

RECEIVED

Nov 16 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Benjamin C/P. Sapp, Special Referee

Case No. 2016-CP-07-01466

(Appellate Case No. 2023-001394)

Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust
Series, 2006-5, NovaStar Home Equity Loan Asset-Backed Certificates, Series
2006-5.....Respondents.

v.

Terry Lennette Grant, Pro Se.....Appellant,

INITIAL BRIEF OF APPELLANT

Terry Lennette Grant, Pro Se
P O Box 21936
Hilton Head Island, SC 29925
843-301-5157
terrygrantseries@gmail.com

Chad W. Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Rd Ste 110
Columbia, SC 29210
Email: chad.burgess@brockandscott.com

Counsel for Respondents

TABLE OF CONTENTS

	PAGE
TABLE OF EXHIBITS.....	i-v
TABLE OF AUTHORITIES.....	vi-vii
MEMORANDUM OF POINTS AND AUTHORITIES.....	1-19
ARGUMENT.....	19-23
I. The Documents Attached to the Complaint and the Motion for Summary Judgment Failed to Provide the Respondent, Deutsche Bank National Trust Company as Trust for NovaStar Mortgage Funding Trust, Series 2006-5, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5, with Standing to Foreclose	23-25
A. Appellant did not complete the closing process	
B. Respondent created documents to force Appellant to appear to have participated in a closing that did not take place.	
C. An Equitable Transfer of the Note and Mortgage was Not Proven	
D. The Appellant Raised the Defense of Standing in a Timely Manner.....	
II. The Original Note and Assignment of Mortgage Were Not properly introduced as evidence at Summary Judgment Hearing.....	25-26
III. Genuine Issues of Material Fact Exists Within the Records.....	26
A. Holder and Owner of the alleged Mortgage.	
B. Preliminary Requirements Which Must Be Met By the Moving Party in Order to Prevail on a Motion for Summary Judgment.	
C. A Genuine Issue of Material Fact Exists Concerning what Entity is the the real party of interest.	
IV. The Original Note Produced throughout this proceeding was Materially Altered And was never attached to the Complaint and Was Provided in an Untimely Manner Precluding its Use.....	26
V. Reasonable Inferences Within the Record Support the Conclusion that the Endorsement Signature on the Alleged Original Note is an Unauthorized Forgery and that Terry Lennette Grant Was denied her Constitutional Right to a Trial on the Merits.....	
CONCLUSION.....	24-29

Table of Exhibits

	Page
Exhibit #1: “Mortgage” NovaStar Mortgage Inc. September 18, 2006.....	1
Exhibit #2: Alleged“Adjustable Rate Note” NovaStar Mortgage Inc. September 18, 2006 5 Pages.....	1
Exhibit #2a: Prepayment Rider 2 pages.....	1
Exhibit #2b: Adjustable Rider 3 Pages.....	1
Exhibit #3: GreenPoint Mortgage Funding, Inc December 3, 2003.....	1
Exhibit #4: GreenPoint Release of Mortgage April 21, 2004.....	1
Exhibit #5: Respondent 1st Complaint filed December 1, 2009 C/A No: 2009CP0705612....	3
Exhibit #6: Assignment of Mortgage dated December 2, 2009.....	4
Exhibit #7: Satisfaction of Lost Mortgage/Affidavit of Lost Note dated October 2, 2006.....	4
Exhibit #8: 1st Case dismissed Notice of Dismissal Dated February 12, 2010.....	5
Exhibit #9: Respondent 2nd Complaint filed April 12, 2010 C/A No: 2010CP0701690.....	5
Exhibit#10: Motion Cover Sheet dated May 3, 2010.....	5
Exhibit#11: Cover Letter dated April 30, 2010.....	5
Exhibit#12: Joseph T Merli’s, Affidavit Sworn to on May 3, 2010; however clerk stamp on May 10, 2010.....	5
Exhibit#13: Judge Mullen appeared to have signed the order of publication on May 10, 2010.	6
Exhibit#14: Island Packet Publication dated clocked by court June 21, 2010.....	6
Exhibit#15: Respondent penned letter to clerk of court On June 8, 2010; however, clocked on June 14, 2010.....	6
Exhibit#16: Order of Reference dated June 15, 2010 and clocked in at 1:10pm signed by one	

person.....	6
Exhibit#16a: Order of Reference dated June 15, 2010 and clocked in at 1:10pm signed by another person.....	6
Exhibit#17: Respondent's first amended complaint C/A No:2010CP0701690 filed on April 19, 2011.....	7
Exhibit#18: Joseph T Merli sworn Affidavit on May 23, 2011, but clocked on on June 28, 2011.....	8
Exhibit#18a: Motion Cover Sheet signed by Joseph T Merli dated May 26, 2011, but clocked in on June 28, 2011.....	8
Exhibit#18b: Certificate of Service not dated Appellant not served; clocked in June 28, 2011.....	8
Exhibit#18c: 2nd Amend Complaint never served o Appellant.....	8
Exhibit#19: Allonge to Note dated June 25, 2012.....	8-9
Exhibit#19a: 2nd created Allonge to Note not dated introduced on January 13, 2023's deposition.....	9
Exhibit#20: Judge Dukes signed Order to Reform Mortgage dated February 7, 2014.....	9
Exhibit#21: Judge Dukes Order granting Respondents Foreclosure Judgment dated May 28, 2014.....	9
Exhibit#22: 2nd Case dismissed Foreclosure Judgment vacated and dismissed on January 14, 2016.....	9
Exhibit#23: Respondent's 3rd filed Complaint June 29, 2016.....	9-10
Exhibit#24: Appellant ordered subject property 18 years Title Search dated December 27, 2016.....	10,28
Exhibit#25: Respondent filed Memorandum in the Support of Motion for Summary Judgment with the exhibits on June 22, 2017.	10

