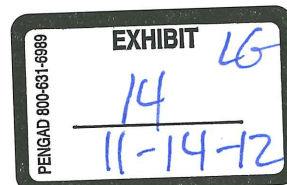


**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying:
Family Court, At-Large, Seat 2

1. NAME: Mr. Samuel McGown Price, Jr.
BUSINESS ADDRESS: 1413 Main Street
Newberry, SC 29108
TELEPHONE NUMBER: (office): 803-276-0796
2. Date and Place of Birth: 1949; Newberry County, SC
3. Are you a citizen of SC? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on December 20, 1970, to Ann Renwick Price. Never divorced; three children.
6. Have you served in the military?
Yes.
U. S. Army from September 1, 1974-November 1974 (active duty for training)
SC Army National Guard from February 1976-October 1, 1995 – Lieutenant Colonel – Social Security Number was used in lieu of serial number – Retired – Honorable discharge
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Newberry College (summer school) 1967;
 - (b) Wofford College 1967-71 BA, History;
 - (c) USC School of Law 1971-74 JD.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
SC, 1974
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
Class Representative in Student Government Senior year at Wofford College. Participated in a clinic to represent juveniles in Family Court at USC.
10. Describe your continuing legal or judicial education during the past five years.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) Ethics on the River	06/22/12;
(b) SC Conference on Lawyer and Judicial Conference	11/01/11;
(c) Family Law Training	04/01/11;



- (d) Old Republic Title Insurance Seminar 05/12/10;
- (e) SC Conference on Lawyer and Judicial Conference 10/22/09;
- (f) Like-Kind Real Estate Exchanges 12/11/07;
- (g) Real Estate Practice 05/10/07.

Please note I have been exempt from the CLE requirement since December 2009.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?
 - (a) I was an Associate Professor at Newberry College for the years 1976, 1977, 1979, and 1980.
 - (b) Business Law, a 3-hour course survey of civil law.
 - (c) Real Estate and Insurance Law, a 3 hour-course focused on SC real estate law and life insurance and property casualty insurance.
 - (d) I was in the Judge Advocate section of the National Guard. One of the duties was to help prepare guardsmen for deployment.
 - (d) Pre-mobilization lectures. These lectures focused on the need and application of powers of attorney, last will and testaments, living wills, health care powers of attorney. The lectures also taught principles of real estate law, probate and estate law, domestic relations and insurance law.
12. List all published books and articles you have written and give citations and the dates of publication for each.

Information for Troop Deployments Outside the Continental United States; February 3, 1990. This is a 120-page compilation of guidelines for troops deployed in fifteen European countries and two Mid-eastern countries. I edited, compiled, indexed and formatted the pamphlet to be distributed through channels in the SC Army National Guard.
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
 - (a) Admitted to practice before the State Courts of SC November 14, 1974;
 - (b) Also admitted to practice before the U.S. Federal District Court August 22, 1975;
 - (c) Also admitted to practice before the Fourth Circuit Court of Appeals March 2, 1979;
 - (d) Also admitted to practice before the Supreme Court of the United States of America October 17, 1983;
 - (e) Also admitted to practice before the U. S. Court of Military Appeals February 10, 1986.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

- (a) December 1974-May 30, 1976: Associate attorney in the Law Office of Richard M. Kenan. Represented clients in General Sessions Court and Common Pleas. Researched and prepared two separate briefs for appeals to the SC Supreme Court.
- (b) June 1, 1976 to Date: Sole practitioner. The practice consists of both an office practice and a trial practice.

The office practice consists of real estate closings, drafting and supervising the execution of documents including, but not limited to, wills, trusts, powers of attorney, health care powers of attorney, deeds, promissory notes, real estate mortgages, prenuptial agreements, contracts of sale, bills of sale, living wills, and specialized contracts and probate and estate work. I have spent much time counseling and advising clients as to specific legal problems.

The trial practice consists of appearances in Common Pleas Court, Family Court, Magistrate's Court, City Recorder's Court, Office of Disability Adjudication and Review (Social Security Disability cases), SC Court of Appeals, and SC Supreme Court. Over the last ten years, I have done very little criminal work.

14. (a) If you are a candidate for Family Court, please provide a brief written description of your experience within each of the following Family Court practice areas: divorce and equitable division of property, child custody, adoption, abuse and neglect, and juvenile justice. Include information about cases you have handled in each of these practice areas, or if you have not practiced in an area, describe how your background has prepared you to preside over such matters as a Family Court Judge.

My domestic practice started immediately. My first domestic cases were before the State had a uniform Family Court system. Judge Francis Nicholson would conduct Common Pleas for domestic matters on specified Saturday mornings otherwise domestic matters were squeezed into the Common Pleas docket or referred to other lawyers as special referees. Non-support cases were handled in General Sessions Court. I have handled hundreds of cases in Family Court. Some cases went to trial; many cases were settled after negotiations. I have been appointed on abuse and neglect cases, juvenile justice cases and I have been appointed as a Guardian Ad Litem in custody cases. I have taken the training in Family Court Mediation. I have handled divorce cases, separation cases, equitable division cases, child custody cases, child support cases, adoption cases, abuse and neglect cases, and DJJ matters. I am intimately familiar with the fear, frustration, anxiety, humiliation, and sometimes terror in the hearts and minds of Family Court litigants. I am also familiar with the lawyering difficulty in bringing a case to trial. This experience gives me the ability to make fair and equitable decisions.

15. What is your rating, if any, by any legal rating organization, such as, Best Lawyers, Chambers, Legal 500, Martindale-Hubbell, Who's Who Legal, Super

Lawyers, etc.? If you are currently a member of the judiciary, list your last available rating, if any.

Martindale-Hubbell BV Distinguished 4.4 of 5

16. What was the frequency of your court appearances during the last five years?
- (a) federal: My experience in Federal Court in the last five years is limited to Social Security Disability appeals. I have filed three (3) cases in Federal District Court; one of which was appealed to the Fourth Circuit Court of Appeals. In these cases, the issues were submitted by briefs. No physical appearance was had before a live judge or panel.
- (b) state: I have an active practice before all courts (excepting General Sessions). I could only guesstimate an answer. I have had dozens of appearances in the past five years.

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the last five years?

	Fees	Estimated Time
(a) civil:	30%	25%
(b) criminal:	3%	5%
(c) domestic:	12%	45%
(d) other:	55%	25%

Social Security disability; Drafting documents; Probate; Special Referee fees

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury, including those that settled prior to trial?
- (a) jury: 25%;
- (b) non-jury: 75%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole counsel

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

(a) Gilliam v. Foster, 75 F.3d 881 (4th Cir. (S.C.) January 29, 1996); 63 F.3d 287 (4th Cir. (S.C.) Aug 08, 1995). This is a criminal murder case. I was appointed to represent one of three defendants. One of the defendants was the son of a sitting county councilman. The jury had been picked, seated and sworn in. The State had presented several witnesses. A SLED forensic investigator had taken numerous photographs of the crime scene. Some of these photographs, but not all, had been introduced into evidence by the SLED investigator. After the investigator's testimony, the Court recessed for lunch. The photographs that had not been introduced into evidence were left on the witness stand. The bailiff put the photographs on the rail of the jury box. When the jury came back from lunch, they viewed photographs that had not been entered into evidence. On the State's motion, the

trial judge granted a mistrial. The case was scheduled for retrial. An appeal was filed in the State Court system under theory of double jeopardy and a simultaneous action was filed in Federal District Court. Both the SC Court of Appeals and the Federal District Court refused to find that a retrial would be double jeopardy. The District Court decision was appealed to the Fourth Circuit. The retrial began. After several State witnesses had testified, an Order was issued by the Fourth Circuit to stop the trial. The case was scheduled to be heard before the Fourth Circuit en banc. The Fourth Circuit found that jeopardy had attached and the retrial would be unconstitutional. Although the State filed a petition for certiorari, such petition was denied by the United States Supreme Court. The importance of this case is that it further defined and refined double jeopardy principles.

- (b) Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 481 S.E.2d 706 (S.C.1997); 319 S.C. 81; 459 S.E.2d 851 (S.C.App.1995). This is a wrongful termination case. Plaintiff was accused (wrongfully) of smoking marijuana in the company parking lot after his shift. Defendant was fired. After three days of trial before a jury, the trial court granted defendant employer's motion for directive verdict. The Court of Appeals affirmed the lower court. The SC Supreme Court remanded the case for a new trial confirming that in SC there is a covenant of good faith and fair dealing in every employment contract.
- (c) Brooks v. Kay, 339 S.C. 479, 530 S.E.2d 120 (S.C. Mar. 27, 2000). This is an action to set aside a deed. Plaintiff was the only heir of grantor. Grantor was an elderly lady who transferred 200 plus acres to defendant. Defendant was a stranger to grantor who met her while hunting her land. He befriended her, did favors for her, and purchased one or two lots from her. Defendant then presented grantor with a deed transferring the property to himself. The deed was executed in the office of the Clerk of Court for Newberry County. Defendant was present during the execution. When grantor returned to her home, she called the Clerk's office and said "Do not record the deed." Defendant had obtained a copy of the executed deed before he left the Clerk's office. After grantor's death, during the probate process, defendant submitted the copy of the deed as proof of title transfer and ownership. This matter was tried in Common Pleas, judge only. The trial court affirmed the transfer. The Court of Appeals upheld the trial court. The SC Supreme Court reversed. The Court addressed the issues of the dead man's statute, the existence of a confidential relationship and its impact on grantor, and undue influence. This case contained many factual issues that will be helpful for those persons trying to protect the elderly from being financially duped.
- (d) Hancock v. Mid-South Management Co., Inc., 673 S.E.2d 801, 381 S.C.

