

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

MCLP Asset Company, Inc.,

Plaintiff,

v.

Any heirs-at-law or devisees of David E. Simpson, deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons or entities entitled to claim through them; all unknown persons or entities with any right, title, estate, interest in or lien upon the real estate described in the complaint herein; also any persons who may be in the military service of the United States of America, being a class designated as Richard Roe; and any unknown minors, incompetent or imprisoned person, or persons under a disability being a class designated as John Doe; South Carolina Department of Motor Vehicles; Kelly Lynne McCann; Jeff Edward; Dawn L. Forrester,

Defendants

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022-CP-23-01861

**MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE AND REFORMATION OF
MORTGAGE**

**(GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT)**

DEFICIENCY WAIVED

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on August 22, 2023, a record was made which is reported herewith, and from the testimony and evidence I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on April 8, 2022.
2. The Summons and Complaint were filed on April 8, 2022.

3. Service was made upon the Defendants as is shown by the proofs of service filed herein.
4. The Defendant(s) Any heirs-at-law or devisees of David E. Simpson, deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons or entities entitled to claim through them; all unknown persons or entities with any right, title, estate, interest in or lien upon the real estate described in the complaint herein; also any persons who may be in the military service of the United States of America, being a class designated as Richard Roe; and any unknown minors, incompetent or imprisoned person, or persons under a disability being a class designated as John Doe; Jeff Edward; Dawn L. Forrester is/are in default as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
6. The Plaintiff's Motion for Summary Judgment was filed on July 28, 2023.
7. The Defendants South Carolina Department of Motor Vehicles and Kelly Lynne McCann submitted answers to the Plaintiff's Amended Complaint.
8. All Defendants was/were notified of the time, date and place of hearing in this matter.
9. For value received, David E. Simpson made, executed and delivered a note, dated December 3, 1999, promising thereby to pay to the order of GE Capital Mortgage, Services, Inc. the sum of \$57,600.00 with interest at the rate of 7.75% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.
10. To better secure the payment of the Note described above, the said David E. Simpson made, executed and delivered a mortgage to GE Capital Mortgage, Services, Inc., in writing, dated December 3, 1999, covering real property in Greenville County, which is the same as that described

in the Complaint. The Mortgage was recorded on December 17, 1999, and is of record in the Greenville County Registry in Book 3314 at page 68.

11. This mortgage constitutes a valid first lien on the subject property.

12. Thereafter, the Mortgage was assigned to Wells Fargo Bank, N.A. by assignment recorded in the Greenville County Registry on July 19, 2005 in Book 4398 at Page 920. The Mortgage was assigned to Plaintiff by assignment recorded in the Greenville County Registry on December 27, 2022 in Book 5719 at Page 5781.

13. The Plaintiff alleged a Clayton 1995 mobile/manufactured home containing serial number “CLR010133TNAB” (hereinafter “Manufactured Home”) is located on the Subject Property defined herein.

14. The Defendant David E Simpson is listed on the certificate of title as owner of the said Manufactured Home. This information was obtained by a search of the DMV records and database.

15. The Plaintiff alleged that two Certificates of Title were issued erroneously for the same manufactured home, one Certificate of Title bearing serial number CLR010133TNAB and the other Certificate of Title bearing serial number CLR010133TNA&B. Plaintiff alleges that the correct serial number is CLR010133TNAB, as it was issued in 1995, the same year of the manufactured home.

16. The Plaintiff alleged the second Certificate of Title shows Defendant David E. Simpson as listed owner of the said Manufactured Home bearing serial number CLR010133TNA&B. Additionally, G E Capital Mortgage Services INC is listed thereon as the lienholder of the said Manufactured Home. Plaintiff obtained this information by a search of the DMV records and database. The Plaintiff further alleged it was the intent of all parties to the subject loan transaction that i) that the Manufactured Home was already converted to be considered an improvement and/or

permanent fixture of the Property, or that it would be converted as a part of this transaction; and
ii) the Manufactured Home would be part of the secured collateral for the Mortgage. However, due to inadvertent error and mistake, the Manufactured Home was not fully described in the Mortgage. As such, Plaintiff requested the Mortgage's legal description should be reformed to include the Manufactured Home's information as follows:

"Also included here with is that certain 1995 Clayton manufactured home, bearing Serial Number CLR010133TNAB."

17. David E. Simpson made, executed and delivered to Wells Fargo Bank, N.A. (servicer for the loan at the time of the modification), its successors and assigns, a certain Loan Modification Agreement, dated April 16, 2013, amending and supplementing the Note and Mortgage described above. By virtue of the Loan Modification Agreement, the unpaid principal balance was modified to \$46,176.20, together with interest at the rate of 4% per annum on the unpaid balance.