Exhibit#26:	Judge Dukes Order to mail correspondence to Appellant PO Box dated May 22, 2018.....	12
Exhibit#27:	Respondent entered in to Beaufort County Recorder of Deed Corrective Assignment of Mortgage dated November 9, 2018, but recorded on November 16, 2018.....	12
Exhibit#28:	Respondent filed Proposed Order for foreclosure August 2, 2021.....	14
Exhibit#29:	Respondent's Record of August 3, 2021 hearing.....	14
Exhibit#30:	Transcript of August 3, 2021 hearing.....	14
Exhibit#31:	Judge Dukes Order granting Respondents 3rd Foreclosure Judgment granted dated August 6, 2021.....	14
Exhibit#32:	Return Of Appellants August 3, 2021 hearing notice from Clerk of Court back To Clerk of Court dated August 6, 2021.....	14
Exhibit#33:	September 7, 2021 Notice of Appeal filed by Appellant Foreclosure Sale Stopped.....	15
Exhibit#34:	November 19, 2021 SC Court of Appeal Order to Remand/Motion of Relief Granted.....	15
Exhibit#35:	May 6, 2021 consent Order filed to 3rd vacate foreclosure judgment/.....	15
Exhibit#36:	September 1, 2022 Remittitur/Order from Court of Appeal-case dismissed and Remanded back to lower Court.....	15
Exhibit#37:	Respondent filed Motion for Summary Judgment September 7, 2022.....	15
Exhibit#38:	Appellant's Opposition to Respondent's MSJ October 6, 2022.....	16
Exhibit#39:	Appellant's MSJ and filed to dismiss on October 21, 2022.....	16
Exhibit#40:	Respondent's Opposition to Appellant's MSJ October 26, 2022.....	16
Exhibit#41:	Order of Recusal by Judge Dukes December 1, 2022.....	17

Exhibit#42:	Respondent Motion to Alter or Amend and Memo in Support of Motion December 2, 2022.....	17
Exhibit#43:	Appellant’s Opposition to Respondent’s Motion to Alter or Amend December 5, 2022.....	17
Exhibit#44:	Order Denying Respondent’s Motion to Alter or Amend December 7, 2022....	17
Exhibit#45:	Transcript of William Sloan’s Deposition January 13, 2023.....	17
Exhibit#46:	Order of Reference by Respondent to appoint Special Referee Benjamin C.P. Sapp February 17, 2023.....	17
Exhibit#47:	Appellant's Supplemental Response in Opposition to Motion for Summary Judgment March 3, 2023.....	18
Exhibit#48:	Appellant’s Opposition/reconsideration and or/Appeal of Appointment of Special Referee to Carmen T. Mullen.....	18
Exhibit#49:	Respondent’s Memo in Opposition to Appellant’s March 9, 2023 Opposition Of the Special Referee appointment.....	18
Exhibit#50:	Transcript of May 4, 2023 hearing Presiding Special Referee Benjamin C. P. Sapp.....	18
Exhibit#51:	Respondent’s Proposed Order June 2, 2023.....	18
Exhibit#52:	Appellant’s Proposed Order June 5, 2023.....	18
Exhibit#53:	Order by Special Referee dated June 12, 2023 and filed June 28, 2023.....	18
Exhibit#54:	Appellant’s Motion to Reconsider Decision of granting Respondent’s Motion for Summary Judgment July 7, 2023.....	18
Exhibit #55:	Order denying Appellant’s Motion to Reconsider September 1, 2023.....	19
Exhibit#56:	Notice of Appeal to South Carolina Court of Appeals September 5, 2023.....	19
Exhibit#57:	Email dated September 19, 2006 between NovaStar Mortgage, Inc (Lender) and Peter Wolf Law Firm, LLC. (Closing Attorney).....	21

Exhibit#58: Three Credit Reports.....	28
---------------------------------------	----

TABLE OF AUTHORITIES

CASES	PAGE(S)
Twelfth RMA Partners, L.P. v. Nat'l Safe Corp., 335 S.C. 635, 639, 518 S.E.2d.44, 46 (Ct. App.1999).....	5
<u>Roche v. Young Bros.</u> , 318 S.C. 207, 456 S.E.2d 897 (1995).....	14
Dalton cv 10-0081-phx-jat wrongful foreclosure.....	20,21
Green cv 10-0080-phx-jat.....	20
Vargas cv 09-2616-phx-jat cal.....	20
Baughman v. American Telephone and Telegraph Company, 306 S.C. 101, 410 S.E.2d 537 (1991).....	21
Hamilton v. Miller, 301 S.C.45, 389 S.E.2d 652 (1990).....	21
Fla. Stat. § 671.201(21)(2009).....	21
Fed.Nat'l Mortg. Assn v. Bradley, 2011 ME 120 ¶¶2-7, 32 A.3d, 1014, 1015-16.....	21
Fla. Stat. § 673.3081(1) 2009).....	22
HUD 4155.2.6.b.5,7,8; 4155.2.6..e; 4155.2.a.c; 4155.2.6a2.6; 4155.1.1.b.1a; 4155.2.6.a.1.c....	22
Major League Baseball v Morsani, 790 So.2d 1071, 1074 (Fla. 2001).....	24
Business Specialists, Inc. v. Land & Sea Petroleum, Inc., 25 So. 3rd 693, 695 (Fla. 4th DCA 2010).....	24
HUD 4155.1 1.B.1a	24,25
Plum Creek Dec. Co. v. City of Conway, 334 S.C. 30,34, 512 S.E.2d 106, 109(1999).....	26
Glaski v. Bank of America, N.A., 218 Cal.App.4th 1079, 160 Cal. Rptr. 3d 449 (Cal. Ct. App. 2013).....	26
Larry D. JESINOSKI, v. COUNTRYWIDE HOME LOANS, INC 135 S.Ct. 790 (2015) 574 U.S. 259	26
South Carolina, Lanneau D. Lids, 4 S.C.L.R. 333 (1952).....	29