326 (S.C. 2009); 370 S.C. 131, 634 S.E.2d 12 (S.C.App. Jun 12, 2006). This is a slip and fall case. Plaintiff tripped over a small pot hole in the parking lot of a newspaper company when she was attempting to buy a paper from a newspaper box. The plaintiff was elderly. When she fell, she damaged her shoulder. The case was dismissed on defendant's motion for summary judgment. The Court of Appeals affirmed. The SC Supreme Court reversed finding that this was a matter to be determined by a jury on the facts which not only included the condition of the parking lot surface but also the considerations of any duty defendant may owe an invitee because of any physical limitations. The case was later tried by a jury and a verdict was rendered for plaintiff (Plaintiff had died during the appellate process).

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter). Do NOT attach a separate list of your briefs.

- (a) Daniel v. White et al., 272 S.C. 477, 252 S.E.2d 912 (S.C. 1979);
- (b) Austin v. Taylor, 284 S.C. 414, 326 S.E.2d 656 (S.C. 1985);
- (c) Nelums v. Cousins, 304 S.C. 306, 403 S.E.2d 681 (S.C.App. Apr. 22, 1991);
- (d) Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 481 S.E.2d 706 (S.C.1997); 319 S.C. 81; 459 S.E.2d 851 (S.C.App.1995);
- (e) Brooks v. Kay, 339 S.C. 479, 530 S.E.2d 120 (S.C. Mar. 27, 2000).

21. List up to five criminal appeals that you have personally handled. None

22. Have you ever held judicial office?

- (a) Appointed as Assistant City Recorder 1977-78 for the City of Newberry. Jurisdiction was limited to 30 days confinement and/or statutory fine.
- (b) Special Referee for Newberry County. Newberry County does not have a standing master or master-in-equity. Special Referees are appointed by the Common Pleas Circuit Court to hear non-jury matters. Such cases are primarily mortgage foreclosures but also include partition actions, supplemental proceedings and quiet title actions. I have presided over such matters since 1984. I have over 700 files of special reference matters.

23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.

Most of these cases were very routine.

24. Have you ever held public office other than judicial office?

Newberry County Election Commission and Registration Board. Appointed on January 8, 1999, and continue to serve. I have typically timely filed my report with the State Ethics Commission during this time; however,

one year I did not file on time because of my confusion as to which year to file, i.e. unlike an income tax return which is filed for the previous year, the Ethics Report is required to be filed before the calendar year ends.

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. N/A
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
 - (a) County Council – 1980. This was a three person race. I missed the run-off by 19 votes.
 - (b) City Council – 1995. This was a three person race. I was in the run-off but lost the race.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. I am aware of none.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. If you are in private practice, are you covered by malpractice insurance and, if so, how long have you carried malpractice insurance? If applicable, have you ever been covered by a tail policy? Yes. Coverage has been in force since June 1976.
38. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No

39. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
40. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." None
41. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." None
42. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
43. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
44. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
45. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
46. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
47. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
48. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Newberry County Bar;
 - (b) SC Bar;
 - (c) SC Association for Justice;
 - (d) American Bar Association;
 - (e) American Association for Justice.
49. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.

- (a) Aveligh Presbyterian Church, Newberry, SC, Former Elder, Former Deacon, Former Coach for Church League Basketball team ages 8-11;
 - (b) Rotary Club of Newberry, SC, former President, Rotarian of the Year and Paul Harris Fellow;
 - (c) Former Assistant Scout Master of Boy Scout Troop No. 1, Assistant Scout Master of the Year in Blue Ridge Council;
 - (d) Former Chairman of the Newberry County Red Cross Chapter;
 - (e) Former Chairman of the Newberry County Commission on Alcohol and Drug Abuse;
 - (f) Former chairman of the Newberry County Family YMCA Board;
 - (g) Former member of the Exchange Club of Newberry.
50. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

As a sole practitioner in a small town, I have represented people from all walks of life. I understand cash flow problems. I have numerous clients who pay me "when they can". I understand people who have financial difficulties. Dr. Lewis P. Jones, one of my history professors, introduced me to the concept of noblesse oblige (the obligation of the noble). My personal philosophy is that the world should be a better place because of my efforts. I have always been concerned about taking care of "the little people". I believe everyone should be equal under the law. I think all persons should be treated with honor and dignity.

51. References:

- (a) Thomas H. Pope, III, Esquire
P. O. Box 190
Newberry, SC 29108
(803) 276-2532
- (b) James A. Lander
2029 Main Street
Newberry, SC 29108
(803) 276-1736
- (c) David A. Carlson
1307 Caldwell Street
P. O. Box 754
Newberry, SC 29108
(803) 276-9756
- (d) Oscar F. Lovelace, Jr., M.D.
600 North Wheeler Avenue
Prosperity, SC 29127
(803) 364-4852
- (e) Bob Burch
First Community Bank
P. O. Box 417

Newberry, SC 29108
(803) 321-3200

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Samuel M. Price, Jr.

Date: August 9, 2012

Law Office
of
Samuel M. Price, Jr.
1413 Main Street
P. O. Drawer 836
Newberry, South Carolina 29108

Fax
Area Code 803
276-9495

Telephone
Area Code 803
276-0796

October 24, 2012

Judicial Merit Selection Commission
Attention Jane O. Shuler, Chief Counsel
P. O. Box 142
Columbia, South Carolina 29202

Dear Ms. Shuler:

The purpose of this letter is to supplement and correct Personal Data Questionnaire and Sworn Statement of Candidate.

(a) Sworn Statement of Candidate: Question number 32 "Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?" On the date of the statement, August 9, 2012, I answered "No". However, on September 6, 2012, I did send a letter of introduction, an abbreviated resume` and a photograph of my family to members of the General Assembly, both House of Representatives and the South Carolina Senate. I attach a list of the persons to whom such information was mailed.

(b) Sworn Statement of Candidate: Question number 33 "Have you contacted any members of the Judicial Merit Selection Commission?" On the date of the statement, August 9, 2012, I had not contacted any members of the Judicial Merit Commission. However, on September 6, 2012, I sent a letter of introduction, an abbreviated resume` and a photograph of my family to the following Commission members:

The Honorable Greg Delleney
The Honorable David J. Mack, III
The Honorable Jake Knotts

The Honorable Alan D. Clemmons
The Honorable Larry A. Martin
The Honorable Floyd Nicholson

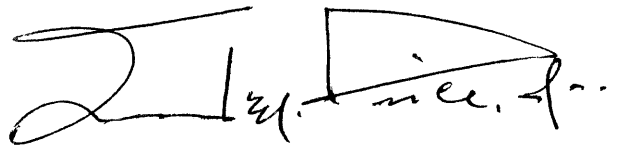
(c) Personal Data Questionnaire: Question number 45 "Have you requested a friend or colleague to contact members of the General Assembly on your behalf? If so, give details. Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? If so, give details." On the date of the statement, August 9, 2012, I answered "No". However, as indicated in question 32 above, introductory contact has been made.

(d) Personal Data Questionnaire: Question number 23 "If the answer to question 22 is

Judicial Merit Selection Commission
October 24, 2012
Page 2

yes, describe or list five of your most significant orders or opinions and give the citations if there were report. Also list citations of any appellate review of these orders or opinions. I attach copies of two (2) orders. Neither order has been reported.

Respectfully,

A handwritten signature in black ink, appearing to read "S. M. Price, Jr.", written in a cursive style.

