

PETITION FOR A WRIT OF CERTIORARI TO THE  
SOUTH CAROLINA SUPREME COURT

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APPEAL FROM BEAUFORT COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Hon. Bentley D. Price  
Circuit Court Judge  
Appellate Case No. 2021-000504

Wilmington Savings Fund Society FSB, not in its individual capacity but solely as owner trustee  
for CSMC 2018-RPL6 Trust, Respondent,

v.

Rex A. Field, Tracy L. Field, Dulamo Estates Home Owner's Association, Inc., Defendants, of  
whom Rex A. Field and Tracy L. Field are the Appellants.

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PETITION FOR WRIT OF CERTIORARI

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Appellants respectfully Petition this court for grant of Writ of Certiorari under Rules 242(3)  
and Rule 242(4) of the South Carolina Appellant Court Rules, and Rule 13(a) SCRCP of trial court  
strike of jury demand occurring before the lower court on April 15, 2021.

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INDEX

Certificate of Counsel ..... i.

Questions Presented ..... 1

Statement of the Case ..... 2

Arguments .....3

I. DID THE COURT OF APPEALS ERR IN AFFIRMING THE TRIAL COURT ORDER DIVESTING APPELLANTS OF SUBSTANTIAL CONSTITUTIONAL RIGHT TO TRIAL BY JURY ?

II. IS THE DECISION OF THE SOUTH CAROLINA COURT OF APPEALS IN CONFLICT WITH PRIOR DECISIONS OF THE SUPREME COURT WHERE THE TRIAL COURT FAILED TO APPLY THE LOGICAL RELATIONSHIP TESTING IN A FORECLOSURE ACTION INVOLVING COUNTERCLAIMS?

III. IS THE DETERMINATION OF THE COURT OF APPEALS IN ERROR WHERE THE CIRCUIT JUDGE EXCEEDED HIS AUTHORITY DURING THE JURY DEMAND STRIKE BY FORWARD OF FURTHER LITIGATION PROCEEDINGS IN THE CASE TO OTHER JUDGES WITHOUT FIRST APPLYING THE LOGICAL RELATIONSHIP TEST ?

Conclusion ..... 4

## CERTIFICATION OF COUNSEL

Counsel for Petitioners here certifies that the Petition for Rehearing before the Court of Appeals was made on June 28, 2023 and finally ruled upon by the court of Appeals on August 18, 2023. The decision of the court received electronically by Appellant counsel and Appellants on this same date. This Petition for Writ of Certiorari is timely filed and served and encompasses special and important reasons for certiorari to be granted pursuant to Rule 242(3) and Rule 242(5) of the South Carolina Appellate Court Rules and the South Carolina Constitution, Article I §14.

## QUESTIONS PRESENTED

- I. DID THE COURT OF APPEALS ERR IN AFFIRMING TRIAL COURT ORDER STRIKING JURY DEMAND OF THE FIELDS WHICH ALLEGED LEGAL AND COMPULSORY COUNTERCLAIMS?
- II. IS THE COURT OF APPEALS DECISION IN CONFLICT WITH PRIOR DECISIONS OF THE SUPREME COURT WHERE THE TRIAL COURT FAILED TO APPLY LOGICAL RELATIONSHIP TESTING AND IMPROPERLY CONFIRMED REFERENCE COMPULSORY REFERENCE VACATED BY THE MATER IN EQUITY COURT?
- III. IS THE DETERMINATION OF THE COURT OF APPEALS IN ERROR WHERE THE CIRCUIT COURT ABUSED ITS DISCRETION AND AUTHORITY BY EXCEEDING RELIEF GRANTED BY MOTION TO STRIKE THE FIELD'S JURY STRIKE DEMAND?

## STATEMENT OF THE CASE

This is a foreclosure case filed by Wilmington with counterclaims brought by the Fields. Wilmington sought both deficiency judgment against the Fields and foreclosure of the Fields' Beaufort County home. The case presents a tortured procedural history. Appellants respectfully aver the procedural errors culminate in trial court bias and abuse of discretion under controlling error of law avering that the Court of Appeals erred in Affirming the Trial Court, Hon. Bentley D. Price's Strike of the Fields' Jury Demand under Rule 13(a), and by erroneously characterizing their legal and compulsory counterclaims as permissive relying upon *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 292, 778 S.E.2d 106, 108 (2015) where no express or implied Waiver. Appellants cite trial court failure to properly analyze compulsory counterclaims under Rule 13(a) SCRPC, nor apply logical relationship testing pursuant to established authority of the Supreme Court in *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989). Appellants acknowledge the holding of this court in *Duetsche Bank Nat'l Trust Co. v. Estate of Houck*, 2023 S.C. Lexis 158 (August 9, 2023). [Cases commenced on or after the effective date of this opinion, the question of whether a counterclaim is compulsory is governed by the plain language of Rule 13(a)] and aver abuse of discretion under controlling error of law by the trial court April 15, 2021 now erroneously affirmed by the Court of Appeals.