Lawton v. New York Life Insurance Co., 181 S.C. 230, 186 S.E. 909 (1986).....	29
Watson v GoldSmith, 205 S.C. 215, 31 S.E. 2d 317 (1944),.....	29
Hart v. Bates 17 S.C. 35 (1881).....	29
Johnston-Crews Co. v Folk, 118 S.C. 470, 111 S. E. 15 (1921).....	29

STATUTES

Regulation X § 1024.2(b)(12).....	1
Regulation X § 1024.5(b)(7), secondary market transactions.....	2
S.C. Code Ann. §36-3-203(b) (Supp.2012).....	5
SC Code of Laws Section 36-2-803.....	
SC Code 30-5-35.. ..	22
Title 18 U.S. Code Section 1001 and 1010.....	25

RULES

SCRCP 60(b)(1-6).....	29
SCRCP Rule 59(b).....	29

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV	1
1 U.S. Const. amend. VIII.....	1
S.C. Const. art. I, § 15.....	1
S.C. Const. art. I, § 31	1

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

1) This matter comes to the appellate court from a foreclosure action brought in the circuit court of Beaufort County by the Respondents/Appellee, Deutsche Bank National Trust Company As Trustee for NovaStar Mortgage Funding Trust Series, 2006-5, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5, Respondents The underlying Mortgage in this action was allegedly executed on September 18, 2006 by the Appellant, Terry Lennette Grant, as the borrower, and it states that NovaStar Mortgage, Inc. is the original lender organized under the United States address at 4059 Kinross Lakes Parkway, 2nd Floor, Richfield, Ohio 44286 (*See Alleged NovaStar Mortgage, Inc.'s "Mortgage", Exh.#1* pp. 1 of 14). The underlying Note in this action was allegedly executed on September 18, 2006 by Appellant, Terry Lennette Grant, does not identify the Appellant as the borrower, as the indicated by an alleged signature the Respondent is alleging as belonging to the Appellant (*See Alleged Note¹, Exh. #2²*, pp. 1 of 5 And 5 of 5).

2) On December 8, 2003, Appellant entered into a loan agreement with lender GreenPoint Mortgage Funding, Inc., in the amount of Three Hundred Ninety Eight Thousand (\$398,000.00) Dollars (*See Exh. #3 GreenPoint Mortgage, p. 1-14 and Exh. A*)³ on a portion of 3.95 acres never on .46 acres. At the time, Appellant envisioned building a community for middle-class people near the water in Hilton Head Island, South Carolina. At the beginning of 2004, the discovery of a life threatening medical condition caused Appellant to rethink her plans.

3) On April 21, 2004, the loan was repaid in full (*See Exh. #4 GreenPoint Release*

¹ In the state of South Carolina, the document should outline the amount of the loan, the borrower, the lender, and the signatures of both parties

² Exh. #2a Alleged Prepayment Rider and 2b Alleged Adjustment Rider

³ See Beaufort County, SC ROD Book 01885 Pages 1116 – 1130, File Num. 2003098284)

of Mortgage)⁴, on a portion of 3.95 acres⁵. This ended the loan agreement with GreenPoint Mortgage Funding, Inc., four months from the date of the loan.

4) On or around September 18, 2006 Appellant was told by her business partner and friend that he arranged for the community development project funding and closing was scheduled for September 18, 2006. Appellant was instructed to go and sign the closing Documents. However, after signing the “Mortgage” document, Appellant noticed multiple irregularities within this closing process. Documents were inaccurate, claiming to pay off a GreenPoint Mortgage that was already paid and satisfied, the legal description was incorrect, just to name a few. Appellant walked out of the closing not completing the closing process. Appellant did not sign any other document outside of the initial Mortgage document.

5) On or around February of 2008, Appellant started received notices that her mortgage was past due. Appellant received presentments from the Finkel Law Firm alleging a default on a Mortgage. Appellant wondered who could possibly not know that there was no default, because she repaid the loan back in 2004. To Appellant’s amazement, it appeared as if someone in conjunction with the Respondent’s had secured a mortgage on my property without my signature on any other documents, besides the Mortgage document I did sign. Appellant Never signed a Note, \Promissory Note, Adjustable Rate Note, Rider , or Prepayment Rider as Respondent’s allegation.

6) On December 1, 2009 Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Inc., NovaStar Funding Trust, Series 2006-5, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 (further herein known as “DBNTC”) filed its

⁴ See Beaufort County ROD Book 01942 Pages 2544 – 2546, File Num. 2004025836)

⁵ The release of the GreenPoint Mortgage was wrongfully or illegally changed from the legal description in the original mortgage legal description (Compare both legal descriptions). Peter Wolf’s law firm added a’ paragraph ‘Save and Except .46 acres’. This was the beginning of this problem.

unverified Complaint to foreclose the subject mortgage without attaching the legally required documents: 1) Original Note⁶ and 2) Original Mortgage or 3) Allonge to Note and 4) Assignment of Mortgage at the time this case was filed (*See Complaint, Exh. #5, Rec. p. 1-12, C/A No: 2009-CP-07-05612*). The Complaint alleged that “[t]he Plaintiff is the legal and/or equitable owner and holder of the Note and Mortgage and has the right to enforce the loan documents.” (*See Complaint, Exh. # 5, Rec. p. 1, ¶ 2*). The Complaint failed to plead a single material fact substantiating that “DBNTC”, prior to filing its lawsuit acquired the subject Note and Mortgage through an equitable transfer. (*See Complaint, Exh. #5, Rec. p. 1-12, C/A No: 2009-CP-07-05612*).

