THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph F. Strickland, Master-in-Equity Court Judge

Court of Appeals No. 2022-001754

Richland County Common Pleas No. 2014-CP-40-02063

U.S. Bank, National Association, as trustee for the Holders of the Bank of America Funding Corporation 2008-FTI ……..……..Respondent.

v.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner, Bank of America, N.A.; and SCBT, Petitioner.

RESPONDENT'S RETURN TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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Date: January 31, 2023

TABLE OF CONTENTS

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW 4

COUNTER-STATEMENT OF THE CASE 4

ARGUMENT 12

I. THE PETITION DOES NOT MEET THE REQUIREMENT FOR EXTRAORDINARY RELIEF 13

II. PETITIONER FAILED TO PROPERLY PRESERVE ISSUES FOR REVIEW 14

III. THE COURT OF APPEALS PROPERLY AFFIRMED THE DECISION OF THE MASTER-IN-EQUITY 16

A. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION OVER THE MOTION FOR SUMMARY JUDGMENT 17

B. U.S. BANK WAS ENTITLED TO FORECLOSE AND HAD STANDING TO BRING A FORECLOSURE ACTION UNDER SOUTH CAROLINA LAW 18

C. ALL CLAIMS WERE ADJUDICATED BY THE TRIAL COURT AND THE CROSS-CLAIMS AGAINST BANA DO NOT AFFECT U.S. BANK'S ABILITY TO FORECLOSE 19

D. THE MASTER-IN-EQUITY PROPERLY AWARDED ATTORNEY'S FEES 20

CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

Cases

Bank of America, N.A. v. Draper
405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013).....17

Baron Data Sys., Inc. v. Loter,
297 S.C. 382, 377 S.E.2d 296 (1989) 18

Blumberg v. Nealco, Inc.,
310 S.C. 492, 427 S.E.2d 659 (1993) 18

Creech v. South Carolina Wildlife and Marine Resources Dep't,
328 S.C. 24, 491 S.E.2d 571 (1997) 15

In re Breast Implant Prod. Liab. Litig.,
331 S.C. 540, 503 S.E.2d 445 (1998) 13

In re Neals,
459 B.R. 612, 617 (D.S.C. 2011).....17

In re Woodberry,
383 B.R. 373, 379 (Bankr. D.S.C. 2008).....17

Jackson v. Speed,
326 S.C. 289, 486 S.E.2d 750 (1997) 16

Laffitte v. Bridgestone Corp.,
381 S.C. 460, 674 S.E.2d 154 (2009) 14

Muller v. Myrtle Beach Golf & Yacht Club,
313 S.C. 412, 438 S.E.2d 248 (1993) 16

Parker v. Shecut,
359 S.C. 143, 597 S.E.2d 793 (2004) 16

Rowe v. City of W. Columbia,
334 S.C. 400, 513 S.E.2d 379 (Ct. App. 1999).....13

S.C. Bd. Of Examiners in Optometry v. Cohen,
256 S.C. 13, 180 S.E.2d 650 (1971) 14

Wilder Corp. v. Wilke,
330 S.C. 71, 497 S.E.2d 731 (1998) 15

Wilson v. Walker,
340 S.C. 531, 532 S.E.2d 19 (Ct. App. 2000).....16

U.S. Bank Tr. Nat'l Ass'n v. Bell,
385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009).....18

U.S. Bank, Nat'l Ass'n, as trustee for the Holders of The Banc of America Funding Corp., 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 v. Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank of America, Nat'; Ass'n; and SCBT,
120 F.3d 472 (4th Cir. 1997) 11, 14, 17, 18

Statutes

S.C. Code Ann. § 36-1-201(20).....17

S.C. Code Ann. § 36-3-602(a) 17

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

I. Does Petitioner meet the factors contained in Rule 242 of the South Carolina Appellate Court Rules? (No.)

II. Did Petitioner properly preserve the issues regarding admissible evidence for appeal? (No.)

III. Did the Court of Appeals err in confirming the Master-In-Equity's Order granting Summary Judgment for Respondent? (No.)