Samuel M. Price, Jr.

rfs

Enclosures

Samuel McGowan Price, Jr.
1413 Main Street, Newberry, South Carolina 29108
(803) 276-7907 smpricejr@gmail.com

Candidate: At-large Family Court Judge Seat #2

Education and Military Experience:

- Wofford College, B.A. History, 1971
- University of South Carolina School of Law, J.D. 1974
- Active Duty, U.S. Army, Corps of Engineers, Ft. Belvoir, Virginia, 1974
- South Carolina National Guard, JAG officer, 218th HSB, Lieutenant Colonel, Retired

Career Experience:

- General practice of law, 1974 – present
- Newberry County Assistant Municipal Judge, 1977 - 1978
- Adjunct Professor of Business Law and Real Estate and Insurance, Newberry College, 1976, 1977, 1979 and 1980
- Ethics Committee, South Carolina Bar Association, 1996 - 1997
- Special Referee, Newberry County, 1980 – present (non-jury Common Pleas matters)

Community Affiliations:

- Aveleigh Presbyterian Church: former deacon and present elder, 1988 - present
- Newberry Rotary Club: member and past president, Paul Harris Fellow, 1998 – present
- Newberry County Voter Registration Commission: member and present chairman, 1998 – present
- Boy Scouts of America: Webelos leader, Assistant Scoutmaster Troop 1
- Newberry County Family YMCA: former board member and past president
- Newberry County Commission on Alcohol and Drug Abuse: former board member and chairman
- Newberry Chapter of the American Red Cross: former board member and chairman

Judicial Experience:

- Member of the following bars: South Carolina Bar, S. C. Federal District Court, Fourth Circuit Court of Appeals, United States Supreme Court, and United States Court of Military Appeals
- Practiced before all Courts in South Carolina including General Sessions, Common Pleas, Family Courts, Probate Courts, Magistrate's Courts, and City Courts
- Practiced before administrative tribunals including Office of Disability and Adjudicative Review (ODAR), SC Highway Department tribunal, and South Carolina Workers' Compensation Commission

Family:

- Married to Ann Renwick Price, retired secondary teacher and administrator at Newberry High School
- Children:
 - J. McGill Price (Gill): graduate of USMA at West Point, 2003; served in Afghanistan as Mechanized Infantry officer, 2008.
 - S. McGowan Price, 111 (Macky): graduate of The Citadel, 2005; served in Iraq, 2010; presently serving in Afghanistan as Blackhawk pilot and company commander.
 - Renwick M. Price, graduate of Brevard College, 2007; recognized artist.

2011-2012
Leg. Session

Repliez à la hauteur afin de révéler le rebord Pop-up™

List to Retain

Sens de l'ouverture

Utilisez le gabarit AVERY® 5160®
Étiquettes faciles à peler
8-29-2012

The Honorable Thomas C. Alexander
150 Cleveland Dr.
Walhalla, SC 29691

The Honorable Ralph Anderson
315 Elder St.
Greenville, SC 29607

The Honorable Lee Bright
PO Box 589
Roebuck, SC 29376

The Honorable Kevin L. Bryant
104-A North Avenue
Anderson, SC 29625

The Honorable Paul G. Campbell, Jr.
150 Loganberry Circle
Goose Creek, SC 29445

The Honorable George E. "Chip" Campsen,
III
360 Concord Street, Suite 201
Charleston, SC 29401

The Honorable Raymond E. Cleary, III
3577 Marion Lane
Murrells Inlet, SC 29576

The Honorable Creighton B. Coleman
PO Box 1006
Winnsboro, SC 29180

The Honorable John E. Courson
PO Box 142
Columbia, SC 29202

The Honorable Ronnie W. Cromer
PO Box 378
Prosperity, SC 29127

The Honorable Thomas C. "Tom" Davis
PO Drawer 1107
Beaufort, SC 29901

The Honorable Dick Elliott
PO Box 3626
North Myrtle Beach, SC 29582

The Honorable Michael L. Fair
PO Box 14632
Greenville, SC 29610

The Honorable Robert Ford
PO Box 21302
Charleston, SC 29413

The Honorable Chauncey K. "Greg" Gregory
PO Box 1381
Lancaster, SC 29721

The Honorable Lawrence K. "Larry" Grooms

The Honorable Robert W. Hayes, Jr.
1486 Cureton Dr.
Rock Hill, SC 29732

The Honorable C. Bradley Hutto
PO Box 1084
Orangeburg, SC 0

The Honorable Darrell Jackson
308 Motley Road
Hopkins, SC 29061

The Honorable John M. "Jake" Knotts, Jr.
Post Office Box 142
Columbia, SC 29202.

The Honorable John C. Land, III
PO Box 138
Manning, SC 29102

The Honorable Hugh K. Leatherman, Sr.
1817 Pineland Ave.
Florence, SC 29501

The Honorable Phil P. Leventis
Post Office Box 142
Columbia, SC 29202

The Honorable Joel Lourie
PO Box 6212
Columbia, SC 29260

The Honorable Gerald Malloy
1216 Salem Road
Hartsville, SC 29550

The Honorable Larry A. Martin
PO Box 247
Pickens, SC 29671

The Honorable Shane R. Martin
2741 Glenn Springs Rd
Spartanburg, SC 29302

The Honorable A. Shane Massey
PO Box 551
Edgefield, SC 29824

The Honorable John W. Matthews, Jr.
PO Box 142
Columbia, SC 29202

The Honorable J. Yancey McGill
601 Longstreet St.
Kingstree, SC 29556

2

The Honorable Floyd Nicholson
527 Bryte Street
Greenwood, SC 29649

The Honorable William H. O'Dell
PO Box 540
Ware Shoals, SC 29692

The Honorable Harvey S. Peeler, Jr.
PO Box 742
Gaffney, SC 29342

The Honorable Clementa C. Pinckney
PO Box 507
Ridgeland, SC 29936

The Honorable Luke A. Rankin
201 Beaty Street
Conway, SC 29526

The Honorable Glenn G. Reese
507 Fagan Drive, Lake Bowen
Inman, SC 29349

The Honorable Michael T. Rose
409 Central Ave
Summerville, SC 29483

The Honorable W. Greg Ryberg
PO Box 1077
Aiken, SC 29802

The Honorable John L. Scott
215 Elomont Dr.
Columbia, SC 29203

The Honorable Nikki G. Setzler
249 Congaree Park Drive
West Columbia, SC 29169

The Honorable Vincent A. Sheheen
PO Drawer 10
Camden, SC 29021

The Honorable Phillip W. Shoopman
4455 Skyland Dr.
Greer, SC 29651

The Honorable David L. Thomas
23 Wade Hampton Blvd.
Greenville, SC 29609

The Honorable Daniel B. "Danny" Verdin, III
PO Box 272
Laurens, SC 29360

The Honorable Kent M. Williams
4205 Stirk Place
Marion, SC 29571

The Honorable Lawrence K. "Larry" Grooms
Post Office Box 142
Columbia, SC 29202

3

The Honorable Paul L. Agnew
P.O. Box 382
Abbeville, SC 29620

The Honorable Terry Alexander
1646 Harris Court
Florence, SC 29501

The Honorable Karl B. Allen
108 Lavinia Avenue
Greenville, SC 29601

The Honorable Merita A. "Rita" Allison (Mrs.
William Ronald)
P.O. Box 93
Lyman, SC 29365

The Honorable Carl L. Anderson
P.O. Box 694
Georgetown, SC 29442

The Honorable Michael A. Anthony
322 Mt. Vernon Road
Union, SC 29379

The Honorable Todd K. Atwater
P.O. Box 1056
Lexington, SC 29071-1056

The Honorable Dr. Jimmy C. Bales
1515 Crossing Creek Rd.
Eastover, SC 29044

The Honorable Nathan Ballentine
324 Sienna Drive
Chapin, SC 29036

The Honorable Bruce W. Bannister
P.O. Box 10007
Greenville, SC 29603

The Honorable Liston D. Barfield
P.O. Box 1734
Conway, SC 29528

The Honorable James A. "Jim" Battle, Jr.
P.O. Box 536
Nichols, SC 29581

The Honorable Eric M. Bedingfield
P.O. Box 1073
Mauldin, SC 29662

The Honorable Eric J. Bikas
103 Monaghan Avenue
Greenville, SC 29617

The Honorable Kenneth A. "Kenny"
Bingham
P.O. Box 2025
Cayce, SC 29171

The Honorable Don C. Bowen
1176 Embassy Drive
Anderson, SC 29625

The Honorable William K. "Bill" Bowers
P.O. Box 686
Hampton, SC 29924

The Honorable Joan B. Brady
P.O. Box 61047
Columbia, SC 29260

The Honorable Lester P. Branham, Jr.
118 Lockwood Drive
Lake City, SC 29560

The Honorable Norman Douglas "Doug"
Brannon
201 Clearwater Road
Landrum, SC 29356

The Honorable Curtis Brantley
194 Bees Creek Road
Ridgeland, SC 29936

The Honorable Grady A. Brown
420 S. Main Street
Bishopville, SC 29010

The Honorable H. Boyd Brown
P.O. Box 26
Winnsboro, SC 29180

The Honorable Robert L. Brown
5925 Hwy. 162
Hollywood, SC 29449

The Honorable Mia Butler Garrick
116 Nautique Circle
Columbia, SC 29229

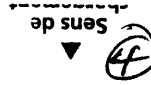
The Honorable William M. "Bill" Chumley
3303 Greenpond Road
Woodruff, SC 29388