7) The Complaint had attached to it copies of the Notice Fair Debt collection Practices Act, ADR Supreme Court Rules, Lis Pendens 2009LP0702680, Summons and Notices. A copy of, (*Adjustable Rate Rider See Exhibit #2b p.1-3*), (*Prepayment Rider Exh. 2a, p.1-2*) and the (*Adjustable Rate Note Exh. #2, p. 1-5*) was introduced at a later date⁷, well after the initial a complaint was filed. They all listed NovaStar Mortgage, Inc. as lender⁸ and the copy of the alleged “Note” was bearing a stamp “Pay to the order of Deutsche Bank National Trust Company as Trustee, without due course, NovaStar Mortgage Inc with respect to the presence of an\endorsement, the signatures were one of many Robo-Signers⁹ (*See Copy of Adjustable Rate Note, Exh. #2, p. 5 of 5*). Notably, the Complaint did not have attached to it an assignment of

⁶In the state of South Carolina, the “Note” should outline the amount of the loan. the borrower, the lender, and signatures of both parties. This means both the lender and borrower must sign the original document (plus any amended versions). Without the signatures, the promissory note has no legal leg to stand on.

⁷ First introduced into the record June 22, 2017

⁸ According to Regulation X § 1024.2(b)(12) Definition of Lender: Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under “federally related mortgage loan” in this section. See also § 1024.5(b)(7), secondary market transactions.

⁹ <https://robosighersuspects.blogspot.com/2015/06/information-on-robo-signing-suspects-r.html> David. A Pazgan, Vice President listed as suspected Robosigner

the Mortgage or an Allonge of Note (*See Exh. #5, Complaint filed December 1, 2009*).

8) On December 10, 2009 Plaintiff filed a document entitled “Assignment of Mortgage”¹⁰ which was created and/or fabricated on December 2, 2009 (*See Exhibit #6 Assignment of Mortgage*¹¹) The Finkel Law Firm was representing the Plaintiff at this time.

9) In Appellant’s defense, Appellant entered into the records of the Court of Common Pleas for Beaufort County, South Carolina a document entitled (‘*Satisfaction of Lost Mortgage/Affidavit of Lost Mortgage See Exh. #7*’)¹². Within this document @ Satisfaction of Lost Mortgage are the words ‘Present owner/holder: Mortgage Electronic Registration Systems, Inc., as nominee of GreenPoint Mortgage Funding, Inc. The undersigned, being the owner and holder of the above described mortgage, acknowledges that the debt which was secured thereby has been paid in full and the lien of the mortgage is satisfied and canceled, October 2, 2006.

10) The second part of this document @ Affidavit of Lost Mortgage are the words ‘Presently appeared before me the undersigned witness, who, being duly sworn, says the above designated owner/holder is the bonafide owner and holder of the described mortgage; that the original mortgage has been lost cannot be found; that the mortgage has not been assigned, hypothecated or disposed of otherwise’. Both parts of the document was sworn to by a Linda Story-Daw, Vice-President before Laura E. Harris, Notary Public, of Muscogee County, Georgia.

11) When this document was made known to the Master in Equity, Marvin H. Dukes,

¹⁰ Twelfth RMA Partners, L.P. v. Nat’l Safe Corp., 335 S.C. 635, 639, 518 S.E.2d.44, 46 (Ct. App.1999); see also S.C. Code Ann. §36-3-203(b) (Supp.2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had.). “[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but ...the assignment of the mortgage alone does not carry with it an assignment of the note.”

¹¹ Respondent submitted to Clerk of Court on 12/10/2009 which shows book and page number at lower left corner of document; Respondent resubmitted to Court on June 22, 2017 as Exhibit or Motion for Summary Judgment; however, book and page number missing.

¹² See Beaufort County ROD Book 02456 Pages 1986 – 1987, File Num. 2006081835)

III for Beaufort County, South Carolina¹³, rather than ‘Dismissing the Claim’, the Master in Equity for Beaufort County, South Carolina allowed the attorneys for the Respondent, Finkel Law Firm, LLC (SC BAR buddies) to withdraw their Claim.

12) On February 12, 2010 Respondent filed a Notice of Dismissal (*See Exhibit #8 Notice of Dismissal*) which was dated February 8, and allegedly mailed on February 10, 2010, this case (2009-CP-07-05612 was dismissed without prejudice Rule 41(a) and Lis Pendens 2009-LP-072680 was canceled.

13) On April 12, 2010 Respondent filed its second foreclosure lawsuit against the Appellant (*See Exhibit #9 Summons, Complaint and Lis Pendens See C/A No. 2010CP0701690*) without attaching the legally required required documents: 1) Original Note and 2) Original Mortgage or 3) Allonge to Note and 4) Assignment of Mortgage at the time this case was filed. This Complaint did not reflect the real party of interest, Caption depict Respondent (Plaintiff) as “Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5” and not the party in the Original Mortgage “NovaStar Mortgage, Inc.” or current “Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust Series, 2006-5, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5”.