COUNTER-STATEMENT OF THE CASE

A. U.S. BANK FILED FOR FORECLOSURE AS A RESULT OF PETITIONER'S DEFAULT ON HER LOAN.

U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 ("U.S. Bank"), commenced the underlying equitable action for foreclosure on March 31, 2014 ("Foreclosure Action"), alleging that Rhonda Meisner ("Petitioner") defaulted on her promissory note executed on August 13, 2003 ("Note"). Pursuant to the terms of the Note, Petitioner promised to pay Bank of America, N.A. ("BANA") the sum of $61,516.00, plus interest. The Note was secured by a mortgage ("Mortgage") (and with the Note, collectively, the "Loan"), which Petitioner executed the same day that she signed the Note, on the real property located at 406 Koon Store Road, Columbia, South Carolina ("the Property").

In its Complaint, U.S. Bank alleged that it was the holder of the Note and the Mortgage and named two additional defendants that it alleged may claim an interest in the Property, South Carolina Bank and Trust, N.A. ("SCBT") and BANA. (R. p. 15 ¶ 2.) U.S. Bank alleged that BANA may claim an interest in the Property stemming from a junior mortgage executed in 2005. (R. p. 17 ¶ 18(a).) As for SCBT, U.S. Bank alleged that it might claim an interest in the Property stemming from a 2007 mortgage, executed by Petitioner in favor of SCBT, and a deficiency judgment entered against Petitioner in Richland County in 2012. (R. p. 17 ¶ 18(b).)

In response, Petitioner filed an Answer on May 15, 2014, asserting affirmative defenses as well as counterclaims for: (1) breach of contract, alleging that the "Plaintiffs" failed to resolve an escrow dispute before transferring the servicing of the loan; and (2) a declaratory judgment seeking a determination of the parties' rights under the Note and Mortgage as well as appraisal rights for the Property ("Original Answer"). (R. pp. 23-29.)

B. PETITIONER FILES A MOTION TO DISMISS, WHICH THE TRIAL COURT DENIES.

On May 6, 2014, Petitioner filed a motion to dismiss the Foreclosure Action pursuant to S.C. Code Ann. Rule 12(b)(8)(9) ("Motion to Dismiss"), and, on June 4, 2014, she filed a memorandum of law in support of the Motion ("Memorandum"). (R. pp. 187-193.) As stated in her Motion to Dismiss and supporting Memorandum, Petitioner alleged that the Foreclosure Action should be dismissed because U.S. Bank failed to timely respond to a complaint filed by SCBT in a separate foreclosure action against Petitioner, in November 2013, in which SCBT sought to foreclose a junior mortgage on the Property (Case No. 2013-CP-40-7144) ("SCBT Foreclosure"). (R. pp. 187-193.)

Petitioner's Motion to Dismiss came on for a hearing on June 10, 2014. At the hearing, U.S. Bank argued that SCBT's foreclosure of its junior lien had no effect on the validity of U.S. Bank's senior lien at issue in this action. (June 10, 2014 T. pp. 7:9–8:13.) Consequently, U.S. Bank argued that its failure to timely respond to the complaint in the SCBT Foreclosure could not serve as a basis for the dismissal of the Foreclosure Action under Rule 12(b)(8), SCRCP. *Id.*

During the hearing, Petitioner attempted to challenge U.S. Bank's standing to maintain the Foreclosure Action based on her allegation that the Assignment of Mortgage was defective. (June 10, 2014 T. pp. 8:21–9:11.) The Trial Court, however, informed Petitioner that it could not hear her argument regarding the Assignment of Mortgage as Petitioner had not filed a motion on the

issue with the Court. (June 10, 2014 T. pp. 9:3–12.) Although Petitioner stated that she had filed a motion challenging U.S. Bank's standing (June 10, 2014 T. p. 9:7–8), the Record shows no such motion was filed—and, in her subsequent Rule 59(e) motion (discussed below), Petitioner conceded that she made an *oral* motion challenging U.S. Bank's standing at the June 10th hearing.

