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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Bentley D. Price, Circuit Court Judge

Supreme Court Appellate Case No. 2023-001465
Court of Appeals Appellate Case No. 2021-000504
Circuit Court Case No. 2019-CP-07-02279

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 Homeowners' Association, Inc.,

Defendants,

Of whom Rex A. Field and Tracy Field are the

Appellants.

APPELLANTS REPLY TO RETURN OF THE RESPONDENT

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COUNTERSTATEMENT OF QUESTION PRESENT FOR REVIEW

1. Whether the Court of Appeals erred in affirming the Circuit Court's decision to strike the Fields' Jury Trial Demand in a Foreclosure Action where the Fields' Counterclaims were a defense to default and enforceability of Wilmington's action for foreclosure and the Circuit Court erred in determining the Counterclaims permissive.

STATEMENT OF THE CASE

As a preliminary matter, Wilmington, *not in its individual capacity,* seeks to characterize the issues before this court as arising in the "*mortgage lending context*". This is not the case. Wilmington **not** in its individual capacity ("foreclosing entity") does not even proclaim ownership, merely possession. It has not proven itself valid assignee nor proven ownership of *purported* enforceable note it has never originated as a mortgage lender. Appellants have always disputed note enforceability by "this" entity, outright, from day one of the litigation. This should be brought to this court's attention where Wilmington FSB, in its individual capacity, has denied ownership or any interest, (R. Vol. IV p. 1495-1496, at ¶91) and Third-Party Defendants have likewise done the same. (Id. at ¶93).

A. Unenforceability of the Note, Mortgage, and Unsubstantiated Default.

Appellants challenged enforceability of the note and mortgage in the court below. Loss Mitigation and payment under Notice of Right to Cure is but one example. Because a foreclosure sounds in equity, a party to a foreclosure action is not entitled to a jury trial as a matter of right. Rather, a party to a foreclosure action is entitled to a jury trial only if he or she asserts a counterclaim that is both legal and compulsory. *BADD*, 414 S.C. at 295, 778 S.E.2d at 109; *Salon Proz*, 420 S.C. at 96, 800 S.E.2d at 492; *cf*. *DAV Corp*., 298 S.C. at 517, 381 S.E.2d at 905 ("*A party does not waive its right to a jury trial on a counterclaim asserted in equity action if the counterclaim is legal and compulsory in nature.*") With

out Judge Price applying a logical relationship test per *DAV Corp*., permissive waiver is a foregone and erroneous conclusion of law, even if counterclaims are deemed at-law. The Fields have never waived their Jury Trial Demand. Appellants assert due process required Judge Price to conduct logical relationship testing before deferring anything. What gets deferred, respectfully, is due process and the yet un-met need for evaluation of the nature and character of counterclaims after Strike of Jury Trial Demand occurs on April 20, 2021.

B. **Alleged Default and Initiation of Foreclosure Action by Compulsory Reference where**
No Effective Service.

Wilmington laments that "Judge Duke's" reasoning for vacating the Order of Reference is not explained in the Form-4 Order." (R. pp. 8-10). The reason is clear if one consults the transcript (R. Vol. IV, p. 1569 at 5-9). The action had not commenced by service of pleadings upon the homeowners. Wilmington, *not in its individual capacity,* patently fails to file for reconsideration of Duke's order, nor file secondary reference motion. Nor motion for default entry. As such the Master-in- Equity ruling remained the law of the case from 9/29/2020 through 4/20/2021 Jury Strike. Other than refuted statements found in pleadings or in-court statements of oral argument, the respondent cannot adduce by evidence default, nor enforceability. Such statements are not evidence. Statements of legal conclusion that the loan "remained in default" is the argument of counsel, not evidence properly adduced. *Trivelas v. S.C. Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001). *See*, also *Higgins v. MUSC*, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 508 n. 7, 443 S.E.2d 401, 406 n. 7 (Ct. App 1994); and *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986). Despite not being properly adduced, Judge Price rules the Fields have permissively waived Jury Trial Rights under failure to adhere to *DAV Corp*. logical relationship testing. Thus, the Circuit Court ruling is

effectively in conflict with the decisions of this Supreme Court irrespective of this court's holding in *Deutsche Bank Nat'l Co. v. Estate of Houck, No*. 2021-001292,--SE-, 2023 WL 5075037 (S.C. August, 2023).