The Honorable Alan D. Clemmons
1800-A North Oak Street
Myrtle Beach, SC 29577

The Honorable William "Bill" Clyburn
364 Edrie Street
Aiken, SC 29801

The Honorable Gilda Cobb-Hunter
4188 Five Chop Road
Orangeburg, SC 29115

The Honorable J. Derham Cole, Jr.
P.O. Box 1467
Spartanburg, SC 29304



The Honorable Thomas D. "Tom" Corbin
1139 Bailey Mill Road
Travelers Rest, SC 29690

The Honorable Heather Ammons Crawford
P.O. Box 31385
Myrtle Beach, SC 29588

The Honorable Kristopher R. "Kris" Crawford
217 Dozier Blvd.
Suite 105
Florence, SC 29501

The Honorable William E. "Bill" Crosby
2680 Hanford Mills Lane
North Charleston, SC 29406

The Honorable Joseph S. Daning
118 Queensbury Circle
Goose Creek, SC 29445

The Honorable F. Gregory "Greg" Delleney,
Jr.
P.O. Drawer 808
Chester, SC 29706

The Honorable Chandra E. Dillard
5 Alleta Ave.
Greenville, SC 29607

The Honorable Tracy R. Edge
PO Box 2095
Myrtle Beach, SC 29578

The Honorable Shannon S. Erickson(Mrs.
Kendall F.)
PO Box 11867
Columbia, SC 29211

The Honorable P. Michael "Mike" Forrester
287 Creekridge Dr.
Spartanburg, SC 29301

The Honorable Marion B. Frye
668 McNeary Ferry Road
Leesville, SC 29070

The Honorable Laurie Slade Funderburk
P.O. Box 188
Camden, SC 29021

The Honorable Michael W. "Mike" Gambrell
400 Filter Plant Road
Honea Path, SC 29654

The Honorable Wendell G. Gilliard
P.O. Box 31641
Charleston, SC 29417

The Honorable Jerry N. Govan, Jr.
P.O. Box 77
Orangeburg, SC 29116

The Honorable Daniel P. "Dan" Hamilton
9 Staten Lane
Taylors, SC 29687

The Honorable Nelson L. Hardwick
714 Cedar Drive North
Surfside Beach, SC 29575

The Honorable Robert W. Harrell, Jr.
2000 Sam Rittenberg Boulevard
Suite 124
Charleston, SC 29407

The Honorable James H. Harrison
1639 Williams Street
Unit 200
Columbia, SC 29201

The Honorable Christopher R. "Chris" Hart
5219 Burke Avenue
Columbia, SC 29203

The Honorable Jackie E. "Coach" Hayes
240 Bermuda Road
Dillon, SC 29536

The Honorable George M. Hearn
1100 Oak Street
Conway, SC 29526

The Honorable Phyllis Henderson
110 Silver Creek Court
Greer, SC 29650

The Honorable William G. "Bill"
Herbkersman
896 May River Road
Bluffton, SC 29910-5833

The Honorable David R. Hiott
P.O. Box 997
Pickens, SC 29671

The Honorable William M. "Bill" Hixon
P.O. Box 7927
North Augusta, SC 29861

The Honorable Kenneth F. Hodges
P.O. Drawer 355
Green Pond, SC 29946

The Honorable Jenny Anderson Horne(Mrs.
Marc F.)
102 Perry Lane
Summerville, SC 29483

The Honorable Lonnie Hosey
PO Box 423
Barnwell, SC 29812

The Honorable Leon Howard
2425 Barhamville Road
Columbia, SC 29204

5

The Honorable Chip Huggins
308 Wayworth Court
Columbia, SC 29212

The Honorable Joseph H. Jefferson
1375 Colonel Maham Drive
Pineville, SC 29468

The Honorable Kevin L. Johnson
P.O. Box 156
Manning, SC 29102

The Honorable John Richard C. King
P.O. Box 11555
Rock Hill, SC 29731

The Honorable Patsy G. Knight
P.O. Box 673
St. George, SC 29477

The Honorable Harry B. "Chip" Limehouse,
III
22 Menotti St.
Charleston, SC 29401

The Honorable Dwight A. Loftis
PO Box 14784
Greenville, SC 29610

The Honorable Deborah A. Long
1115 John Short Rd.
Indian Land, SC 29707

The Honorable Phillip D. Lowe
507 West Cheves Street
Florence, SC 29501

The Honorable James H. "Jay" Lucas
113 Lyndale Drive
Hartsville, SC 29550

The Honorable David J. Mack, III
4340 Evanston Boulevard
N. Charleston, SC 29418

The Honorable Peter M. McCoy, Jr.
P.O. Box 13826
Charleston, SC 29422

The Honorable Joseph A. "Joe" McEachern
P.O. Box 3751
Columbia, SC 29230

The Honorable Walton J. McLeod
308 Pomaria Street
Little Mountain, SC 29075

The Honorable James H. Merrill
2401 Daniel Island Drive
Charleston, SC 29492

The Honorable Harold Mitchell, Jr.
PO Box 3046
Spartanburg, SC 29304

The Honorable Dennis C. Moss
306 Silver Circle
Gaffney, SC 29340

The Honorable V. Stephen "Steve" Moss
104 Rains Road
Blacksburg, SC 29702

The Honorable Elizabeth R. Munnerlyn
207 West Main Street
Bennettsville, SC 29512

The Honorable Christopher J. "Chris"
Murphy
136 W. Richardson Avenue
Summerville, SC 29483

The Honorable Wendy K. Nanney
124 Birnam Court
Greenville, SC 29615

The Honorable James M. "Jimmy" Neal
5148 Sandy Lane
Kershaw, SC 29067

The Honorable Joseph H. "Joe" Neal
PO Box 5
Hopkins, SC 29061

The Honorable Denny Woodall Neilson (Mrs.
David S.)
109 Carol Drive
Darlington, SC 29532

The Honorable Ralph W. Norman
PO Box 36518
Rock Hill, SC 29732

The Honorable Harry L. Ott, Jr.
461 Bull Swamp Road
St. Matthews, SC 29135

The Honorable Phillip D. "Phil" Owens
PO Box 723
Easley, SC 29641

The Honorable Steve A. Parker
330 Farm Lake Rd.
Boiling Springs, SC 29316

The Honorable J. Anne Parks
PO Box 181
Greenwood, SC 29648

The Honorable Andrew S. "Andy" Patrick
PO Box 22676
Hilton Head Island, SC 29925

6

The Honorable Lewis E. "Gene" Pinson
306 Plantation Drive
Greenwood, SC 29649

The Honorable Michael A. Pitts
372 Bucks Point Road
Laurens, SC 29360

The Honorable Thomas E. "Tommy" Pope
PO Box 471
York, SC 29745

The Honorable Joshua A. Putnam
PO Box 51542
Piedmont, SC 29673

The Honorable Rick Quinn
610 Spruce Glen Court
Lexington, SC 29072

The Honorable J. Todd Rutherford
PO Box 1452
Columbia, SC 29202

The Honorable Kevin R. Ryan
PO Box 1097
Pawleys Island, SC 29585

The Honorable Ronnie A. Sabb
PO Box 311
Greeleyville, SC 29056

The Honorable William E. "Bill" Sandifer, III
112 Cardinal Drive
Seneca, SC 29672

The Honorable Bakari T. Sellers
4231 Voorhees Drive
Denmark, SC 29042

The Honorable J. Gary Simrill
1515 Alexander Road
Rock Hill, SC 29732

The Honorable B.R. Skelton
2962 Walhalla Highway
Six Mile, SC 29682

The Honorable G. Murrell Smith, Jr.
PO Box 580
Sumter, SC 29151

The Honorable Garry R. Smith
210 Foxhound Road
Simpsonville, SC 29680

The Honorable J. Roland Smith
183 Edgar Street
Warrenville, SC 29851

The Honorable James E. Smith, Jr.
PO Box 50333
Columbia, SC 29250

The Honorable F. Michael "Mike" Sottile
132 Sparrow Dr.
Isle of Palms, SC 29451

The Honorable Edward L. Southard
1511 Dennis Boulevard
Moncks Corner, SC 29461

The Honorable L. Kit Spires
PO Box 396
Pelion, SC 29123

The Honorable Leonidas E. "Leon"
Stavrinakis
375 Meadow Breeze Lane
Charleston, SC 29414

The Honorable Tommy M. Stringer
4040 Highway 414
Landrum, SC 29356

The Honorable Edward R. "Eddie" Tallon,
Sr.
140 Bagwell Farm Road
Spartanburg, SC 29302