C. THE FIRST ORDER OF REFERENCE IS ENTERED BUT SUBSEQUENTLY VACATED.

While Petitioner's Motion to Dismiss was still pending, U.S. Bank filed a Motion to Strike Jury Trial Demand and for Mandatory Order of Reference, on July 24, 2014, arguing that Petitioner's counterclaims were not legal counterclaims as they did not affect U.S. Bank's right to enforce the Note and Mortgage. U.S. Bank therefore sought an order referring the entire matter to the Master-in-Equity. (R. pp. 206-210.)

On June 27, 2014, the Court entered an order denying Petitioner's Motion to Dismiss ("Order Denying Motion to Dismiss"). In the Order, the Trial Court noted that, although Petitioner cited Rules 12(b)(8) and (9), SCRCP, as grounds for her Motion to Dismiss, Rule 12(b)(9) did not exist; therefore, the Court only addressed Petitioner's Motion pursuant Rule 12(b)(8). (R. pp. 9-11.) The Court denied the Motion to Dismiss because it concluded Petitioner's default under the Note and Mortgage was "entirely unrelated to her performance under the terms of [her] loan agreement with SCBT[.]"

In a motion filed on June 30, 2014, pursuant to Rules 59(e) and 60, SCRCP, Petitioner asked the Trial Court to amend the Order Denying Motion to Dismiss, and for relief from the Order ("Motion for Reconsideration"). (R. pp. 197-205.) Petitioner asked the Court to reconsider its ruling under Rule 12(b)(8) and noted that the Court had not ruled on her oral motion at the June 10, 2014 hearing challenging the assignment of the Mortgage to U.S. Bank. (R. p. 197.) The Trial Court denied Petitioner's Motion for Reconsideration, in a Form 4 order on September 5, 2014,

stating that it did not receive a copy of the motion as required by Rule 59(g), SCRCP ("Order Denying Motion for Reconsideration"). (R. p. 12.) Petitioner appealed the Order Denying Motion to Dismiss and the Order Denying Motion for Reconsideration. The South Carolina Court of Appeals dismissed the appeal as interlocutory in an order entered November 19, 2014. (R. p. 1.)

On July 24, 2014, the Clerk of Court entered an order striking Petitioner's demand for a jury trial and referring the matter to the Master-in-Equity ("First Order of Reference"). (R. pp. 6-7.) The Master-in-Equity, Judge Strickland, vacated the First Order of Reference, on January 15, 2015, concluding that the Order was inadvertently signed by the Clerk of Court but should have been signed by a Circuit Court Judge. (R. p. 13; Dec. 16, 2015 T. pp. 13:17–14:5.)

D. PETITIONER FILES AN AMENDED ANSWER AND COUNTERCLAIMS AND U.S. BANK OBTAINS AN ORDER OF MANDATORY REFERENCE.

On August 10, 2015, Petitioner filed an amended answer and counterclaims ("Amended Answer")[1] asserting various affirmative defenses and counterclaims for: (1) declaratory judgment to determine the real party in interest; (2) breach of contract against Bank of America; (3) breach of contract accompanied by a fraudulent act against Bank of America; (4) abuse of process against U.S. Bank; (5) failure to file a satisfaction of mortgage against Bank of America; (6) slander of title against Bank of America; and (7) slander of title, based in equity, against SCBT. (R. pp. 35-58.)

After filing its Reply to Petitioner's Amended Answer (R. pp. 59-67), U.S. Bank again sought an order of reference when it filed a Motion to Strike Jury Trial Demand and for Mandatory Order of Reference on October 28, 2015 ("Motion for Order of Reference"). U.S. Bank's Motion for Order of Reference was heard on December 16, 2015. (Dec. 16, 2015 T. p. 1.)

[1] For clarification, U.S. Bank notes that Petitioner titled her Amended Answer as her "First Amended Complaint." (R. p. 35.)

On April 13, 2016, the Trial Court entered an order striking Petitioner's demand for a jury trial and referred the matter to a Master-in-Equity ("Second Order of Reference"). (R. pp. 2-5.) In the Second Order of Reference, the Trial Court concluded that Petitioner's counterclaims and cross-claims, if proven true, would not have any impact on the enforceability of the Note and Mortgage, and were, therefore, permissive. (R. p. 3.) Because Petitioner raised the permissive counterclaims and cross-claims in the equitable foreclosure proceedings, the Trial Court concluded that Petitioner had waived her right to a jury trial and referred the matter to the Master-in-Equity. (R. pp. 3-4.)