C. **Issues Surrounding the Fields' Seven (7) Jury Demand(s).**

Noteworthy for this court, is the Fields file a Jury Demand the very day they are served papers October 22, 2019. In total, they have made seven (7) express demands for Jury Trial. At no time have they been dilatory or Waived their rights to Jury Trial on Counterclaims. Appearing before Judge Robert H. Bonds, Rex Field again openly requests jury trial at oral argument. Prior to this, as far back as November 18, 2019, also prior to responding to the Complaint, the Fields filed a document styled "*Motion for Case to be Heard by Jury* Pursuant [sic] SCRCP 38(b)". In this filing the Fields made reference to their stand alone jury demand, reasserted their Jury Trial demand, and asserted a broad reservation of rights as it related to jury trial. (R. pp. 47–52). The motion is never scheduled. It is Never heard. It is Never ruled upon.

In response to the motion to strike jury demand filed by Respondent, on February 14, 2020 the Fields filed an opposition to Wilmington's Motion, arguing primarily that the Motion was void because the matter should be stayed pending foreclosure intervention. (R. pp. 67–69). The Fields on February 19, 2021, filed their <u>first</u>: Answer, Counterclaims and Third-Party Complaint ("Answer") (R. pp. 70–231). The amended pleading is filed on 3/25/2021 as a matter of right, the operative pleading pending before Judge Price, however, the ruling that is *deferred* -is the Fields' March 25, 2021 Amended Answer, Amended Affirmative Defenses, Amended Counterclaims and Third-Party complaint. The Fields filed Third-Party causes of action against Fannie Mae, Wilmington Savings Fund Society FSB, in its individual capacity, ("Wilmington FSB") and Christiana Trust. Wilmington concedes this was the operative pleading before Judge Price at

effective date of strike of jury demand. (R. Vol. IV, p. 1604 at 16-18). *See, also* Price 4/20/2021 Form-4 (R. Vol. I, at 14). By Answer, all Third-Party Defendants disclaim ownership or any interest in the alleged debt. Hence, they would not be necessary nor required in evaluating compulsory nature of the Fields' Second Amended Counterclaims as to enforceability, nor default. They would pass muster under *DAV Corp* if evaluated properly under logical relationship testing. This did not occur. By not doing so, the character of the Counterclaims are presumed without supporting evidence as permissive, even if at law. Moreover, the court has improperly determined at law implied Waiver by the Fields where they have made a minimum of seven express demands for Jury Trial on their Counterclaims.

D. **April 15, 2021 Hearing, Ruling, and Order on Motion to Strike Jury Demand.**

The circuit court scheduled oral argument on April 15, 2021. (R. pp. 1602-1629). Judge Bentley Price is presiding over the hearing. The hearing is attended by Wilmington, *not in its individual capacity*, Counsel and the Fields, appearing *pro se*. The court heard oral arguments. Oddly, the court dismisses the Fields counterclaims in ruling from the bench. Provided, however, when the April 20, 2021 Order is published, the Fields' Amended Counterclaims are not dismissed, they are instead *deferred*. Subsequently, Fields filed Second Amended Answer, Affirmative Defenses, Amended Counterclaims and Third-Party Complaint (R. Vol I at 14), approved by Judge Robert H. Bonds pursuant to Order dated August 26, 2021, which is now the operative pleading.