14) On May 3, 2010 Respondent submitted a motion form (*See Exh. #10 Motion Cover Sheet*) by and through Finkel Law Firm LLC., Joseph T. Merli signed this document; however, the Cover Letter to the Clerk of the Court (*See Exh. #11 Cover Letter*) is dated April 30, 2010. Joseph T. Merli’s affidavit (*See Exh. # 12 Joseph Merli’s Affidavit*) was sworn to and

¹³ Judge recused himself on December 1, 2022 (See Exhibit #39 Order of Recusal)

subscribed by a notary public for Beaufort County South Carolina on May 3, 2010, But the document was clock stamped on May 10, 2010.

15) On May 10, 2010 Judge Colleen Mullen appeared to have signed the Order of Publication (*See Exh. #13 ORDER*).

16) On May 14, 21, and 28 of 2010 on the issue of the Island Packet (*See Exh. #14 Island Packet publication*) Respondent allowed their declaration that they were the real party of interest “Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5”;; however, there is a different lender as alleged to be on the Original Mortgage of September 18, 2006 “NovaStar Mortgage, Inc.”, without Assignment of Mortgage and without Allonge of Note as required by law to be in possession of both at the time the case was filed.

17) On June 8, 2010 Respondent penned a letter (*See Exhb. # 15*) to the Clerk of the Court in reference to a proposed order, requesting for the presiding judge or clerk of court to sign the Order and return a clock copy back to the Respondent. It was clocked on June 14, 2010.

18) On June 15, 2010 Order of Reference was signed by Clerk of Court, in this action, referring the case to Marvin H. Dukes, III, Master-In-Equity¹⁴ (*See Exh. # 16 & 16a ORDER OF REFERENCE*); however, it was dated June 15, 2010 and Clerk of Court Clocked in at 1:10 p.m. on both documents. It was signed by two different clerks or some one attempted to sign the Clerk of the Court's name. The Motion Cover Sheet was also clocked in at exact same time indicating that it was submitted on June 15, 2010 stamped by the Court. On the other hand,

¹⁴ Judge Dukes recused himself December 1, 2022

Joseph Merli's, his signature is next to the date stamp indicating that it was submitted June 10, 2010.

19) On April 19, 2011 Respondent filed (*first amended complaint*) of the foreclosure lawsuit against the Appellant (*See Exhibit #17 amended Summons, amended Complaint and amended Lis Pendens See C/A No. 2010CP0701690*) without attaching the legally required required documents: 1) Original Note and 2) Original Mortgage or 3) Allonge to Note and 4) Assignment of Mortgage at the time this case was filed. This Complaint did not reflect the real party of interest, Caption depict Respondent (Plaintiff) as "Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5" and not the party in the Original Mortgage "NovaStar Mortgage, Inc." or current "Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust Series, 2006-5, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5". Also an ORDER to Amend Complaint to a reform legal description was entered by the Clerk.

20) Appellant made an attempt to clear this matter up with Respondent by submitting on May 24, 2011, an Offer to Tender Full Balance Due in ten days upon presentment of authority to issue a good title upon receipt of the same (received in record May 24, 2011 Rosenau ¹⁵). There was no response from the Finkel Law Firm or any of the Finkel Associates. It seems that any answer entered into the record of the Court of Common Pleas for Beaufort County, South Carolina by the Appellant did not match the required payment plan of the Finkel Law Firm, LLC or Callison Tighe &

¹⁵ See SC Public Index for Beaufort County Case No:2010CP0701690

Robinson, LLC, and was not considered a response by the Master in Equity. At all times during this alleged foreclosure action, the Master in Equity displayed total bias towards the Respondent in all Rulings he made. Appellant also filed an objection the order for Respondent's amended Amended Lis Pendens, Amended Summons, Notices and amended Complaint.

21) On or around June 28, 2011 Respondent filed the following: 1) Affidavit (*See Exh. #18*) Joseph T Merli signed and sworn to and subscribed before notary of South Carolina on May 23, 2011, but clocked in on June 28, 2011; 2) Order of Publication, signed by Clerk of Court June 24, 2011, but clocked in on June 28, 2011(*See Exh. #18a*) 3) Motion Cover Sheet signed by Joseph T Merli indicated it was submitted on May 26, 2011, but clocked in on June 28, 2011 (*See Exh. #18b*). Certificate of Service not dated as to when Appellant was served, it only lists another Defendant; however clocked in on June 28, 2011 (*See Exh. #18c*) Appellant was never served *amended Complaint; however*, amended Summons, Complaint and an amended Lis Pendens was allegedly filed without attaching the legally required required documents: 1) Original Note and 2)Original Mortgage or 3) Allonge to Note and 4) Assignment of Mortgage at the time.

22) On or around July 15, 2011 Appellant filed objection to the amended complaint, summons and Lis Penden for the second time, clearly stating Respondent is not the real party of interest and lack standing to foreclosure. Respondent was not holder of Original Note or alleged Mortgage or in possession thereof.

23) On or around June 25, 2012 Respondent by way of counsel of record at the time Callison,

Tighe & Robinson, LLC had created or fabricated a document entitled “Allonge” (*See Exhibit # 19 & 19a Allonges of Note*¹⁶) for the alleged note Respondent claimed to be in possession on December 1, 2009 when Respondent first initiated this foreclosure action and the second foreclosure action which was filed on April 12, 2010.

24) On or around February 7, 2014, Judge Dukes signed and submitted an order granting Respondent’s Motion for Summary judgment and granting Respondent to reform alleged Mortgage from TMS 017B the neighbors property to 018A my property (*See exh. # 20 ORDER dated Feb. 7, 2014*).