Petitioner filed a Motion to Alter and Amend Ruling Pursuant to SCRCP Rule 59-e [sic] ("Motion to Amend") on April 20, 2016. (R. pp. 247-250.) However, no order ruling on Petitioner's Motion to Amend appears in the Record.

Petitioner filed a Notice of Appeal from the Second Order of Reference on May 12, 2016. (R. pp. 398-399.) After the briefing was complete, the South Carolina Court of Appeals entered an Order dismissing Petitioner's appeal on February 13, 2019 on the grounds that she had no right to a jury trial on the counterclaims and, therefore, the Order striking the jury trial request was not appealable. (R. pp. 4-7.) Petitioner filed a timely Petition for Rehearing on that Order; however, on March 21, 2019, the Court of Appeals denied the Petition for Rehearing. (R. p. 8.) Petitioner then filed a Petition for Writ of Certiorari with this Court, which was denied on June 28, 2019. (R. p. 1.)

E. U.S. BANK FILES ITS MOTION FOR SUMMARY JUDGMENT AND, AFTER A HEARING ON OCTOBER 29, 2019, THE TRIAL COURT GRANTS THE MOTION FOR SUMMARY JUDGMENT.

On April 15, 2019, U.S. Bank filed its Motion for Summary Judgment ("MSJ") and contemporaneously filed its Affidavit in Support of the MSJ (the "Affidavit"). (R. pp. 340-343.) In the Affidavit, Theresa Robinson, an employee of Nationstar Mortgage LLC d/b/a/ Mr. Cooper,

the servicer of this loan, stated that Petitioner defaulted on the loan, which had been assigned to U.S. Bank, and that she failed to cure the default. (R. pp. 341-343.) In addition, a copy of the Note was attached to the Affidavit, which bears a blank indorsement from the original lender, BANA. (R. pp. 344-349.) An assignment of the mortgage from BANA to U.S. Bank was also attached to the Affidavit, which was recorded on May 2, 2014. (R. p. 360.) Moreover, sworn discovery responses from BANA, the only other party who could have an interest in this loan, stated that BANA transferred possession of the Note to U.S. Bank on June 29, 2013. (R. pp. 388-397.)

On June 1, 2019, Petitioner filed a response to the MSJ stating that the Court did not have jurisdiction because an appeal was currently pending and that it was not clear if U.S. Bank had standing to foreclose. (R. pp. 404-407.) The Trial Court held a hearing on the MSJ on October 29, 2019 (the "MSJ Hearing"). (R. pp. 154-220.) At the MSJ Hearing, the Trial Court repeatedly asked Petitioner to state any factual issues that would require a trial in this matter. *Id*. Petitioner responded that she did not think that U.S. Bank had been properly assigned the Note and Mortgage and also stated that BANA may have an interest in the loan and may owe her money because it failed to draft payments from her bank account or file a satisfaction of the Mortgage. *Id*. However, BANA has originally given Petitioner two loans, the subject loan in 2003, which U.S. Bank currently holds, and a subsequent loan in 2005. (R. pp. 176-178.) Petitioner appeared to claim that the 2005 loan should have been satisfied, which is irrelevant to this action, and could never offer any evidence that BANA still had any interest in the 2003 loan, which BANA had disclaimed as explained above. *Id*. Given Petitioner's failure to offer any evidence to rebut U.S. Bank's MSJ, the Trial Court entered an Order on November 7, 2019 granting the MSJ ("MSJ Order"). (R. pp. 27-39.)

F. PETITIONER APPEALS THE TRIAL COURT ORDER AND THE COURT OF APPEALS AFFIRMS THE TRIAL COURT ORDER AND DENIES PETITIONER'S REQUEST FOR REHEARING.