Appellants respectfully aver Certiorari is appropriate because the Court of Appeals decision affects substantial justice in the case at bar and Affirmed a decision of the lower court that is in conflict with prior binding precedent and decisions of the Supreme Court, and affects important and substantial rights as guaranteed by the Constitution of the State of South Carolina, specifically Article I section 14.

## ARGUMENTS

### I. DID THE COURT OF APPEALS ERR IN AFFIRMING TRIAL COURT ORDER STRIKING JURY DEMAND OF THE FIELDS WHICH ALLEGED LEGAL AND COMPULSORY COUNTERCLAIMS ?

Yes. Appellants assert the Court of Appeals has affirmed the trial court strike of jury demand where the court failed to apply logical relationship test to determine whether the Field's counterclaims were permissive or compulsory and in error failed to apply Rule 13(a) SCRPC properly to the Fields' counterclaims, which were compulsory and not permissive.

### II. IS THE COURT OF APPEALS DECISION IN CONFLICT WITH PRIOR DECISIONS OF THE SUPREME COURT WHERE THE TRIAL COURT FAILED TO APPLY LOGICAL RELATIONSHIP TESTING AND IMPROPERLY CONFIRMED REFERENCE COMPULSORY REFERENCE VACATED BY THE MATER IN EQUITY COURT ?

Yes. The determination of the Court of Appeals conflicts with decisions of the Supreme Court in prospective application to this case of *Deutsche Bank Nat'l Trust Co. v. Estate of Houck*, 2023 S.C. Lexis 158 (August 9, 2023) specifically where no logical relationship was performed and the trial court level applying Rule 13(a) SCRPC on April 15, 2021. As set forth by this Supreme Court, the result in *N.C. Federal Sav. & Loan Assoc. v. DAV Corp.*, 298 S.C. 514 as affirmed cited that the logical relationship test had been applied in a way in prior precedent that does not track Rule 13(a). See, *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015); *Wachovia Bank Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 330 n. 7, 755 S.E.2d 437, 442 n.7 (2014); *Mullinax v. Bates*, 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995); *First Citizens Bank & Tr. Co. of S.C. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991); *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 97, 800 S.E.2d 488, 492 (Ct. App. 2017); *Beach Co. v. Twillman, Ltd.*, 351 S.C.

56, 61, 566 S.E.2d 863, 865 (Ct. App. 2002) (HN2). Appellants aver certiorari is proper and should be granted by this court as the decision in this case affects important and substantial rights. S.C. Const. Art. I §14.

III. IS THE DETERMINATION OF THE COURT OF APPEALS IN ERROR WHERE THE CIRCUIT COURT ABUSED ITS DISCRETION AND AUTHORITY BY EXCEEDING RELIEF REQUESTED BY MOTION TO STRIKE THE FIELD'S JURY STRIKE DEMAND APRIL 15, 2021 ?

Yes. The trial court under Hon. Bentley D. Price strikes the Fields' demand for Jury Trial and granted excessive relief not sought by Wilmington's Motion to Strike which did not request nor have prayer for reference or bi-furcation. Appellants assert the trial court procedurally advanced all further litigation proceedings to other circuit judges without properly applying Rule 13(a) or applying a logical relationship test pursuant to *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 330, 755 S.E.2d at 109 ("A counterclaim is compulsory if it arises out of the same transaction or occurrence and is thus compulsory, when there is a "logical relationship" between the counterclaim and the enforceability of the guaranty agreement"). *Id* and "[T]he test for determining if a counterclaim is compulsory is whether there is a "logical relationship" between the claim and counterclaim. *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989). Appellants aver the circuit court failed to properly apply Rule 13(a) SCRPC before strike of the Fields' Jury Demand, now in error affirmed by the Court of Appeals and thus warranting grant of writ of certiorari by this court of a decision occurring before the effective date of August 9, 2023 the prospective application cited by *Deutsche Bank Nat'l Trust Co. v. Estate of Houck* 2023 S.C. Lexis 158 (August 9, 2023).

CONCLUSION

For the reasons set forth above, Petitioners respectfully seek the Supreme Court grant the Petitioner's Writ of Certiorari in the above captioned case.

Respectfully submitted,

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