Appellants ask the supreme court to note abuses of discretion of record under the circuit court by procedurally deferring matters, including Counterclaims, after Strike of Jury Trial Demand, that should not have occurred without first engaging in the logical relationship test. (Vol. IV at 1628). Judge Price's primary focus is patent. He wants the case off jury roster and back to the master, failing to consider the precedent of this court and the logical relationship test outline

in *DAV Corp*, nor Rule 13(a) vs Rule 13(b) analysis as to the pending Counterclaims. (R. Vol I at 14):

- "Plaintiffs motion to dismiss Amended Answer, Counterclaims and Third Party Complaint and Defendant's Motion to Join Third-Party Defendants will be heard at a later date (*sic)". (hearing transcript)

- "I'm referring this to the Master for foreclosure. All right." (R. Vol. IV at 1626; 16). "The master will handle everything that will be in my order. All right." (R. Vol. IV at 1628).

Appellants assert what got deferred erroneously, in fact, was due process and the necessity of applying the *DAV Corp*. logical relationship test at the date of Strike. Appellants assert the ruling conflicts with then-prevailing precedent of the Supreme Court at date of Jury Strike 4/20/2021. Appellants assert Judge Price should have conducted this analysis before deferring the case, where procedurally pleadings had not closed, in fact. This is particularly so if he was going to strike a Jury Demand involving a residential home. It is controlling error of law under abuse(s) of discretion, where no supporting evidence of default had yet been proven, but yet improperly presumed.

The extensive record and transcripts in this case further evidences Judge Price comes to the jury strike date under preconceived notion of default and improperly comments on status of the pro se litigants and presumed evidence and disputed fact. It is illustrated of record as improper comments by Judge Price upon unproven, erroneous legal conclusions. Judge Price by use of questions only to Wilmington, *not in its individual capacity*, counsel renders depiction the Defendants as deadbeats and thus defaulters, improperly commenting on the case status (see, Vol. IV, p. 1607 – 1608, lines (12-13; 15-16; and 405 at p. 1608):

- "All right. So this is a foreclosure action, correct, from 2019 ?"
- "All right, and do the Fields still reside in the residence?"
- "When was the last time they made a payment on the home ?"

It is irrelevant the Fields had terminated their attorney, from day one they have made Jury Trial Demands pro se over seven (7) times. In view of this, Judge Price should properly have evaluated the character of the Fields' amended counterclaims by and through the logical relationship test established by this court. The ruling is in conflict with the precedent(s) of the Supreme Court.

Wilmington, *not in its individual capacity*, counsel lament that the first pleadings 02/29/2021 existed as (149) pages, spans (924) numbered paragraphs, and includes (9) counterclaims and third-party claims. Now that the parties stipulate what is the operative pleading 03/25/2021 at date of Strike of Jury Demand (R. Vol. II p. 456-603) and concedes that *DAV Corp.,* was binding authority, Appellants Counsel will not at length address *Estate of Houck*. The unmeritorious element of Respondent's argument is that absolutely none of the Fields' counterclaims disputing enforceability and default are dependent upon Third-Party causes of action or any Third-Party defendant, under *DAV Corp*., all disclaim ownership or any interest. Moreover, Judge Bonds found no over-pleading, and as such any over-pleading issue is not relevant. (R. Vol IV p. 1781 at 12-17). Bond affirmatively advises Wilmington, *not in its individual capacity*, "I am going to allow the amended answer and counterclaim and third-party complaint".[1]

STANDARD OF REVIEW FOR CERTIORI

Appellants acknowledge that "*A writ of certiorari is not a matter of right*" and *"[i]s subject to the discretion of the justice of the Supreme Court*. This case rises to the level of special and important reasons cited by Appellants as SCACR 242(b)(3) and SCACR 242(b)(4) discussed in

[1]Appellants acknowledge the list of Third-Party Defendants that are not on Appeal nor part of Judge Price's jury strike ruling on 04/20/2021. Appellants' affirmative defenses and counterclaims, without the above Third-Party litigants, is sufficient under challenges of standing, real party in interest, and unfair trade practice claims to effect enforceability.

section II, infra. Specifically, the Circuit Court decision is in conflict with prior decisions of the Supreme Court. SCACR 242(b)(3). And, this case implicates constitutional rights and due process of law. SCACR 242(b)(4). Respondent's Return cites to to SCACR 242(b)(1-5) generally and without precision.