On January 15, 2020, Petitioner appealed the MSJ Order to the South Carolina Court of Appeals ("MSJ Appeal"). Petitioner's appeal argued that: (1) the Master-In-Equity did not have subject matter jurisdiction to rule on U.S. Bank's MSJ; (2) that U.S. Bank had no standing to foreclose; and (3) that the Master-In-Equity erred in determining U.S. Bank was entitled to attorney's fees. *See U.S. Bank, Nat'l Ass'n, as trustee for the Holders of The Banc of America Funding Corp., 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 v. Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank of America, Nat'; Ass'n; and SCBT*, Op. No. 2022-UP-237 (S.C. Ct. App. Filed August 10, 2022). On July 27, 2022, the Court of Appeals affirmed the Trial Court Order. On August 25, 2022, Petitioner filed a Petition for Rehearing and Rehearing Enbanc arguing that the Court of Appeals "overlooked her arguments" (the "Petition for Rehearing").

On October 29, 2022, the Court of Appeals denied the petition for rehearing as the Court was unable to discover any material fact or principle of law that had been overlooked or disregarded ("Order Denying Rehearing"). This Order Denying Rehearing led to the instant Petition for Certiorari filed with this Court on December 15, 2022 (the "Petition")[2], claiming that the following questions were presented for review:

1. Whether a plaintiff can file a mortgage foreclosure action when it does not possess the note or the mortgage at the time of filing?

[2] For clarification, U.S. Bank notes that Petitioner titled her Petition for Writ of Certiorari as "Petition For A Writ of Certiorari to the Court of Appeals."

2. Can a plaintiff in a foreclosure action cure its lack of standing that was not present prior to filing the foreclosure action by evidencing ownership of the note during the pendency of the litigation?
3. Whether summary judgment is appropriate when the original creditor scribed into the promissory note the mandatory requirement to automatically draft payments but failed to do so then declared default prior to assigning the note and mortgage to the plaintiff?
4. Whether summary judgment is appropriate when the other defendants are not present at the summary judgment hearing to address the cross claims and counterclaims of the Petitioner?
5. Whether a pro se party's declaration submitted under penalty of perjury pursuant to 28 U.S.C. § 1746 submitted in response to summary judgment should be accepted as evidence in lieu of a sworn affidavit?
6. Whether a pro se party's answers to fact questions by the Master in Equity should be considered as testimony that supports the required "scintilla of evidence" necessary to defeat summary judgment?
7. Whether a motion and payment of the fee is a requisite part of the summary judgment proceeding such that the filings and payment of the fees must be made at a time the circuit court has subject matter jurisdiction to proceed with a substantive motion when the mode of trial is at issue?
8. Did the Master in Equity err in awarding attorney's fees to the plaintiff?

ARGUMENT

The Petition does not meet the requirements of certiorari pursuant to Rule 242 of the South Carolina Appellate Court Rules. Further, Petitioner, at each and every opportunity throughout her

appeal of this matter, failed to raise any objection or otherwise argue that the declaration or her answer should be considered evidence and as such is prohibited from raising these issues for the first time in the instant Petition. Lastly, the Court of Appeals properly affirmed the decision of the Master-In-Equity as Petitioner's arguments lack merit. Therefore, the petition for writ of certiorari should be denied. *See* Rule 242(b), SCACR.

I. THE PETITION DOES NOT MEET THE REQUIREMENTS FOR THE EXTRAORDINARY RELIEF OF CERTIORARI REVIEW.

The Petition does not satisfy the grounds for certiorari review enumerated by Appellate Rule 242, and Petitioner does not argue otherwise. "A writ of certiorari is an extraordinary form of relief[,] . . . reserved for extraordinary situations or circumstances, and is granted sparingly" only in the absence of other effective relief. *Rowe v. City of W. Columbia*, 334 S.C. 400, 407, 513 S.E.2d 379, 383 (Ct. App. 1999); *see also In re Breast Implant Prod. Liab. Litig.*, 331 S.C. 540, 543 n.2, 503 S.E.2d 445, 447 n.2 (1998) (noting that this Court "will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal").