25) On or around May 28, 2014 Judge Dukes granted Respondent Foreclosure Judgment, even though Respondent did not possess the Original Note or Original Mortgage and did not prove that they were the real party of interest and right to foreclose (*See Exh. #21 Order dated May 28, 2014*). Respondent was now represented by Callison, Tighe, & Robinson, LLC.

26) On or around January 14, 2016 Respondent dismissed the foreclosure judgment that was granted to them on May 28, 2014 stating, “Since the date of the Judgment of Foreclosure the plaintiff has decided NOT to pursue the foreclosure Thus, it is no longer equitable that the Judgment of the Foreclosure should have prospective application” (*See Exh.22 foreclosure judgment vacated and C/A No:2010CP0701690*).

27) On or around June 29, 2016 Respondent filed another foreclosure action¹⁷ (*See Exh. #23*

¹⁶ See the two Allonges submitted by Respondent at different times during this litigation one was not submitted on June 22, 2017 when Respondent submitted Alleged Note; however, one was submitted to United States District Court on Nov. 11, 2022 both dated June 25, 2012 with no loan number indicated. The other was submitted on January 13, 2023 Deposition with loan number 7197104, Different pay to the order content with no date indicated (fabricated documents)

¹⁷ Second time Res Judicata

Complaint, Summons, and Lis Pendens) against Appellant, this time Respondent is represented by Brock & Scott, PLLC. Respondent filed the Complaint without the original Note or the Original Mortgage attached to the complaint. Respondent did not have the Assignment of Mortgage or an Allonge of alleged Note at the time this case was filed. This is the third foreclosure lawsuit filed against the Appellant. (Res Judicata)

28) On or around December 16, 2016 Appellant paid for an (18) eighteen year title search on subject property (*See Exh. #24 Title Search*) which reflects no mortgage. Appellant was represented by William Sloan of William Sloan Law Firm.

29) On or around January 24, 2017 and January 27, 2017 Respondents filed Notices of Appearance for two more attorneys and they filed Denial of Loan Modification on Jan. 27th..

30) On or around March 21, 2017 Respondent filed another Notice of Appearance for adding an attorney.

31) On or around June 22, 2017 filed a (*Memorandum in the Support of Respondent's Motion for Summary Judgment with the exhibits supporting their Motion (See Exh. #25)*). Notice document does not have the May 28, 2014 Foreclosure Judgment by Hon. Marvin H. Dukes, III, Stamp affixed to this document.

32) On July 21, 2017 Appellant filed a Motion to Amend Answer.

33) On September 21, 2017 Notice of Motion hearing was filed, It was scheduled for October 11, 2017.

34) On or around October 10, 2017 Respondent filed Motion to Amend Complaint.

35) On October 12, 2017 Notice of Motion hearing filed. It was scheduled for November 6, 2017.

36) On or around November 6, 2017 Order by Judge Dukes was entered for Respondent to Amend Complaint.

37) On November 7, 2017 Appellant filed Motion to Reconsider Judges Dukes Order granting Respondent Motion to Amend their Complaint.

38) On November 9, 2017 Respondent filed their Amended Complaint and Summons without Judge addressing Appellant's open Motion. Respondent still was not in possession of Original Note or Original Mortgage. Respondents did not have Assignment of Mortgage or an Allonge of Note at the time they filed this amended complaint.

39) On or around December 7, 2017 Appellant filed an answer to Respondent's amended Complaint.

40) On or around February 15, 2018 Appellant filed another Motion to Amend Answer, even though Appellant first Motion was never addressed.

41) On or around March 20, 2018 Respondent filed another Notice of Appearance adding Attorney.

42) On or around May 4, 2018 Notice of Motion hearing scheduled for May 14, 2018 at 3:30pm was filed.

43) On or around May 15, 2018 Respondent filed Motion/Order to relieve William Sloan and the William Sloan Law Firm as her counsel due to ineffective counsel.

44) On or around May 22, 2018 Order relieving Willian H Sloan as Appellant's counsel was granted. Judge also instructed that all correspondence from this court will be sent to Appellant's P.O. Box 21926, Hilton Head Island, SC 29925 (*See Exhibit#26 ORDER*).

45) On or around June 15, 2018 Notice of hearing scheduled for July 9, 2018 at 1:30 pm was filed.

46) On or around June 25, 2018 Judge Dukes Order denying Appellant Motion to Reconsider granting Respondent Motion.

47) On or around July 17, 2018 Notice of hearing scheduled for August 1, 2018 at 2:00pm. was filed.

48) On or August 9, 2018 Appellant filed for Bankruptcy.

49) On or around August 15, 2018 Respondent filed Supplement Memo in Support if Motion for Summary Judgment.

50) On or around September 14, 2018 Respondent filed a Motion to Stay Due to Bankruptcy filing.

51) On or around September 20, 2018 Judge Order granting Stay Due to Bankruptcy.

52) On or around November 9, 2018 Respondent has another document created and/or fabricated entitled "Corrective Assignment of Mortgage" (*See Exh. 27 Corrective Assignment of Mortgage*).

53) On or around November 16, 2018, this newly created and/or fabricated document was filed and recorded into the Beaufort County Recorder of Deeds entitled "Corrective Assignment

of Mortgage”. This was done while this case was Stayed, put on hold. However, it was not entered into this proceeding as of yet.

54) On or around May 5, 2020 Respondent files Notice of Appearance for another attorney W. P. Stork. Upon information and belief he was working for Callison, Tighe & Robinson, LLC. the Respondent also filed a Motion to Restore Case.