The Honorable Bill Taylor
PO Box 2646
Aiken, SC 29802

The Honorable Anne Johnston Thayer
225 Ansonborough Plantation
Belton, SC 29627

The Honorable McLain R. "Mac" Toole
180 Dogwood Circle
West Columbia, SC 29170

The Honorable David Tribble, Jr.
PO Box 1456
Clinton, SC 29325

The Honorable Ted M. Vick
200 W. Main Street
Chesterfield, SC 29709

The Honorable J. David Weeks
2 Marlborough Court
Sumter, SC 29154

The Honorable J. Seth Whipper
4592 Durant Avenue
N. Charleston, SC 29405

The Honorable W. Brian White
P.O. Box 970
Anderson, SC 29622

7

The Honorable William R. "Bill" Whitmire
P.O. Box 157
Walhalla, SC 29691

The Honorable Robert Q. Williams
2512 Holly Circle
Darlington, SC 29532

The Honorable Mark N. Willis
201 Quillen Ave.
Fountain Inn, SC 29644

The Honorable Thomas R. "Tom" Young
P.O. Box 651
Aiken, SC 29802

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 Wells Fargo Bank Minnesota)
 National Association, as Trustee for)
 registered Holders of Option One)
 Mortgage Loan Trust 2002-A,)
 Asset-Backed Certificates, Series)
 2002-A, without recourse,)
)
 Plaintiff,)
)
 vs.)
)
 Lucille P. Coleman, individually and)
 as Personal Representative of the)
 Estate of Ethel E. Kinard Coleman;)
 Deborah Coleman; John Harrison;)
 Rene Harrison; Charles Harrison;)
 Lester Harrison; Noah Harrison;)
 Conseco Finance Servicing Corp.,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 DOCKET NO. 03-CP-36-0140

DECREE

2005 APR 18 P 1:31

Pursuant to the Order of Reference granted in the above entitled case, a reference was held on June 15, 2004 at 2:00 p.m., before the undersigned Special Referee with authority to enter final judgement with appeal directly to the Supreme Court.

The action is one for the foreclosure of a real estate mortgage in Newberry County. Present at the hearing were Ellie C. Floyd, of Rogers Townsend & Thomas, attorney for the plaintiff, Joseph W. Hudgens, of Pope and Hudgens, attorney for the defendant Lucille P. Coleman, and Ms. Coleman. Ms. Coleman is named as a party individually and as personal representative of the Estate of Ethel E. Kinard Coleman, her mother, from whom she inherits, the original mortgagor.

#1
 SDP

Ms. Floyd called attention to the case file including the pleadings, lis pendens, order of reference, affidavits of service and affidavits of default as to the defendants Conseco Finance

Servicing Corp., Deborah Coleman, John Harrison, Rene Harrison, Charles Harrison, Lester Harrison and Noah Harrison. It appears that notice of the hearing was given to all defendants, but none appeared except Ms. Coleman. It also appears that notice of the submission of written testimony on behalf of the plaintiff was given pursuant to S.C. Code Ann. E14-11-110.

The following documents were introduced and received in evidence:

Note from Ethel Coleman to Option One Mortgage Corporation, dated January 25, 2002, in the principal sum of \$78,000.00, with interest at the rate of 8.3% per annum, providing for monthly installments of \$588.73, commencing on March 1, 2002, with a late charge of 5% of the applicable payment.

Real estate mortgage from Ethel Coleman to Option One Mortgage Corporation, dated January 25, 2002, on a lot of 1.73 acres, Lot No. 13 of James H. and Patsy M. Long Farm, with address of 137 Patsy Lane, Newberry, SC 29108, Tax Map 350-1-13, recorded in Mortgage Book 762, at page 29. The mortgage also purported to cover a mobile home.

Rogers Townsend & Thomas letter to Ethel Coleman dated May 12, 2003, stating arrearage of six payments, costs and other charges.

Loan Settlement Statement, Form HUD-1A(2/94).

Rogers Townsend & Thomas letter to Ethel Coleman dated July 15, 2003, stating arrearage of nine payments, costs and other charges.

Bank of America statement 10-22-02 through 11-18-02, Account No. 0007 7361 8567 of Ethel E. Coleman and Lucille P. Coleman.

#2
LMP
Letters of Lucille P. Coleman dated March 13 and 18, 2003, to Option One Mortgage sending copy of her appointment as Personal Representative of the Estate of Ethel P. Coleman and referring to her efforts to make monthly loan payments.

Order of Appointment of Lucille P. Coleman as Personal Representative of the Estate of Ethel Coleman.

Letter of Joseph W. Hudgens to Rogers Townsend & Thomas dated May 27, 2003, tendering payment for six payments, one half of claimed late charges and objecting to various charges. Mr. Hudgens proposed that the lender accept the past due payments and have the Court resolve the disputed charges in the foreclosure action.

The offer was refused.

Second letter of Mr. Hudgens to Rogers Townsend & Thomas dated June 9, 2003 again requesting the compromise of the May 27, 2003 letter.

Letter of Rogers Townsend & Thomas dated July 1, 2003, rejecting Mr. Hudgens' requests and returning the checks sent by Mr. Hudgens.

Check dated 12-22-00 from Carolina Housing Outlet in the amount of \$563.00 payable to Foremost Insurance Co. for Ethel Coleman.

Foremost Insurance Company mobile home insurance declarations page covering the subject mobile home, naming Ethel Coleman as insured and Conseco as lienholder.

Check dated 12-18-02 from Lucille Coleman to Foremost Insurance Company for "Home 137 Patsy Lane" in the amount of \$167.25.

Insurance premium notice for Foremost Policy No. 103-0648547620-02, period December 22, 2002 to December 22, 2003, in the amount of \$167.25.

Check dated 3-24-2003 from Lucille P. Coleman to Foremost Insurance Company with notation 103-064-854-762-002.

Check dated 9-18-03 from Lucille P. Coleman to Foremost Insurance Company in the amount of \$167.25 for "Shealy".

Foremost Insurance Company mobile home declarations page, Policy No. 103-0639891431-01, covering 137 Patsy Lane, naming Ethel Coleman as insured and Option One as lien holder, in the premium amount of \$569.99, Policy period 12/22/01 to 12/22/02.

Receipt for insurance binder in the amount of \$563.00 issued to Ethel Coleman.

#3
SMP
Check dated 3-26-02 from Lucille P. Coleman to Option One in the amount of \$624.05, with notation "for March 5690409, indicating the bank account of "Ethel E. Coleman, Lucille P. Coleman, 137 Patsy Ln., Newberry, S.C. 29108.

Testimony was taken from plaintiff's counsel, Ms. Floyd, and from the defendant Lucille P. Coleman.

Ms. Floyd testified as to the existence of the note and mortgage sued upon based on the public records and as to the balance due on the note as of the date of the hearing based upon calculations of the plaintiff mortgagee. She also testified as to certain cost and the basis for the amount of attorney's fees.

Mr. Hudgens, counsel for the defendant Lucille P. Coleman, did not object to the principal amount due as testified, but he did object to the testimony as to costs and the basis for fees as hearsay. In view of the Court's ruling hereinafter stated, that objection at this time is moot.

Ms. Coleman testified as to the death of her mother, her efforts to make payments on the note after her mother's death, and the refusal of the plaintiff to accept payments.

The central issue relates to the efforts of Lucille P. Coleman to make payments to the plaintiff following her mother's death and the propriety of the plaintiff in refusing to take payments.

From the testimony and evidence I find the following:

- 1) The note was a valid obligation of Ethel Coleman.
- 2) The mortgage is a valid first lien on the land and mobile home, subject only to Newberry County property taxes.
- 3) Ethel Coleman died on November 10, 2002, and Ms. Lucille Coleman inherited an interest in the property. Lucille Coleman raised an issue as to the rights and interests of the other defendants in the property. However, that is an issue for another day and in another court, and this ruling does not prejudice that issue in any respect.
- 4) The Estate of Ethel Coleman is under administration in the Probate Court for Newberry County, Case Number 2002ES3600360.
- 5) Lucille Coleman was appointed Personal Representative on February 18, 2003.

6) The promissory note subject to this action was not in default at the time of Ethel Coleman's death.

7) The principal amount due at her death and at the date of the hearing was Seventy-seven Thousand, Five Hundred Forty-four and 47/100 (\$77,544.47) Dollars.

8) Lucille Coleman informed the plaintiff of the death of Ethel Coleman.

9) Lucille Coleman attempted to make the note payment next due after Ethel Coleman's death but it was refused by the plaintiff.

10) Lucille Coleman contacted representatives of the plaintiff concerning the matter and procedure for making payments, but the plaintiff through its representatives refused to discuss the debt with her because she was not a party to the transaction, and the plaintiff questioned her authority or interest.

11) However, the plaintiff had knowledge of Lucille Coleman's relationship by virtue of her being the insured on the insurance policy and her name on the bank account from which Ethel Coleman has written checks as referred to above in the list of exhibits.

12) Lucille Coleman continued to attempt to make current payments each month prior to her appointment as Personal Representative on February 18, 2003, but payments were refused.

13) Ms. Coleman notified the plaintiff of her appointment as Personal Representative but her efforts to make payments were rejected.

14) On May 12, 2003 plaintiff's attorneys, Rogers Townsend & Thomas, wrote to "Ethel Coleman" in spite of knowledge of Ethel Coleman's death and the appoint of Lucille Coleman as Personal Representative and gave her a reinstatement amount of \$7,832.06, consisting of six payments of \$588.73 totaling \$3,532.38, late charges of \$247.24, and an additional amount of

\$4052.44 consisting of charges for property inspections, \$9.50, escrow shortage \$652.00, BPO \$115.00, NSF \$50.00, costs \$2,425.94, attorneys fees \$800.00. With respect to the escrow claim, the HUD 1-A does not indicate any escrow account. Taxes and insurance have been paid by Ethel Coleman or Lucille Coleman.