The factors this Court considers when deciding whether to grant a petition for certiorari include: (1) whether a case involves novel questions of law; (2) whether there was a dissent in the Court of Appeals decision; (3) whether the Court of Appeals decision conflicts with a prior decision of the Court of Appeals or conflicts with a decision of the Supreme Court; (4) whether substantial constitutional issues are involved; (5) whether the decision of the Court of Appeals conflicts with a decision of the Supreme Court of the United States related to federal questions. SCACR, Rule 242.

This matter does not present any novel questions of law. Instead, Petitioner seeks to have this Court ignore years of precedent and ignore clear and concise rules of civil and appellate procedure existing under South Carolina law. The Court of Appeals unanimously affirmed the

Trial Court's decision applying precedential case law from this Court. *See U.S. Bank, Nat'l Ass'n as trustee for Holders of Banc of Am. Funding Corp., 2008-FT1 Tr., Mortg. Pass-Through Certificates, Series 2008-FT1 v. Meisner*, Op. No. 2022-UP-237 (S.C. Ct. App. Filed August 10, 2022), *reh'g denied* (Nov. 15, 2022). As to the final two prongs of Appellate Rule 242, there are no constitutional issues or federal questions raised by Petitioner's claims.

When reviewing a case on a writ of certiorari, this Court must "confine its review to the correction of errors of law only, and will not review the findings of fact of an inferior Court . . . except when such findings are wholly unsupported by the evidence." *S.C. Bd. Of Examiners in Optometry v. Cohen*, 256 S.C. 13, 18, 180 S.E.2d 650, 652 (1971); *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 472, 674 S.E.2d 154, 161 (2009) ("On certiorari, review by the Court is confined to the correction of errors of law."). Here, as the Court of Appeals noted, it is uncontested that Petitioner failed to pay the mortgage which remained the fundamental basis for the Trial Court's MSJ Order; thus, there were no factual findings "wholly unsupported by the evidence." *Cohen*, 256 S.C. at 18, 180 S.E.2d at 652. Instead, the Petitioner repeats the same unsupported arguments rejected in both the Trial Court and Court of Appeals. While those arguments should be rejected once again for the reasons set forth below, it is clear that Petitioner's arguments do not rise to the level of extraordinary relief required for this Court to grant a petition for writ of certiorari. As such, the instant petition should be denied.

II. PETITIONER FAILED TO PROPERLY PRESERVE ISSUES FOR REVIEW.

In the Petition, Petitioner asserts the following arguments for the first time:

2. Can a plaintiff in a foreclosure action cure its lack of standing that was not present prior to filing the foreclosure action by evidencing ownership of the note during the pendency of the litigation?
3. Whether summary judgment is appropriate when the original creditor scribed into the promissory note the mandatory requirement to automatically draft payments but failed to do so then declared default prior to assigning the note and mortgage to the plaintiff?

. . .

4. Whether a pro se party's declaration submitted under penalty of perjury pursuant to 28 U.S.C. § 1746 submitted in response to summary judgment should be accepted as evidence in lieu of a sworn affidavit?
5. Whether a pro se party's answers to fact questions by the Master in Equity should be considered as testimony that supports the required "scintilla of evidence" necessary to defeat summary judgment?
6. Whether a motion and payment of the fee is a requisite part of the summary judgment proceeding such that the filings and payment of the fees must be made at a time the circuit court has subject matter jurisdiction to proceed with a substantive motion when the mode of trial is at issue?

Petitioner failed to assert or otherwise present these specific arguments on appeal, and as such failed to preserve the issue for review.

In order for an issue to be raised for the first time on appeal, it "must have been raised and ruled upon by the trial judge to be preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998) (citing *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997)). Further, the appellate rules clearly and concisely set out this

rule stating "[o]rdinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR. At no point during the MSJ Hearing or within the Petitioner's briefing to the Court of Appeals does Petitioner argue that the Trial Court erred in ignoring the declaration or oral answers should be deemed evidence. Instead, Petitioner identified three issues for appeal: (1) whether the Trial Court correctly determined the Plaintiff, US Bank, was the real party in interest that possessed the requisite standing to pursue foreclosure, (2) whether the Trial Court correctly determined the plaintiff US Bank was entitled to summary judgment, and (3) whether the Trial Court correctly determined the plaintiff US Bank was entitled to attorney's fees. (App. B. p. 1).