55) On May 21, 2020 Judge Order granting the Respondent Motion to Restore Case and Order case be restored to active docket.

56) On or around March 15, 2021 Respondent refiled Amended Lis Pendens to reflect TMS R510 007 000 018A 0000 and not what was reflected in the Original Mortgage TMS R510 007 017B 000.

57) On or around July 15, 2021 Respondent filed Motion for Summary Judgment, Memo in Support of Motion for Summary Judgment, Affidavit in Support of MSJ. Notice of Hearing was filed for a hearing scheduled for August 3, 2021 at 10:30 a.m. Appellant was never served. The Clerk of Court and Respondent sent Notice to an address other than what was instructed in the Court Order date May 22, 2018. The Clerk of Court sent it to Appellant's physical location, even though the mail receptacle was not being used. Respondent sent correspondence to Appellant past counsel, even though the Order of May 22, 2018 relieved Appellant's Counsel as her attorney.

58) On or around July 30, 2021 Respondent filed an amended affidavit of default.

59) On or around August 2, 2021 Respondent filed a Proposed Order of Foreclosure, prior to

this Foreclosure hearing is scheduled for August 3, 2021 (***See Exhibit#28 Proposed Order***).

60) On August 3, 2021 Respondent has a foreclosure hearing without Appellant because the Respondents in concert with the Clerk of the Court assistance, strategically circumvent the Process of service to ensure that the Appellant does not attend the hearing. Service of process serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of a reasonable notice of the action. Roche v. Young Bros., 318 S.C. 207, 456 S.E.2d 897 (1995).

61) On August 3, 2021 Respondent filed a (***See Exh.#29 Record*** of hearing) which was drafted by William P. Stork, the attorney that attended the hearing (***See Exh.#29 and See Exh.#30 Transcript of hearing***).

62) On August 6, 2021 Judge Marvin H Dukes, III entered a Judgment (***See Exhibit #31*** for the third time without the Respondent being in possession of Original Note and Original Mortgage. The Foreclosure Judgment was granted in favor of Respondent (***See Exh.# 30 Transcript of August 3, 2021 Hearing***). ***See Exh.#25 Note filed June 22, 2017*** and Note alleged stamped on August 3, 2021 was submitted on January 13, 2023 Deposition of William Sloan, Esq.). Notice of Sale was also filed. Alleged Note was stamped twice and back dated./

63) On or around August 11, 2021 Respondent filed Notice of Appearance for an attorney.

64) On or around August 17, 2021 Clerk of Court filed a (***See Exhibit #32 Return Copy of Order/Judgment of Foreclosure***) that was filed on August 6, 2021; however, Clerk of Court mailed it to Appellant's physical address and not to the address in Court Order of May 22, 2018.

65) On or around September 7, 2021 Notice of Appeal was filed by Appellant in South Carolina Court of Appeals (*See Exhibit#33 Notice*).

66) On or around September 8, 2021 Respondent filed Notice of Sale/Order/Notice of Foreclosure.

67) On or around November 19, 2021 (*See Exhibit #34*) Appellant filed SC Court of Appeal Order-Motion to Remand/Motion of Relief Granted Appeal.

68) On or around January 18, 2022 Appellant filed Notice of Appearance of her new counsel. Motion of Relief of Judgment was filed.

69) On or around January 20, 2022 Letter and exhibits to support Motion for Relief was filed.

70) On or around May 2, 2022 Respondent filed Notice of Appearance for attorney Chad W. Burgess of Brock & Scott, PLLC.

71) On or around May 6, 2022 (*See Exhibit# 35*) consent order filed Order to vacate Foreclosure Judgment.

72) On or around September 1, 2022 Remittitur/Order from Court of Appeal-case dismissed and Remanded back to lower court (*See Exhibit#36 Order*).

73) On or around September 7, 2022 Respondent filed another Memo in Support of Motion for Summary Judgment and Motion for Summary Judgment *See Exhibit#37*).

74) On or around September 28, 2022 Notice of hearing scheduled for October 28, 2022 at 9:30 a.m. was filed.

75) On October 6, 2022 Appellant filed Response in Opposition to Motion for Summary

Judgment (*See Exhibit#38*).

76) On October 11, 2022 Appellant filed Motion to Relieve her attorney as counsel for ineffective counsel.

77) On October 12, 2022 Notice of Hearing scheduled for October 28, 2022 at 9:30 a.m. was filed along with Affidavit of attorney's fee & cost by Respondent.

78) On October 21, 2022 Appellant filed a Motion for Summary Judgment and to Dismiss, Memo in Support of Motion for Summary Judgment & Dismiss, Affidavit of Appellant fees & Costs (*See Exhibit#39*).

79) On October 26, 2022 Respondent filed Opposition to Appellant's Motion for Summary Judgment (*See exhibit#40*).

80) On October 27, 2022 Respondent filed foreclosure/exhibits.

81) On October 28, 2022 Appellant filed Return to Respondent's Opposition of Appellant's Motion for Summary Judgment.

82) On November 4, 2022 Notice of hearing scheduled for November 30, 2022 was filed.

83) On November 29, 2022 Respondent filed an amended Affidavit of attorney fees & costs at 11:56 a.m. Respondent filed a second amended Affidavit of attorney fee & costs at 16:54.

84) On November 30, 2022 at the hearing Appellant attended Judge Marvin H. Dukes, III reviewed Appellant's submitted documents and told the Respondent " this case has been going on for a long time. It would make me happy if you would find a way to settle with Dr. Grant".

85) On December 1, 2022 at 10:57 a.m, Judge Marvin H. Dukes, III disqualified and recused

himself from this case by filing Order vacating Order of References & Order of Recusal stating it was a conflict (*See Exhibit# 41 Judge's Order of Recusal*).