15) In response to the May 12th letter, counsel for Lucille Coleman sent certified funds to Rogers Townsend & Thomas in the amount of \$3656.00 representing the six past due payments and one half of the late charges. He objected to the other charges in view of Ms. Coleman's attempts to make payments which were refused. He insisted on reinstatement and offered to resolve the additional charges by agreement or litigation. That tender was refused on May 27, 2003.

16) Ms. Coleman's counsel on June 9, 2003 again sent the \$3656.00 plus an additional payment of \$688.73 for the June payment and proposed the same solution.

17) On July 1, 2003 Rogers, Townsend & Thomas rejected the offer and returned the tendered payment.

On July 15, 2003 the plaintiff's counsel again wrote to "Ethel Coleman" despite knowledge of her death and the appointment of Lucille Coleman as Personal Representative.

#6
SM
The July 15th letter gave a reinstatement amount of \$9,538.22, consisting of nine payments of \$588.73 totaling \$5,298.57 and additional late charges in the amount of \$317.88, additional amounts for property inspections, BPO, and unspecified costs in addition to the other charges set out in the May 12, 2003 letter.

The position of Lucille Coleman is that she is ready, willing and able to make all monthly payments after the death of Ethel Coleman but objects to any costs or fees since the failure to pay was not her fault but that of the plaintiff. Defendant Lucille P. Coleman has made and continues to

make payments each month to her attorney who has been placing the funds in escrow.

As of May 1, 2005, there will be nineteen (19) payments unpaid after the death of Ethel Coleman.

I make the following conclusions:

It is well settled in this state that an action to foreclose a real estate mortgage is an action in equity. 27 S.C. Juris. Mortgages § 103. Cases cited in 18 S.C. Digest, Mortgages, key numbers 308 and 382.

Certainly upon notification of the status of Lucille Coleman as Personal Representative of the Estate of Ethel Coleman, the plaintiff should have accepted her tendered payments. Allowing for any uncertainty or confusion on the part of the plaintiff prior to notification of Lucille Coleman's authority, there was at the most only a period of three months which would be subject to late charges. Based upon the provisions of the note that amount would be 5% of the three months payments of \$588.73 each.

Had the plaintiff acknowledged Lucille Coleman's authority and allowed her to make the three payments due from the time of Ethel Coleman's death until appointment of Lucille Coleman as Personal Representative, this action would have been unnecessary and the other costs itemized in the letters of plaintiff's counsel dated May 12, 2003 and July 15, 2003 would not have been incurred.

The defendant Lucille Coleman was obviously trying as best she could and as only as she knew how to keep the mortgage debt current. The plaintiff is at fault in not allowing her to do so.

The plaintiff should have accepted payments as applying to the account of Ethel Coleman. Lucille Coleman should be allowed to make the loan current. The Court is impressed by defendant

Lucille P. Coleman's regular consistent monthly payments to her attorney for the monthly mortgage payment.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED That upon payment by the defendant Lucille Coleman by May 1, 2005 of nineteen (19) monthly payments of \$588.73 each and the three months late charges for three payments calculated according to the note at \$77.32, this action is dismissed. Payment must be made within thirty (30) days of the date of this Order.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that after payment of the nineteen (19) monthly payments of Five hundred eighty-eight and 73/100 (\$588.73) dollars each and three (3) months of late payments, i.e. 5%, the payments shall be booked by plaintiff to show payments 4-19 were timely made and no interest shall accrue on the lateness of the sixteen (16) payments (except payments 1, 2 and 3).

The claimed costs asserted by the plaintiff other than the late charges set out above and plaintiff's attorneys fees shall be paid by the plaintiff.

Court costs are to be paid by the plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT IF PAYMENT ABOVE STATED (19 months at \$588.73 and 3 late payments of \$77.32, for a total of Eleven thousand four hundred seventeen and 83/100 (\$11,417.83) DOLLARS IS NOT PAID IN FULL BY DEFENDANT LUCILLE P. COLEMAN WITHIN THIRTY (30) DAYS OF SERVICE OF THIS ORDER, THE FOLLOWING PORTION OF THIS ORDER WILL BECOME THE EFFECTIVE LAW OF THE CASE.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment that Mobile/Manufactured Home is

Subject to the Lien of Plaintiff's Mortgage)

The Plaintiff has alleged it is entitled to a declaratory judgment that the 2001 Adrian mobile home with VIN No. GAHAA00314AB Serial No. GAHAA on the subject property is subject to its first mortgage lien as an improvement to the secured real property. Plaintiff's allegations are supported by the evidence presented on its behalf, including: The Plaintiff's first Mortgage, containing language in the legal description including the mobile home as security for the Plaintiff's first Mortgage. Based upon this evidence, I find that the intent of the parties at the closing of the Plaintiff's first mortgage was for the mobile home to be subject to the lien of the Plaintiff's first mortgage, in addition to the raw land, as an improvement to the real property and I conclude therefore that the Plaintiff is entitled to a declaratory judgment that the mobile home is subject to the first lien of the Plaintiff's first mortgage.

FOR A SECOND CAUSE OF ACTION

(Foreclosure of the Mortgage)

This first Mortgage constitutes a first mortgage lien on the subject property, subject only to ad valorem or other liens/taxes given priority by statute.

The Plaintiff in this action is the owner and holder of the Adjustable Rate Note and first Mortgage it is seeking to foreclose.

Ethel Coleman died intestate on November 11, 2002, leaving the subject property to her heirs or devisees, namely, Lucille P. Coleman; Deborah Coleman; John Harrison; Rene Harrison; Charles Harrison; Lester Harrison; Noah Harrison as is more fully preserved in the Probate records Newberry County, in Case No. 2002ES3600360.

#9
SM

Any notice required by the terms of the first mortgage or by state or federal statutes has been

given to the applicable defendant(s) prior to the commencement of this action.

Payment due on the Adjustable Rate Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Adjustable Rate Note and first Mortgage in the hands of the attorney herein for collection by foreclosure.

The sum of \$4,700.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Adjustable Rate Note and first Mortgage. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff during the several month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and their experience in handling foreclosure matters. The fees awarded herein are also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

The amount due and owing on the Adjustable Rate Note, with interest at the rate provided in the Adjustable Rate Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Adjustable Rate Note and first Mortgage, is as follows:

(a) Principal due December 1, 2002 \$77,544.47

#10
6/1

(b)	Interest from November 1, 2002 through June 15, 2004 at 8.3% per annum	\$10,456.59
(c)	Advances (Escrow advances, corporate charges and other charges)	\$1,107.05
(d)	Costs of collection prior to hearing (service, filing, etc.)	\$1,744.84
(e)	Late Charges	\$671.08
(f)	Attorney's fee	\$4,700.00
TOTAL debt secured by Adjustable Rate Note and first Mortgage, including interest to date shown		\$96,224.03

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 8.3% per annum (pursuant to the terms of the Adjustable Rate Note and first Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

Plaintiff is seeking the usual foreclosure of the first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

The Defendant(s) claim(s) or may claim a lien upon or interest in the subject property and in the event there is a surplus from the sale of the subject property, such Defendant(s) may present any such lien claim at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such claims or liens are as follows:

11
SOP

Conseco Finance Servicing Corp., by virtue of being listed as a holder of a lien on the mobile/manufactured home at one time in the records of the South Carolina Department of Public Safety, Division of Motor Vehicles. The Plaintiff is informed and believes that the lien of Conseco Finance Servicing Corp. has been paid in full and that its interest in the mobile/manufactured home should be extinguished.

IT IS THEREFORE ORDERED:

Pursuant to S. C. Code Ann. § 15-53-20, et seq., the Plaintiff is entitled to a Declaratory Judgment that the mobile/manufactured home of Defendant(s) is an improvement to the property which is the subject of this action and it therefore subject to the lien of the Plaintiff's first mortgage. As such, any judicial sale of the subject property in this case shall include the mobile home as an improvement to the real property. Pursuant to S. C. Code Ann. § 56-19-390, following the sale, the South Carolina Department of Public Safety, through its Division of Motor Vehicles, shall issue a Certificate of Title to the mobile/manufactured home to the successful purchaser, or its successor or assigns, at the foreclosure sale.

There is due to the Plaintiff on the Adjustable Rate Note and first Mortgage set forth in the Complaint the sum of \$96,224.03, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

The amount of the judgment shall be subject to increase to permit the Plaintiff to recover

12
SMP

additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

The Defendant(s) liable for the aforesaid judgment debt of the Adjustable Rate Note and first Mortgage including interest at the rate of 8.3% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Special Referee at public auction, at the Newberry County Courthouse, in the City of Newberry, County and State aforesaid on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

For cash: The Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the

#3
sup

other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s). Interest on the balance of the bid shall be paid through the day of compliance at the rate of 8.3%. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

Purchaser to pay for any statutory commission on sale from the proceeds of sale.

Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

The Special Referee will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Special Referee may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth

19

in a supplemental order.

If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

The Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Newberry County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

In the event the successful bidder is other than the Defendants in possession herein and the occupants have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to the Plaintiff's Mortgage in said premises, the Plaintiff is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be

#15
2017

removed by the Plaintiff or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.

In accordance with Rule 77(d), SCRPC, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

The following is a description of the premises herein ordered to be sold:

All that piece, parcel or lot of land, together with the improvements thereon, lying and being in the County of Newberry, State of South Carolina, containing 1.74 acres, more or less and shown as Lot No. 13 on a plat entitled "Survey for James H. and Patsy M. Long Farm", prepared by Joe E. Mitchell, RLS dated March 12, 1997 and recorded in the Office of the ROD for Newberry County in Plat Book B100 at Page 1 on January 6, 1998. Also reasonable rights of ingress and egress to and from the above described property along the roadways shown on the plat, known as Patsy Lane. Said plat is incorporated herein by reference.

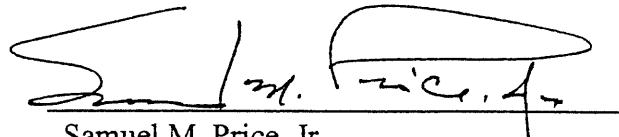
This being the identical property conveyed to Ethel Coleman by deed of Gloria R. Crayne dated December 29, 2000 and recorded December 29, 2000 in Deed Book

553 at Page 267 in the Office of the ROD for Newberry County, South Carolina; subsequently Ethel Coleman died intestate on November 11, 2002, leaving the subject property to her heirs or devisees, namely, Lucille P. Coleman; Deborah Coleman; John Harrison; Rene Harrison; Charles Harrison; Lester Harrison; Noah Harrison as is more fully preserved in the Probate records Newberry County, in Case No. 2002ES3600360.

Property Address: 137 Patsy Lane
Newberry, SC 29108

TMS# 350-1-13

IT IS SO ORDERED.



Samuel M. Price, Jr.
Special Referee

Newberry, SC
April 18, 2005

#17

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2010-CP-36-0089

Branch Banking and Trust Company,)
)
Plaintiff,)

vs.)

ORDER

Deon Bonds; Shirley Bonds; John Kent)
)
Lester a/k/a Kent Lester; Mortgage)
)
Electronic Registration Systems, Inc.)
)
(MIN# 100052550257398056),)
)
Defendants.)

FILED
NEWBERRY COUNTY
2012 MAR 30 P 3:32
JACKIE S. BOWERS
CLERK OF COURT

This is a foreclosure action. Defendants Deon Bonds and Shirley Bonds, by and through their attorneys, Drew B. Walker of Ellis, Lawhorne & Sims, P.A., filed a Motion for Summary Judgment pursuant to Rule 56. Plaintiff, by and through its attorney Charles S. Gwynne, Jr. of Rogers Townsend & Thomas, PC, has likewise filed a Motion for Summary Judgment. A hearing was held at 1413 Main Street, Newberry, South Carolina, on December 16, 2010.

PROCEDURAL HISTORY

A Lis Pendens (2010LP36-42) and Summons and Complaint dated March 5, 2010, were filed by the plaintiff on March 8, 2010. Defendant John Kent Lester a/k/a Kent Lester was served on March 8, 2010; defendant Mortgage Electronic Systems, Inc. was served on March 9, 2010; and defendants Deon Bonds and Shirley Bonds were served on March 19, 2010. Thereafter, an Answer and Counterclaim dated May 13, 2010, was filed on May 17, 2010, by defendants Deon Bonds and Shirley Bonds against defendant John Kent Lester. Plaintiff's Reply to Answer and Answer to Counterclaim dated June 4, 2010, was filed on June 7, 2010. An Order of Reference transferring this

No. 1
emp

case to the undersigned was signed by the Honorable Eugene C. Griffith dated November 14, 2010, was filed on November 16, 2010. Defendants Deon Bonds and Shirley Bonds, by and through their attorney, did file a Motion for Summary Judgment dated October 19, 2010, and filed on October 22, 2010. Thereafter, plaintiff did file its Motion and Notice of Motion for Summary Judgment dated December 10, 2010, and filed on December 13, 2010. A Stipulation of Dismissal as to John Kent Lester a/k/a Kent Lester only dated February 22, 2011, was filed on February 23, 2011.

FACTUAL HISTORY

John S. Lester did execute a Deed to Kent Lester (emphasis added) transferring subject property for the consideration of Sixty-eight thousand and no/100 (\$68,000.00) dollars. This Deed was dated September 5, 1997, and recorded in the office of the Clerk of Court for Newberry County on September 9, 1997, in Deed Book 468 at page 137. John Kent Lester (emphasis added) did sign a Promissory Note together with a real estate mortgage to Branch Banking and Trust Company dated September 5, 1997, and recorded in the office of the Clerk of Court for Newberry County in Mortgage Book 540 at page 146 on September 9, 1997. The Mortgage was in the name of John Kent Lester evidencing that John Kent Lester did borrow from BB&T the sum of Forty-eight thousand (\$48,000) dollars. Thereafter, on October 30, 2006, Kent Lester sold subject property to Deon Bonds and Shirley Bonds by his deed dated October 30, 2006, and recorded in Record Book 1209 at page 133 for the sum of One hundred forty-two thousand five hundred (\$142,500) dollars. Defendants Deon Bonds and Shirley Bonds signed a Promissory Note to an unknown creditor secured by a real estate mortgage to MERS dated October 30th, 31st, 2006, recorded in the office of the Clerk of Court for Newberry County in Record Book 1435 page 57, reflecting an indebtedness of One hundred twenty-eight thousand two hundred fifty and no/100 (\$128,250.00) dollars.

No. 2
Camp

After the October 30, 31, 2006 closing, Kent Lester a/k/a John Kent Lester continued to make monthly payments to plaintiff. However, on or about July 25, 2009, defendant Kent Lester a/k/a John Kent Lester stopped making payments to Branch Banking and Trust Company which precipitated this foreclosure action. Thereafter, in 2011, defendant John Kent Lester filed for relief pursuant to the United States Bankruptcy Act and is subsequently dismissed as a necessary party to this action.

ISSUES

1. Does the name Kent Lester as the owner of subject property give notice to subsequent purchasers of a mortgage in the name of John Kent Lester to plaintiff Branch Banking and Trust Company?
2. Does indexing the Deed under "Lester, Kent" and indexing the Mortgagor as "Lester, John Kent" comply with the recording statute? Does such compliance give record notice or constructive notice to defendants Deon Bonds and Shirley Bonds of an existing real estate mortgage?

ARGUMENTS OF THE PARTIES

Plaintiff Branch Banking and Trust Company argues that under the case of Brayton v. Beall, 73 S.C. 308, 53 S.E. 641 (1906) because Kent Lester and John Kent Lester was "well-known" in the community, defendants Bonds were put on constructive notice or, at least, inquiry notice that checking mortgages, encumbrances and such under the name of Kent Lester should have given rise to also check under the name of John Kent Lester. In Brayton, it appears that plaintiff Brayton who was the landlord of an individual whose sir name was McKenzie was known as R. C. McKenzie who was a tenant of plaintiff Brayton. R. C. McKenzie gave a chattel mortgage to plaintiff Brayton on a mule for \$100. Thereafter, Mr. McKenzie gave a second chattel mortgage to defendant Beall and

signed it under the name of W. A. McKenzie. An action was brought by the first chattel mortgagee against the second mortgagee for possession of the mule when McKenzie defaulted on payment. It was established in the case that defendant Beall checked the public records in Richland County and found no chattel mortgage in the name of W. A. McKenzie. The Court framed the issue as follows: "The real question of law then is, whether under such circumstances the record of Brayton's mortgage given by R. C. McKenzie was constructive notice to Beall when he took a subsequent mortgage from the same individual on the same mule under another name by which the mortgagor was known in the community, to wit: W. A. McKenzie." The Court went on to state that Beall could certainly have ascertained that his mortgagor was known also by the name of R. C. McKenzie, and so a record in the name of R. C. McKenzie must under such circumstances give notice that it refers to an individual known also as W. A. McKenzie.

Plaintiff argues that pursuant to S. C. Code Ann. §30-7-10 (the Recording Statute) requires the following:

1. All deeds and mortgages be recorded in order to give notice to subsequent creditors or purchasers for value without notice.
2. Plaintiff's mortgage was recorded pursuant to the Act.

Plaintiff further argues that defendants Deon Bonds and Shirley Bonds had constructive notice of the existence of subject mortgage that is the basis for this foreclosure action. Therefore, defendant Deon Bonds and defendant Shirley Bonds purchased subject property with this lien on the property and since they had constructive notice of the existence of this mortgage, plaintiff's mortgage should be determined to take priority.