I. THE CIRCUIT COURT ERRED IN STRIKING THE FIELDS' JURY DEMAND WHERE IT FAILED TO APPLY THE LOGICAL RELATIONSHIP TEST.

The Fields assert that the Circuit Court erred in Striking their Jury Demand prematurely finding the Counterclaims Permissive, despite being at law and compulsory. The Fields assert the Court of Appeals incorrectly Affirmed the Circuit Judge where no logical relationship test was applied pursuant to *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp*., 298 S.C. 514, 381 S.E.2d 903 (1989). On June 14, 2023-UP-239 (S.Ct. App. June 14, 2023) without oral argument affirmed the trial court concluding "the circuit court did not err by striking the Field's demand for a jury because it correctly determined the Field's counterclaims were permissive rather than compulsory." (Id. at 1) The Fields filed petition for re-hearing, which the Court of Appeals denied. This Petition for Writ of Certiorari followed.

A. Standard of Review.

Whether a party is entitled to a jury trial is a question of law, and "[a]n appellate court may decide questions of law with no particular deference to the trial court." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E. 2d 771, 772-73 (2010). Appellant cites that normally, "[t]he matter of striking from a pleading…is largely within the discretion of the trial judge" such that "[t]he granting…of a motion to strike …will not be reversed except for an abuse of discretion or unless the action of the trial judge was controlled by an error of law." *Brown v. Coastal Life Ins. Co.*, 264 S.C. 190, 194, 213 S.E.2d 726, 728 (1975). Here appellants assert abuse(s) of discretion where Judge Bentley Price erred at law by Striking the Fields' Jury Demand without application of *DAV*

Corp., whatsoever. Nor *Salon Proz*. Nor *Badd*. The circuit court ruling conflicts with the precedent of this court at relevant date of the Strike. Moreover, it implicates constitutional due process and constitutionally protected right of the cornerstone, if not the bedrock, of jurisprudence the right to Jury Trial. In this case the right is asserted by the Fields' under Demand for Jury in defense of their home and purported enforceability of the Wilmington, *not in its individual capacity*, bearer instruments purported to be in possession of the foreclosing entity, yet which it has never proclaimed ownership of. Appellants assert abuse of discretion where Judge Price improperly comments on what is evidence not adduced whatsoever. This is reflected by the record. (R. Vol. IV, P. 1607-1608, at 12-13; 15-16; and 405 at p. 1608). Directing questions to Wilmington, *not in its individual capacity*, counsel, the court presumes enforceability prematurely and assumes facts and evidence not established, that the Fields are deadbeats and defaulters.

At no time has the foreclosing entity proven default, in fact. Nowhere in the record does the Plaintiff even declare ownership of the *purported* note or assignment of the purported mortgage. This court should note that Wilmington Federal Savings Bank, FSB in its individual capacity ('Wilmington FSB") and all Third Party Defendants *disclaim* ownership and any interest in the subject note and mortgage. The Plaintiff Wilmington, *not in its individual capacity*, has to date failed to adduce evidence of default other than statements in pleadings and/or counsel arguments inside court, which are not evidence. *Trivelas v. S.C. Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001). Judge Price fails to apply logical relationship testing, in error. Appellants assert abuse of discretion where at oral argument he dismisses their claims 4/15/2021. Yet, subsequently, by Form-4 Order dated April 20, 2021 Judge Price kicks the can down the road, not dismissing but *deferring* other matters (other than Strike of Jury Demand) to other circuit judges and future court dates. The Strike of Jury Demand denies Appellants due process of law guaranteed

by the Constitution, and the "forward" of pending amended answer, amended affirmative defenses, and amended counterclaims occurs without application of logical relationship testing as to enforceability. It is abuse of discretion and error of law. An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions. *Father v. South Carolina Dept of Soc. Servs*., 353 S.C. 254, 578 S.E.2d 11 (2003). By further way of example, Judge Robert H. Bonds immediately recognizes the enforeceability debacle and questions Wilmington's, *not in its individual capacity*, trial attorneys: (R. Vol. IV P. 1794 at 18-21)

THE COURT: (Robert H. Bonds – August 12, 2021)

- "All right. *What about it ? What about the fact (*sic) that they sent him a right-to-cure, telling him to pay it by a certain date ? He sends them a check and they send it back*."

