial, Supp. R. 135). Timmons therefore failed to "request a jury pursuant to Rule 38," as contemplated by Rule 53(b), and the case properly remained before the special referee. The special referee properly held Timmons waived his right to a jury trial by failing to make a timely demand.[12] (Sept. 12, 2017 Order at 3, R. 5).

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[10] Timmons did not raise any objection to the order of reference until August 20, 2017—more than three months after entry of the order.

[11] The ten-day deadline fell on a Saturday, so the deadline became the following Monday, July 24, 2017.

[12] Chase acknowledges that the South Carolina Supreme Court has held an action for claim and delivery is one at law that is triable by jury unless a party waives its right to a jury trial. *See First Palmetto State Bank & Tr. Co. v. Boyles*, 302 S.C. 136, 138, 394 S.E.2d 313, 314 (1990) (applying

Further, the clerk's reference to a special referee prior to the filing of the last pleading does not change the outcome of this issue. Rule 53(b) expressly contemplates such a situation. *See* Rule 53(b), SCRCP (requiring a case to be returned to the circuit court if a party demands a jury trial pursuant to Rule 38). Timmons failed to comply with Rule 38. Therefore, this court should affirm the reference to a special referee and the special referee's finding that Timmons waived his right to a jury trial.[13] *See* Rule 220(c), SCACR (providing this court may affirm on any ground that appears in the record).

Timmons' arguments that the special referee created a sham legal process and committed fraud, perjury, barratry, and conspiracy, (App. Br. 12–15, 18–20), are all based on his belief that the special referee lacked jurisdiction over this case and therefore acted unlawfully when he issued rulings in Chase's favor. The special referee had jurisdiction and the power to resolve all issues that arose in this matter. *See* Rule 53(c), SCRCP (providing a special referee "shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter."). This court should affirm the special referee's rulings.[14]

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a prior version of Rule 53(b) that did not include foreclosure actions among those that may be referred to a special referee). Timmons waived his right to a jury trial in this case.

[13] Timmons' argument that his demand for a jury trial "was never docketed," (App. Br. 12), is contradicted by the special referee's consideration of the jury trial demand and ruling that Timmons waived his right to a jury trial.

[14] Timmons has accused Chase of pursuing two foreclosure actions against him and issuing two "certificates of exemption." (App. Br. 2). Timmons misunderstands the procedures in this case. The first certificate of exemption, filed contemporaneously with the summons and complaint, is a certificate of exemption from arbitration because the matter is a mortgage foreclosure. (Nov. 30, 2015 Cert. of Exemption, Supp. R. 101). When Timmons requested foreclosure intervention, Judge Henderson continued the case pursuant to the Administrative Order. (May 25, 2016 Order, R. 1). In May 2017, the case resumed when Chase filed a certificate of exemption from the requirements of the Administrative Order because Timmons failed to complete a loss mitigation

III. Timmons' remaining arguments are meritless or unpreserved.

Timmons raises numerous additional arguments that do not fit neatly into any legitimate issue on appeal. Each of his arguments is either meritless or unpreserved.

Timmons argues the special referee decided issues that were not raised. (App. Br. 16). Timmons fails to identify any such issues. Regardless, the record demonstrates that the special referee decided all the issues raised, and only the issues raised. Timmons also appears to argue that he was not required to file a Rule 59(e) motion to preserve any issues for appeal that he failed to raise to the special referee. *See* (App. Br. 16). This assertion conflicts with South Carolina appellate courts' longstanding precedent. *See, e.g.*, *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("If our review of the record establishes that an issue is not preserved, then we should not reach it."). To the extent Timmons raised any issues that the special referee did not rule upon, the issues are unpreserved because he failed to file a Rule 59(e) motion requesting a ruling on those issues. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (providing a party must file a Rule 59(e) motion when an issue has been raised, but not ruled upon, to preserve it for appellate review). Any arguments Timmons did not raise to the special referee are also unpreserved. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733.

Timmons accuses Chase's lawyers, the clerk of court, and the special referee of committing criminal acts and asks for Rule 60(b) relief from judgment. (App. Br. 21–22). Timmons has made clear his anger toward the special referee, the clerk of court, and Chase, but he has not presented

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application. (May 22, 2017 Cert. of Exemption, R. 62). Chase did not file a second foreclosure action.

any evidence of wrongdoing. Moreover, Timmons never filed a Rule 60(b) motion. This argument is meritless.

Finally, Timmons argues the Mortgage applied to the property alone and did not include his mobile home. (App. Br. 23). Timmons waived this argument when he failed to deny the allegations in Chase's complaint and, thus, admitted that the Mortgage applies to the mobile home. *See* Rule 8(d), SCRCP. In fact, Timmons never objected or responded to Chase's cause of action for claim and delivery of the mobile home until he filed his response in opposition to Chase's motion for summary judgment on the merits—seven months after Chase filed its certificate of exemption from the Administrative Order. *See* (Resp. in Opp. to Chase's Mot. for Summary J., Supp. R. 197, 201). The South Carolina Rules of Civil Procedure explain in plain language that a party must admit or deny all allegations in the complaint, and any allegations that are not denied are deemed admitted. Rule 8(d), SCRCP ("Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."). Thus, even a pro se litigant must submit a responsive pleading denying the allegations in a complaint. Timmons did not timely deny the allegations in Chase's complaint related to the mobile home. Consequently, he waived his right to object to Chase's cause of action for claim and delivery.[15]

The following additional arguments are unpreserved because Timmons never raised them to the special referee:

- The allegation that the special referee engaged in extrinsic fraud. (App. Br. 10).
- The allegation that the Mortgage is void for lack of recourse and remedy. (App. Br. 20–21).

[15] Timmons' argument that there is no "fixture filing" is unpreserved because he did not raise it to the special referee. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733.

See Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733. To the extent Timmons' brief includes any arguments not addressed by Chase, those arguments are either unpreserved or wholly meritless.

CONCLUSION

Timmons raises no credible issues in this appeal. Timmons waived his right to contest Chase's claims on the merits when he failed to file a responsive pleading denying the allegations. There can be no reasonable dispute that Chase had standing and that the clerk of court properly referred this case to the special referee. Despite Timmons' myriad accusations against Chase, the special referee, and the clerk of court, this case has been litigated properly and should be affirmed.

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May 13, 2019

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APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

William O. Spencer, Jr., Special Referee

Appellate Case No. 2018-000355

JPMorgan Chase Bank, National Association, ... Respondent,

v.

Fritz A. Timmons, ... Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JPMorgan Chase Bank, National Association, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Final Brief of Respondent

Supplemental Record on Appeal

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