Defendants Deon Bonds and Shirley Bonds make the following arguments. That defendants

Bonds are bona fide purchasers for value without notice of the plaintiff's mortgage. The Bonds had no actual knowledge of plaintiff's mortgage. That the fact that plaintiff's mortgage was indexed as **John Kent Lester** and the mortgagor's deed was indexed as **Kent Lester**, gave no notice (no record notice, no constructive notice, no inquiry notice) to defendants Bonds.

STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP, Rules 56(c). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "In that way, '[a] motion for summary judgment is akin to a motion for a directed verdict' because 'in each instance, one party must lose as a matter of law.'" Id. , quoting Main v. Corley, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material facts. The moving party may discharge the burden of demonstrating the absence of a genuine issue of material fact by pointing out the absence of evidence to support the nonmoving party's case. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. The nonmoving party must come forward with specific facts showing there is a genuine issue for trial.

Bennett v. Investors Title Ins. Co., 370 S.C. 578, 588-89, 635 S.E.2d 649, 654 (S.C.App. 2006) (internal citation omitted).

FINDING AND RULING OF THE COURT

The Court has listened to arguments of both plaintiff and defendants Bonds. The Court has examined the following documents:

1. Defendants Deon Bonds' and Shirley Bonds' Notice of Motion and Motion for Summary Judgment dated October 19, 2010
2. Defendants Deon Bonds' and Shirley Bonds' Memorandum in Support of Motion for Summary Judgment dated December 13, 2010
3. Copy of Deed from Kent Lester to Deon Bonds and Shirley Bonds dated October 30, 2006, and recorded on November 21, 2006, in Record Book 1209 at page 133
4. Copy of Deed from John S. Lester to Kent Lester dated September 5, 1997, and recorded in Deed Book 468 at page 137 on September 9, 1997
5. Copy of Real Estate Mortgage of John Kent Lester to Branch Banking and Trust Company of South Carolina dated September 5, 1997, and recorded in Mortgage Book 540 at page 146 on September 9, 1997.
6. Deposition of Misty S. Goldiner of July 26, 2010
7. All pleadings filed in this case
8. Affidavit of Smitty Stickland dated September 8, 2010
9. Affidavit of Travis H. Pilcher dated September 9, 2010
10. Affidavit of Tameika Isaac Devine dated September 9, 2010
11. Real Estate Mortgage of Deon Bonds to MERS dated October 31, 2006 or October 30, 2006 and recorded in Record Book 1435 at page 57

No. 6
out

12. Affidavit of Deon Bonds dated August 12, 2010
13. Affidavit of Shirley Bonds dated August 12, 2010
14. Plaintiff's Notice of and Motion for Summary Judgment
15. Plaintiff's First Request for Admissions to Defendants Deon Bonds and Shirley Bonds dated October 4, 2010
16. Real Estate Appraisal by Mid State Appraisals as of October 27, 2006
17. Contract of Sale dated July 25, 2006, between Deon Bonds, Purchaser, and Lester, Seller
18. Real Estate Appraisal by Mark S. Cowan as of November 3, 2005
19. Title Report by Paralegals, LLC by Travis H. Pilcher dated August 3, 2006

The Deed into Kent Lester is not the same name as the mortgage of John Kent Lester.

The Clerk of Court for Newberry County is the office that is charged with and responsible for recording deeds and real estate mortgages (together with other documents). The same office is required under the South Carolina Code of Laws to index such documents in order to give the public notice of real estate transfers and real estate mortgage encumbrances. Under the old pre-computer indexing system, deeds and mortgages were indexed manually. There would be a name of mortgagors and first names were divided into three (3) columns, to wit:

Date	Mortgagors Family names	Given Names ABCDEFGH	Given Names IJKLMNO	Given Names PQRSTUVWXYZ	Mortgagee	Brief Description
9/9/97	Lester		John Kent		BB&T	641 Folk Rd

Under the old system, it would be easy to notice that Kent Lester might very well be John Kent Lester. Such method of indexing certainly gives inquiry notice to the title examiner. This

No. 7
JWP

is not true under the new computer indexing method. Alphabetically, J comes before K. If the record title derived from the deed is Kent Lester, the title examiner will type in "Lester" then "Kent". The computer will pull up all Lesters whose first name begins with a "K" and all first names thereafter alphabetically (K through Z). It is not reasonable to assume that the title examiner would think the mortgage would be in a different name. If the situation were reversed and the deed had been in the name "John Kent Lester" and the real estate mortgage had been in the name "Kent Lester", it would have been reasonable for the title examiner to have found the mortgage under the current indexing system. The current computer indexing system was in effect prior to 1997.

The fact that Kent Lester and John Kent Lester is the same person does not impute constructive notice or inquiry notice to defendants Bonds. Absent a showing that defendants Bonds or their attorney had actual notice that Kent Lester and John Kent Lester was the same person, there is no requirement that title examiner examine all Lesters for mortgages.

It appears that the initial error was made when the mortgage to plaintiff was issued in a name other than the name in which title to the real estate subject to the mortgage of plaintiff was granted. It would have been an easy matter for plaintiff Branch Banking and Trust Company to list the mortgagor as "John Kent Lester a/k/a Kent Lester" or to require that Kent Lester deed property to himself as John Kent Lester. Because this was not done, it is not reasonable to expect that defendants Bonds would have had notice of plaintiff's mortgage.

The undersigned finds that defendants Deon Bonds and Shirley Bonds are a bona fide purchaser for value. That defendant Deon Bonds and Shirley Bonds:

(1) actually paid in full the purchase money amount.

(2) purchased and acquired legal title from a grantor by the name of Kent Lester as indicated in the chain of title.

(3) purchased bona fide, i.e. in good faith with integrity of dealing without notice of a lien or defect. Spence v. Spence, 368 S.C. 106, 117, 628 S.E.2d 689, 874, 875 (2006).

Defendants Bonds relied on the public record to determine that no mortgage existed on subject property in the name in which Kent Lester had taken title. As a subsequent purchaser, the defendants Bonds were “entitled to rely on recorded deeds . . . to determine their rights in respect to property.” Murells Inlet Corp. v. Ward, 378 S.C. 225, 236, 662 S.E.2d 452, 457 (Ct.App. 2008)

It was plaintiff Branch Banking and Trust Company’s error by having a different name on their mortgage, i.e. **John Kent Lester**, rather than the record title owner of subject property, i.e. **Kent Lester**. The South Carolina Statute §30-9-40 of the South Carolina Code requires indexes to be kept in “alphabetical arrangement”. Liberty Loan Corp. of Darlington v. Mumford, 283 S.C. 134,138, 322 S.E.2d 17, 20 (Ct.App. 1984).

The undersigned sees no benefit of taking testimony. The facts are clear. Plaintiff Branch Banking and Trust Company permitted its mortgagor (**John Kent Lester**) to have a different name than the grantee (**Kent Lester**) in the chain of title. Therefore, plaintiff’s mortgage is outside the chain of title. The plaintiff’s mortgage is defective and does not constitute a mortgage lien on subject property. This Court dismisses the Motion for Summary Judgment of Plaintiff and grants the Motion for Summary Judgment of Defendants Deon Bonds and Shirley Bonds.

Although defendant John Kent Lester a/k/a Kent Lester has been dismissed as a party to

No. 9
Emp

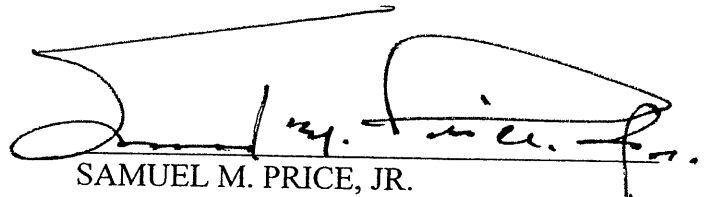
this action, he appears to be the wrong-doer in this matter. The fact that he continued to make payments for a period in excess of two (2) years after the sale of this property indicates that defendant John Kent Lester a/k/a Kent Lester knew or should have known that this mortgage should have been paid at the time Mr. Lester sold this real estate to defendants Deon Bonds and Shirley Bonds.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that as to subject property, the mortgage of plaintiff Branch Banking and Trust Company is defective because it is outside the chain of title. Plaintiff's mortgage is of no effect on property owned by defendant Deon Bonds and defendant Shirley Bonds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Deon Bonds and defendant Shirley Bonds' Motion for Summary Judgment is hereby granted and the foreclosure on subject property is ended.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this order does not satisfy the indebtedness owed by Kent Lester a/k/a John Kent Lester to plaintiff. Plaintiff shall maintain the right to collect such funds owed by Kent Lester a/k/a John Kent Lester as permitted by the State Law and Federal Bankruptcy Law.

IT IS SO ORDERED.


SAMUEL M. PRICE, JR.
Special Referee for Newberry County

Newberry, SC ^{TK}
March 30, 2012