Judge Bonds immediately recognizes what Judge Price omits to even check – the enforceability debacle created by the foreclosing entity, not the Fields. As evidenced by this, the foreclosing entity has never established this case arises in the "mortgage *lending* context" which is an inaccurate and inarticulate characterization of the issues in the pending action. Rather, what is really going on is attempted debt collection on a *purported* enforceable note, with no assignment of purported mortgage wielded as foreclosure against the Fields' home. Where, by the way, Wilmington, *not in its individual capacity*, by whatever name it employs as foreclosing entity, has never established nor proven by properly adduced evidence, nor declaration of ownership, of the bearer instrument or assignment of the mortgage, standing, or that it is the real de-facto party-in-interest.

Again, Third-Parties Wilmington FSB, in its individual capacity, Christiana Trust, and Fannie Mae brought in via later court approved second amended answer, defenses, affirmative defenses, and amended legal counterclaims outright disclaim ownership or any interest in the *purported* note or

mortgage. The Fields had alleged amended counterclaims at law implicating enforceability, no different than the subsequent oral contract illustrated in *DAV Corp*. found by this court to be compulsory in nature because "if performed", the oral agreement "would have avoided default on the note". Likewise, in *Salon Proz* a SCUTPA claim alleged by the mortgagor against bank regarding a pattern of reneging on promises to modify loans – was compulsory, the Court of Appeals explaining "Were this allegation true, it could affect the loan's enforceability. Id. At 97, 800 S.E.2d at 492. Appellants allege violation of the SCUTPA by way of amended counterclaims, conceded by Wilmington, *not in its individual capacity*, counsel to be the operative pleading. ((R. Vol. IV, p. 1604 at 16-18). *See, also* Price 4/20/2021 Form-4 (R. Vol. I, at 14).

DAV Corp., Salon Proz, *BADD* and even *Houck* (which is prospective from the date of the decision and not applicable at date of Jury Strike) if applied to review the Circuit Court's drastic action make clear – particularly in a *non* mortgage "*lending*" context - a counterclaim has a logical relationship to an underlying claim (default or enforceability), and is therefore compulsory, if it would operate as a defense to the underlying claim. Reneging upon payment sent under demand and right to cure notice certainly qualifies. (R. Vol. III p. 981).

By contrast, were the amended counterclaims not to affect the viability of the underlying claim, it is not compulsory but permissive. A counterclaim is either legal or equitable depending on the "main purpose" in bringing the action," which can be gleaned from both "the body of the [pleading]" as well as "the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action. *Verenes*, 387 S.C. at 16, 690 S.E.2d at 773 (internal quotation marks omitted). A counterclaim is compulsory under Rule 13(a) SCRCP only "if it arises out of the transaction or occurrence that is subject matter of the opposing party's claim". SCRCP 13(a).

Here the foreclosing entity's claim is default. (R. Vol. I p. 40 at (14). Wilmington, *not in its individual capacity*, alleges mortgage assignment, but the only assignments of record evidence are entered by the Fields' evidencing the foreclosing entity is not valid assignee. Christiana Trust d/b/a of Wilmington FSB in its individual capacity is, in fact. Further, the Field's operative pleading now (08/26/2021), second amended counterclaims challenge the standing, real party-in-interest, and most importantly the enforceability and default of the purported debt. The main purpose gleaned from face of the Counterclaims is the Field's defense of their home, not strictly monetary claims. As pro se, they filed Third-Party Claims where counsel for the foreclosing entity either cannot, or will not, adduce or prove default nor enforceable debt. They simply wish to do so later, perhaps on the eve of trial. The trial court has permitted these abuses throughout the record in this case. The Fields are pro se, after all. Wilmington, *not in its individual capacity*, simply under estimated the will of their opponents in defense of their home.