The Petition attempts to bring forth five completely new issues which were not specifically identified in Petitioner's brief to the Court of Appeals or specifically objected to in the course of the MSJ Hearing. While it should be noted that Petitioner's arguments remain meritless, Petitioner is attempting to present arguments for the first time to the South Carolina Supreme Court which she had full opportunity to address in her appeal of the MSJ Order. Accordingly, this Court should deny the Petition regarding Petitioner's new issues presented as Petitioner failed to preserve the issues for appellate review.

III. THE COURT OF APPEALS PROPERLY AFFIRMED THE DECISION OF THE MASTER-IN-EQUITY.

The Court of Appeals properly concluded that the Trial Court had subject matter jurisdiction regarding U.S. Bank's MSJ filed on April 15, 2019, and affirmed that the Trial Court properly granted U.S. Bank's MSJ.

As an initial matter, while the Petition is repetitive and, at times, incoherent, it appears Petitioner argues that the Master-In-Equity did not have jurisdiction to hear U.S. Bank's MSJ, that U.S. Bank did not have standing to bring a foreclosure action, that summary judgment regarding

the foreclosure action was not appropriate, and that the Master-In-Equity erred in awarding attorney's fees. Petitioner's arguments are without merit and the Court of Appeals properly affirmed the decision of the Trial Court. Therefore, the Petition for Writ of Certiorari must be dismissed.

A. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION OVER THE MOTION FOR SUMMARY JUDGMENT.

During the pendency of an appeal in South Carolina, the lower court retains jurisdiction over all matters not affected by the appeal. *See Wilson v. Walker*, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000); *see also Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . . Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal." (citing Rule 205, SCACR)). Regarding any matter directly involved in the appeal, "when the Supreme Court remits a case to the circuit court, the circuit court 'acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.'" *Parker v. Shecut*, 359 S.C. 143, 152, 597 S.E.2d 793, 798-99 (2004) (citing *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 414–15, 438 S.E.2d 248, 249-50 (1993)).

Petitioner's appeal of the Order Striking Defendant's Jury Demand and for Mandatory Reference is a wholly separate procedural dispute completely detached from whether Petitioner defaulted under the Loan. The Court of Appeal correctly pointed out that while U.S. Bank's MSJ was filed prior to the resolution of Petitioner's appeal, the Trial Court did not hear the MSJ until November 22, 2019, over four months following the Supreme Court's remittance of the case on June 28, 2019. *See Meisner*, Op. No. 2022-UP-237 (S.C. Ct. App. Filed August 10, 2022), *reh'g denied* (Nov. 15, 2022). Therefore, even if Petitioner's appeal was critical to whether U.S. Bank

had the right to foreclose, the Trial Court obtained jurisdiction prior to hearing or ruling on U.S. Bank's MSJ.

B. U.S. BANK WAS ENTITLED TO FORECLOSE AND HAD STANDING TO BRING A FORECLOSURE ACTION UNDER SOUTH CAROLINA LAW.

South Carolina law recognizes that standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013). Mortgage loan servicers have standing to foreclose a mortgage loan because of their pecuniary interests in collecting payments made under a mortgage loan or the servicer's contractual duty to collect payments and foreclose mortgages in the event of default. *Id.* at 222, 405 S.E.2d at 482 (quoting *In re Woodberry*, 383 B.R. 373, 379 (Bankr. D.S.C. 2008) and *In re Neals*, 459 B.R. 612, 617 (D.S.C. 2011)). Further, the holder of a mortgage note, such as U.S. Bank, can also have standing to foreclose upon proof that it is in physical possession of a properly indorsed note. *See Id.* at 223-24, 405 S.E.2d at 482-83 (citing S.C. Code Ann. §§ 36-1-201(20) & 36-3-602(a)).

