THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master-in-Equity

Appellate Case No. 2022-001147

U.S. Bank National Association, as Trustee, as successor to U.S. Bank Trust National Association, as Trustee, for Conseco Finance Home Equity Loan Trust 2001-C,..…………...……………………………………...…………...…...Respondent,

v.

Frances L. Mack nka Frances L. Mack-Marion,……..………………………Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES

I. Did the master-in-equity err reversibly here in granting judgment on the pleadings on Appellant's declaratory judgment claim on the basis of Hambrick v. GMAC Mortgage Corp., 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006)?

II. Did the master-in-equity err reversibly in determining that Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532, 534 (2011), bars Appellant's claim seeking a declaratory judgment that the 2001 mortgage in this case is unenforceable?

III. Should this Court modify the prospective-only application of Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532, 534 (2011), and, if so, how?

ARGUMENT

I. No defense of Hambrick has been made.

The Respondent, U.S. Bank National Association, as Trustee, as successor to U.S. Bank Trust National Association, as Trustee, for Conseco Finance Home Equity Loan Trust 2001-C (hereinafter "U.S. Bank"), makes no attempt to argue that the result, reasoning, or general approach of the Court of Appeals' decision in Hambrick v. GMAC Mortgage Corp., 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006), is correct. U.S. Bank's brief does not offer anything indicating that Hambrick was in any way right.

The closest U.S. Bank comes to defending Hambrick is its claim that the Appellant, Frances L. Mack-Marion (hereinafter "Mack-Marion"), "argues that this Court's exclusive original jurisdiction to determine what constitutes the unauthorized practice of law is unjust, unfair, and should be reversed." (Initial Brief of Respondent p. 11.) That is a straw man argument, made "where the arguer wishes to respond to an argument of his or her choosing and not one that is actually presented." State v. Smith, 298 P.3d 1138 (Kan. App. 2013). Mack-Marion has never made the contention that "this Court's exclusive original jurisdiction to determine what constitutes the unauthorized practice of law is unjust, unfair, and should be reversed." (Initial Brief of Respondent p. 11.) As explained in her brief, Mack-Marion has merely pointed out that other precedential decisions, including decisions by this Court, have soundly reasoned that trial courts can and should make determinations of the *effect* of a party having done something that this Court, in its original jurisdiction, has *already* determined constitutes the unauthorized practice of law. Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 138-40, 714 S.E.2d 532, 534 (2011); Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 873, 877 (2007); Linder v. Ins. Claims Consultants, Inc., 348 S.C. 477, 496, 560 S.E.2d 612,

622 (2002); Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244, 247-48 (Ct. App. 2010), *aff'd as modified* 404 S.C. 421, 746 S.E.2d 35, 76 (2013).

II. The arguments made for why Matrix's holding is prospective-only do not hold up.

U.S. Bank spends much of its brief arguing that the unenforceability of mortgages created through unauthorized law practice has only post-Matrix application because Matrix says it is limited to post-Matrix application. See Matrix, 394 S.C. at 140. For example, U.S. Bank writes that this Court, "applying equitable principles, determined that its decision voiding mortgages that were not closed by an attorney would only apply prospectively from the decision date." (Initial Brief of Respondent p. 7.) U.S. Bank also writes that, "prior to Matrix, this Court had never issued an opinion that the unauthorized practice of law regarding the closing of a mortgage loan would void the mortgage. As the foreclosure of a mortgage is equitable in nature, so was the remedy issued by the Matrix court; specifically, that voiding a mortgage used to secure a loan would only be applied prospectively from the date of the Matrix decision. This balancing of equities was affirmed in 2012 and again in 2013 as stated above." (Initial Brief of Respondent p. 10.)

This reasoning is circular. It fails to answer questions at the heart of this appeal: Why should mortgages closed through unauthorized law practice and recorded before the date of the Matrix opinion not be treated the same way as those closed the same way but recorded after it? What equitable principles support such a time-limited application? Why should this principle apply forward from August 8, 2011, and not from June 1, 1987, which was the date of this Court's opinion in State v. Buyers Service Co., 292 S.C. 426, 357 S.E.2d 15 (1987)? Is such time-limited application fair? If so, why?

Mack-Marion respectfully submits that U.S. Bank has not been able to find answers to these questions that support its position.

U.S. Bank also writes that Mack-Marion "cites to several cases in her brief for the proposition that lenders should be expected to know that there would be some remedy for 'their unauthorized practice of law.' [App. Brief pp. 8-9]. However, the cases cited sounded in law and would not apply to equitable actions and, therefore, are distinguishable to the case at hand and the Matrix decision. See also Franklin v. Chavis, 371 S.C. 527, 535, 640 S.E.2d 873, 877 (2007) [citation-related parenthetical omitted]." (Initial Brief of Respondent p. 10 n. 3.)

As an initial matter, Mack-Marion points out that the very case U.S. Bank cited as an example, Franklin, was one in which, in addition to a declaratory judgment, the petitioners were seeking the equitable remedies of restitution and injunction. 640 S.E.2d at 877. It is not true that all "the cases cited sounded in law[.]" (Initial Brief of Respondent p. 10 n. 3.)

Perhaps more to the point, though, equity follows the law. E.g., Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011). Equitable actions are not exempt from the application of legal principles – far from it. Id. U.S. Bank provides the Court with nothing demonstrating why the principles Mack-Marion cites from law cases would not apply in equity. See id.

U.S. Bank also supplies this Court with nothing in opposition to the logic that, as a decision that announced a limit on remedies and not a change to substantive law, the Matrix opinion should not have limited its application to only recording dates after the opinion was issued. See Matrix, 394 S.C. at 140; Buyers Service, 292 S.C. at 430-34. This Court has determined that "decisions creating new remedies to vindicate existing rights are applied retrospectively." Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989); accord

Carolina Chloride, Inc. v. S.C. Dept. of Transp., 391 S.C. 429, 434, 706 S.E.2d 501, 503 (2011).

U.S. Bank has not offered any doctrinal reasons for why Matrix was or should continue to be limited to prospective-only application.

III. U.S. Bank does not say how any good end is achieved by Matrix's prospective-only application.

The brief submitted by U.S. Bank does not articulate any policy purposes or even any other kind of good or important objectives that are served Matrix unenforceability applying only from August 8, 2011, forward. Mack-Marion lays out why this limitation is arbitrary and unfair, how it fails to address (and even rewards) decades of lender misconduct, and that it harms people it is supposed to help. Mack-Marion's counsel expected a brief from U.S. Bank that would at least attempt to give a listing of the other side of the ledger, but this is absent.

This is, perhaps, because no objective for the 2011 time limit seems to be served other than protecting mortgage lenders from the consequences of their choices to engage in activity they knew this Court had prohibited. Allowing lenders to "ignore established laws of this state" while this Court "overlook[s] their unlawful disregard" is not a good thing. Matrix, 394 S.C. at 140. It is, however, what the 2011 limit in Matrix does. Id.

CONCLUSION

U.S. Bank offers no good arguments for Matrix's time limit and makes no defense of Hambrick. The court should modify Matrix, state that Hambrick is not good law, and reverse the master's grant of judgment on the pleadings accordingly, remanding this case for a trial on the merits.

Respectfully submitted,

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