I. REGARDLESS OF WHETHER THE FIELDS' COUNTERCLAIMS ARE AT LAW UNDER THE LOGICAL RELATIONSHIP TEST THERE EXIST SPECIAL AND IMPORTANT REASONS WARRANTING WRIT OF CERTIORARI BY THIS SUPREME UNDER SCACR 242(b)(3) and SCACR 242(b)(4) AS TO COMPULSORY NATURE OF THEIR CLAIMS.

Irrespective of this court's abolishing the "logical relationship test" under *Estate of Houck*, this court's holding made explicitly clear the ruling applied only to "*cases commenced on or after the effective date of this opinion*" Id. (emphasis added). In turning to the Reply, Item II of the Return appears to be a mis-statement by Wilmington, *not in its individual capacity*, in saying "regardless of whether the Fields' counterclaims are permissive (*sic) under the logical relationship test". Perhaps they intended to say even "under performance of a logical relationship test", which did not in fact occur as confirmed by the record. Either way, omitting due process Judge Price neglected to conduct any logical relationship test evaluating the character of the Fields' counterclaims. It is the Fields' continued position—as set forth above—that the trial court committed abuse of discretion and ruled

under controlling error of law implicating constitutional due process and right to Jury Trial of Compulsory Counterclaims when Judge Price failed to engage in logical relationship testing under DAV Corp., and progeny cases. Without doing so, there was no way to evaluate compulsory vs. permissive character of the counter claims to evaluate Jury Trial right. Appellants assert the Circuit Court improperly struck the Fields' Jury Trial Demand. It did so failing to follow precedent of this court leaving no alternative but to erroneously conclude counterclaims were permissive in nature. Appellants respectfully assert the Court of Appeals erred in Affirming the Circuit Court where the Circuit Judge's ruling is in conflict with the authority and precedent(s) of this Supreme Court. The logical relationship test as set forth in *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp*., 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989) and its progeny case(s) applies in this case in determination whether the Fields Counterclaims were compulsory or permissive, and thus whether the Court of Appeals has wrongfully Affirmed trial court error in Striking the Fields' Demand for Jury Trial. The Court of Appeals presumed permissive waiver no differently than did the Circuit Court Judge, where absolutely no logical relationship test was conducted.

Why should the Supreme Court exercise its discretion and grant writ of certiorari? Regardless of the Court's view of the propriety of the trial court's decision to strike there are indeed "special and important" reasons warranting Certiorari in this case. Respondent omits express cite to sub paragraphs (b)(3) and (b)(4) of SCACR 242(b), conveniently omitted by Wilmington's, *not in its individual capacity*, Return. In the case sub judice there is distinct conflicts between the Circuit Judge's ruling and the binding precedent of the Supreme Court. Respectfully, Judge Price missed the boat under *DAV, Corp*. entirely. And, respectfully, there is distinct conflict with this court's lineage of case law existing at the relevant time prior to *Houck*. Even more important is there is still impinged constitutional right that must be addressed, not the least of which is right to Jury Trial and

Due Process of law implicated by the Circuit Court's ruling, not cases which will follow in the wake of *Estate of Houck*.