In this matter, U.S. Bank produced ample summary judgment evidence to establish, unequivocally, its standing to foreclose the Mortgage as the holder of the Note. The undisputed evidence shows that U.S. Bank was physically in possession of the properly indorsed Note at the time the suit was filed because BANA transferred possession of the Note (indorsed in blank) to U.S. Bank on June 29, 2013. (R. pp. 388-397.). See *Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013) (Finding that the holder of a note indorsed in blank has standing to foreclose). Petitioner provides no evidence that even suggests summary judgment was not appropriate, despite her unsupported conclusions that U.S. Bank lacked ownership of the note at the time the suit was filed. Despite Petitioner's meritless accusations, the Trial Court and the Court of Appeals properly recognized that U.S. Bank submitted copies of the Note, Mortgage, all assignments, an affidavit

which confirmed the default, and a verified statement of the account in question to the Master-In-Equity – all of which evidence U.S. Bank was the holder of the Note entitled to pursue a foreclosure action. *See Meisner*, Op. No. 2022-UP-237 (S.C. Ct. App. Filed August 10, 2022), *reh'g denied* (Nov. 15, 2022). Thus, U.S. Bank provided sufficient evidence to prove that there is no genuine issue of material fact that U.S. Bank is entitled to pursue a foreclosure action and that Petitioner defaulted on the Mortgage.

C. ALL CLAIMS WERE ADJUDICATED BY THE TRIAL COURT AND THE CROSS-CLAIMS AGAINST BANA DO NOT AFFECT U.S. BANK'S ABILITY TO FORECLOSE.

Petitioner argues that BANA was not present at the foreclosure hearing and, therefore, the cross-claims against it were not adjudicated; thus, Petitioner's claims, without support, that the Trial Court should not have entered summary judgment in favor of U.S. Bank. (App. Br. At 13-15). However, BANA was joined in the MSJ filed by U.S. Bank to which BANA noted they had no interest and as such the Trial Court properly determined that summary judgment remained appropriate.

Summary judgment is appropriate when inquiry into facts would not provide further clarification of the application of law. *Moriarty v. Garden Sanctuary Church of God,* 341 S.C. 320, 534 S.E.2d 672 (2000); *Mosteller v. County of Lexington,* 336 S.C. 360, 520 S.E.2d 620 (1999) *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003). The non-moving party in a motion for summary judgment "must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition." *Dawkins v. Fields,* 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (internal quotation marks omitted). A cross-claim will only prohibit the court from dismissing the entire matter pursuant to summary judgment if the cross-claims are independent causes of action. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 776 S.E.2d 434

(Ct. App. 2015) (Affirming summary judgment order as equitable indemnity cross-claim was not independent of the breach of contract claim).

Petitioner's cross-claim included a variety of actions which remain related to the rights and liabilities of the parties under the Note and Mortgage. (R. pp.35-58). These cross-claims were not independent causes of action as they all stem from the Note and Mortgage U.S. Bank's action asked the Trial Court to enforce. The Trial Court properly confirmed that Petitioner's cross-claims held a commonality of facts and issues to the foreclosure matter. (R. p.31). Petitioner again fails to provide any credible reason as to why the Trial Court would be prevented from entering the MSJ Order. Accordingly, the Trial Court properly granted U.S. Bank's MSJ.

D. THE MASTER-IN-EQUITY PROPERLY AWARDED ATTORNEY'S FEES.

In South Carolina, the general rule is "that attorney's fees are not recoverable unless authorized by contract or statute." *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989). Thus, a contract between parties may dictate that reasonable attorney's fees and costs be awarded in the event of default. See *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993); *see also U.S. Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009).

Petitioner fails to provide any evidence that invalidates the language in the Mortgage allowing for the recovery of attorney's fee, or any other support as to why the granting of attorney's was in error. The Trial Court and the Court of Appeal correctly identified that the contract between the parties provided for attorney's fees in the event of default and Petitioner defaulted under the Mortgage. *See Meisner*, Op. No. 2022-UP-237 (S.C. Ct. App. Filed August 10, 2022), *reh'g denied* (Nov. 15, 2022); *see also* (R. pp. 27-39). Therefore, the Trial Court did not err in ordering attorney's fees nor did the Court of Appeal err in affirming that attorney's fees were warranted.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied, and U.S. Bank respectfully requests an award of all other just relief, including, but not limited to, an award of fees and costs for litigating the merits of the petition for writ of certiorari.

Respectfully submitted,

Respondent U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1
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