18. Subsequent to the execution of the Note, Mortgage, and Loan Modification, David E. Simpson passed away on or around December 15, 2020. The Plaintiff has been unable to locate an estate filed for said decedent in the records of Greenville County, South Carolina.

19. No party related to David E. Simpson has appeared, answered or come forward in this action claiming an interest in the subject property or the foreclosure as is evidenced by the Affidavit of Kelley Woody, Guardian Ad Litem in this case.

20. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 (hereinafter, "the Administrative Order"), Plaintiff states that the default date of the subject mortgage loan is after December 31, 2016. As such, the loan is not eligible for the Home Affordable Modification Program (hereinafter, "the HAMP").

21. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

22. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was David E. Simpson.

23. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

24. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$5,738.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed up to this point in time under the terms of the note and mortgage. Performance of additional services may result in a determination by this court that additional reasonable attorney's fees are due.

25. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	08/22/2023		\$33,267.28
Accrued interest from:	12/01/2019	to: 06/12/2023	\$4,545.07
Per diem interest from:	06/13/2023	to: 08/22/2023	\$226.10
Accruing at:	4% per annum		
Advancements to Escrow			\$3,718.97
Corporate Advances			\$5,429.95
Late charges:			\$38.60
Other charges:			\$0.00

Credits:	\$ (11.06)
Costs of collection prior to hearing:	\$3,011.73
Attorney's fees:	\$5,738.00

26. Total Debt secured by Note and Mortgage, is \$55,964.64. Interest shall be added to the total debt at the rate stated above until the date a judicial sale is conducted herein. Additional interest accrual after the date of such judicial sale will be governed by terms set forth herein below.

27. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRPC.

28. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The said Defendants and such claims or liens are as follows:

A. The Defendants, Jeff Edwards and Dawn L. Forrester, have or may claim to have some interest in the Property by virtue of a Bond for Title with David E. Simpson and Pamela F. Simpson, in the original principal amount of \$45,000.00, which lien was recorded/filed or assigned to Defendant in the Greenville County Records on 08/24/2018 in Book 2546 at Page 791. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the Property upon the completion of a properly held foreclosure sale of the Property.

B. The Defendant, Kelly Lynne McCann, has or may claim to have some interest in the Property by virtue of a Purchase Agreement with Jeff Edwards and Dawn L. Forrester, in the original principal amount of \$70,000.00, which lien was not recorded or filed in the Greenville County Records. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the Property upon the completion of a properly held foreclosure sale of the Property.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff's Motion for Summary Judgment should be granted.
2. The Plaintiff should have judgment regarding its action for Reformation of Mortgage as outlined above.
3. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.
4. That there is due to the Plaintiff on its Note and Mortgage the sum of \$55,964.64, representing the Total Debt due to the Plaintiff as outlined above.
5. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest as previously set forth at the rate of 4% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff's Motion for Summary Judgment is granted.
2. The Mortgage's legal description is reformed to include the Manufactured Home's information as follows:

"Also included here with is that certain 1995 Clayton manufactured home, bearing Serial Number CLR010133TNAB."
3. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt to include continuing accruing interest as aforesaid, together with the costs and disbursements of this action.
4. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master in Equity at public auction, at the Greenville

County Courthouse, City of Greenville, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

- A. FOR CASH: The undersigned Master in Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 4% per annum.
 - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
 - D. Purchaser to pay for the deed and the cost of recording the deed.
5. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.
 6. No personal or deficiency judgment being demanded, the bidding shall not remain open after the date of sale and shall be final on that date, and compliance with the bid may be made immediately.
 7. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he/she will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or

its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master in Equity or the Plaintiff may re-advertise the Property for sale on the next, or some other subsequent, sales day, according to the same terms set forth herein, and so on from time to time thereafter until a full compliance shall be secured.

8. In the event an agent of the 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 terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

9. That the undersigned Master in Equity shall 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; and

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

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

10. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof, to include the manufactured/mobile home.

11. IT IS FURTHER ORDERED that the South Carolina Department of Motor Vehicles is directed to issue a new certificate of title pertaining to the subject mobile/manufactured home

reflecting title in the name of the successful bidder of said sale, free and clear of all liens.
Mobile Home serial number is “CLR010133TNAB and CLR010133TNA&B.”

12. The appointment of any Guardian ad Litem or Attorney appointed by the Court in this case shall terminate upon the completion of the sale and any supplemental proceedings in this case.
13. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Greenville County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
14. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Greenville County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued 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.
15. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master in Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.

16. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THAT PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE, SHOWN AND DESIGNATED AS 3.73 ACRE TRACT OF LAND ACCORDING TO PLAT BEING DATED JULY 3, 1986, AND REVISED SEPTEMBER 14, 1987, AND BEING RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA IN PLAT BOOK 14-R AT PAGE 37, AND BEING SHOWN ON A MORE RECENT PLAT PREPARED BY JEFFERY M. PLUMBLEE, INC. ENTITLED "SURVEY FOR DAVID E. SIMPSON" DATED JULY 3, 1986, REVISED SEPTEMBER 14, 1987 AND REVISED OCTOBER 27, 1994 AND RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA IN PLAT BOOK 28-R AT PAGE 96. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE METES AND BOUNDS DESCRIPTION.

ALSO:

THE RIGHT TO USE AN EASEMENT OR RIGHT OF WAY FOR INGRESS AND EGRESS TO AND FROM RUTLEDGE LAKE ROAD HERETOFORE GRANTED TO FAZIO AUTO COLLISION SERVICES, INC. BY EASEMENT AGREEMENT OF FRANK B. REDDING AND RITA REDDING DATED JUNE 21, 1983 AND RECORDED IN THE RMC OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA IN DEED BOOK 1192 AT PAGE 2024.

ALSO INCLUDED HERE WITH IS THAT CERTAIN 1995 CLAYTON MANUFACTURED HOME, BEARING SERIAL NUMBER CLR010133TNAB.

THIS BEING THE SAME PROPERTY CONVEYED TO DAVID E. SIMPSON BY DEED OF DONALD L. HARLEY AND JUDITH A. HARLEY DATED NOVEMBER 11, 1994 AND RECORDED NOVEMBER 14, 1994 IN BOOK 1589 AT PAGE 728 IN THE OFFICE OF THE REGISTER OF DEEDS FOR GREENVILLE COUNTY, SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 861 Rutledge Lake Rd, Greenville, SC 29617-6834

TMS: 0509.03-01-011.03

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COMMON PLEAS COURT

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-23-01861

MCLP Asset Company, Inc.

PLAINTIFF(S)

Any heirs-at-law or devisees of David E. Simpson, deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons or entities entitled to claim through them; all unknown persons or entities with any right, title, estate, interest in or lien upon the real estate described in the complaint herein; also any persons who may be in the military service of the United States of America, being a class designated as Richard Roe; and any unknown minors, incompetent or imprisoned person, or persons under a disability being a class designated as John Doe; South Carolina Department of Motor Vehicles; Kelly Lynne McCann; Jeff Edward; Dawn L. Forrester

DEFENDANT(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk
:

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		N/A
<p>If applicable, describe the property, including tax map information and address, referenced in the order: All that piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, shown and designated as 3.73 acre tract of land according to plat being dated July 3, 1986, and revised September 14, 1987, and being recorded in the RMC Office for Greenville County, South Carolina in Plat Book 14-R at Page 37, and being shown on a more recent plat prepared by Jeffery M. Plumblee, Inc. entitled "Survey for David E. Simpson" dated July 3, 1986, revised September 14, 1987 and revised October 27, 1994 and recorded in the RMC Office for Greenville County, South Carolina in Plat Book 28-R at Page 96. Reference is hereby made to said plat for a more complete metes and bounds description.</p> <p>ALSO:</p> <p>The right to use an easement or right of way for ingress and egress to and from Rutledge Lake Road heretofore granted to Fazio Auto Collision Services, Inc. by easement agreement of Frank B. Redding and Rita Redding dated June 21, 1983 and recorded in the RMC Office for Greenville County, South Carolina in Deed Book 1192 at Page 2024.</p> <p>Also included here with is that certain 1995 Clayton manufactured home, bearing Serial Number CLR010133TNAB.</p> <p>This being the same property conveyed to David E. Simpson by Deed of Donald L. Harley and Judith A. Harley dated November 11, 1994 and recorded November 14, 1994 in Book 1589 at Page 728 in the Office of the Register of Deeds for Greenville County, South Carolina.</p>		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge	Judge Code	Date
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For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

**Thomas Eller
Attorney for SC DMV
Post Office Box 1498
Blythewood, SC 29016**

**Kelly Lynne McCann
861 Rutledge Lake Road
Greenville, SC 29617**

ATTORNEY(S) FOR THE DEFENDANT(S)

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Greenville Common Pleas

Case Caption: Wells Fargo Bank NA , plaintiff, et al vs. David E Simpson , defendant,
et al
Case Number: 2022CP2301861
Type: Master/Order/Foreclosure & Sale and Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)