The character of these rights involve cornerstone to democracy in and through the courts. It constitutes the very bedrock of jurisprudence, particularly right to Demand Trial by Jury if Counterclaims are Legal *and Compulsory*. The Fields did not waive their rights to Jury Trial on Counterclaims asserted in this action, if their amended counterclaims were *indeed legal and compulsory*. As applicable to this case, South Carolina courts apply the logical relationship test in determining whether a counterclaim is compulsory. *See*, DAV Corp., 298 S.C. at 518, 381 S.E.2d at 905. The character of Appellants' claims under Rule 242(b)(4) encapsulate due process irrespective of whether *Houck* has changed the landscape of foreclosure cases in the future. SCACR 242(b)(3) and 242(b)(4) stand as guide post(s) why this Supreme Court should grant Writ of Certiorari. The "*live*" issue under South Carolina law applicable to this appeal is due process of law and violation of constitutional right under abuse of discretion and controlling error of law erroneously Affirmed by the Court of Appeals. *DAV Corp*., and progeny cases applied in the 4/20/2021 action to strike a Jury Demand taken by Judge Bentley Price. Appellants' Second Amended Answer, Affirmative Defenses, Defenses and Counterclaims challenged the default by eleven (11) counterclaims. There remain two (2) counterclaims never even ruled upon by the Circuit Court before Strike of Jury Demand. Appellants' First Amended Counterclaims of Right alleged nine (9) Counterclaims; their Second Amended alleged eleven (11). The Amended Counterclaims – procedurally deferred by the Circuit Court's ruling, implicating enforceability specifically. They implicate default as alleged by pleadings and oral argument, resulting in rulings which lack adduced proven evidentiary support and are not supported by Fact.

Finally, addressing the public policy argument that trial courts and litigants going forward will no longer be arguing for and applying the logical relationship test pursuant to *Houck*, this may

be true; Houck has abrogated in relevant part, a line of cases applying the logical relationship test including *BADD*, *BLACKBURN*, *BATES*, HUCKS, *DAV Corp*., *Salon Proz*, and *Twillman Ltd.* (citations omitted) However, a decision issued by this Court under Writ of Certiorari would absolutely provide illustrated guidance to litigants and Judges alike pursuant to SCACR 242(b)(3) and 242(b)(4). This is particularly true in relation to mode of trial, jury trial right, and due process of law under prevailing authority. The circuit court should have, but did not, follow the precedent of this court and ruled in conflict with Supreme Court's established lineage of *N.C. Fed. Sav. & Loan Ass'n v. Dav. Corp*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989) and progeny cases. For this reason, the Writ of Certiorari requested by the Fields should be granted. It illuminates the "character of reasons" enumerated in SCACR 242(b)(3) and SCACR 242(b) (4) squarely that this Court's holding in *Estate of Houck* does not alter including, without limitation, due process of law.

Lastly, looking to the plain language of Rule 13(a) SCRCP as applied to the Circuit Court's ruling and setting *DAV Corp*. aside, there is still error at law Affirmed by the Court of Appeals that should be reversed under the plain language of the rule. Did the Fields have, at time of serving its initial or amended pleadings, a Counterclaim as to the foreclosing entity, where a mortgage lending context is not present as asserted by Respondent's characterizations. If collection of a debt by foreclosure due to a default, would the Fields' claims not arise out of the same transaction or occurrence that is the subject matter (default) of the opposing party's claim? They would. Again, the Fields are forced into necessity of having to flush out the truth by Amended Counterclaims and Third-Party Complaint against Wilmington FSB, Christiana Trust, and Fannie Mae. It yielded fruit where these parties disclaim ownership or any other interest in the subject note and mortgage and this is per responsive pleading by the foreclosing entity attorneys. It is also easy to look to Rule 13(b). Under the plain language do the Fields' amended counterclaims not arise out of the transaction or occurrence, which is the subject matter (e.g., default) of the foreclosing entity's

claims? They do if there was a written demand to cure, where as Judge Bonds notes they sent money as directed but the debt collector/Servicer rejects it. Again, it is a Servicer shell game. Hide the ball. Here the Fields' did not lie down as Pro Se litigants against lawyers trained in foreclosure litigation. The Supreme Court should do the same, where the Court of Appeals and the Circuit Court did not do so and erroneously found permissive waiver at law and that the Fields Amended Counterclaims were not compulsory. Appellants thank the court for its time and consideration.

CONCLUSION

For the foregoing reasons, Rex A. Field and Tracy L. Field respectfully seek that the Supreme Court grant Petitioners' Writ of Certiorari pursuant to SCACR 242(b)(3) and SCACR 242(b)(4).

Respectfully submitted this 30th day of October 2023.

Respectfully Submitted,

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