86) On December 1, 2022 at 16:31 p.m. Respondent filed Motion to Alter or Amend and Memo in Support of Motion to Alter or Amend (*See Exhibit#42*).

87) On December 2, 2022 Respondent filed Certificate Motion/Reconsider from December 1, 2022.

88) On December 5, 2022 Appellant filed Opposition to Motion to Alter or Amend and Memo in Support of (*Opposition to Motion to Alter or Amend See Exhibit#43*).

89) On December 7, 2022 Order filed Denying Respondent Motion to Alter or Amend (*See Exhibit#44*).

90) On December 19, 2022 Respondent filed Certificate of Notice of Deposition of William H Sloan, Esquire scheduled for January 13, 2023.

91) On January 13, 2023 Appellant attend video Deposition of William Sloan, Esquire (*See Exh. #45 Transcript of Deposition*).

92) On February 17, 2023 Notice of Hearing was filed; however, no scheduled date indicated.

93) On February 21, 2021 Order of Reference filed by Respondent (*See Exhibit #46*).

94) On March 3, 2023 Appellant filed Supplement ti Memo in Support if Motion for Summary Judgment. Appellant also filed Supplement Response in Opposition to Motion for Summary Judgment (*See exhibit#47*)

95) On March 9, 2023 Appellant filed Opposition/Reconsideration and.or Appeal of

appointment of Special Referee to Judge Carmen T. Mullen (*See Exhibit#48*).

96) On March 15, 2023 Respondent filed Memo in Opposition to Appellant's March 9, 2023 Opposition of the appointment of Special Referee (*See Exhibit#49*).

97) On April 3, 2023 Respondent filed Affidavit of amount due.

98) On April 21, 2023 Notice of Hearing scheduled for May 4, 2023 at 10 a.m. filed

99) On May 4, 2023 a hearing was held (*See Exh. #50 Transcript of hearing*) Special Referee Benjamin C. P. Sapp instructed both parties to submit a proposed order to his email address in 30 days. Special Referee Sapp stated in the hearing that after each party has submitted a proposed order, he will sign one of the or make his recommendation (7) seven days after he received both Proposed Orders.

100) On or around June 2, 2023 Respondent emailed Special Referee Proposed Order (*See Exh. #51*) Respondent's Proposed Order.

101) On or around June 5, 2023 Appellant emailed a Special Referee Proposed Order (*See Exh.#52 Appellant's Proposed Order*).

102) On June 28, 2023 Special Referee filed Respondent's Order which he signed on June 12, 2023 (*See Exhibit #53 Order on Appeal*).

103) On July 7, 2023 Appellant filed a Notice of Appeal and Motion to Reconsider Decision Granting Respondent's Motion for Summary Judgment(*See Exhibit# 54*).

104) On September 1, 2023 Order Denying Appellant's Motion to Reconsider was filed (*See Exhibit #55*).

105) On September 5, 2023 Appellant filed Notice of Appeal of Special Referee Sapp's Decisions entered on June 28, 2023 and September 1, 2023 (*See Exhibit#56*).

106) On October 4, 2023 Special Referee filed Order/ Notice of Sale scheduled for Friday, November 3, 2023 at 11:00.

ARGUMENT

107) The trial court erred by granting summary judgment to Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust Series, 2006-5, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5, for the following reasons. First, Respondent did not have standing to file its lawsuits December 1, 2009. Deutsche Bank claimed that it had standing as a consequence of an "equitable transfer" of the Note. However, there was no proof presented that Deutsche Bank was in possession of the original Note on or before December 1, 2009, April 12, 2010 and June 29, 2016 the date the lawsuit was initially filed and all subsequent lawsuits thereafter.

108) Second, there is a genuine issue of material fact in this case as a result of Deutsche Bank's Assignment of Mortgage created on December 2, 2009, the day after Respondents filed The initial foreclosure lawsuit and filed on December 10, 2009, in the Beaufort County Record of Deeds (10) ten days after the initial case was filed; Further, there was no allegation or proof that Deutsche Bank purchased the Note which is an indispensable element of an equitable transfer. *Johns v. Gillian*, 134 Fla. 575, 184 So. 140, 143-144 (Fla. 1938). Accordingly, the record creates a reasonable inference that the Mortgage is owned by NovaStar Mortgage, Inc.

and that Deutsche Bank has no right to foreclose on Terry Lennette Grant's property¹⁸.

109) Third, Deutsche Bank¹⁹ prejudicially violated Federal and South Carolina Law by not presenting the Appellant for the first time immediately prior to the filing of the lawsuits and prior to the summary judgment hearing the original Note with a bearer endorsement. In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. Baughman v. American Telephone and Telegraph Company, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is a drastic remedy and should be granted only upon clear and convincing evidence. Additionally, even where there is no dispute as to the evidentiary facts, but only as to the conclusions are inferences to be drawn from them, summary judgment should not be granted. Hamilton v. Miller, 301 S.C. 45, 389 S.E.2d 652 (1990). If, after a hearing, the court determines that summary judgment is appropriate, an order to that effect ending the case should be issued. If the court determines summary judgment is not appropriate, the case should proceed to trial. Without the endorsed note Respondent had no ability to even claim it is a holder of the Note. Fla. Stat. §671.201(21)(2009).

110) Fourth, Deutsche Banks' violation of UCC Article 3 and 9 was prejudicial to Terry Lennette Grant because there is a reasonable inference that the original lender, NovaStar Mortgage Inc and/or MERS', conspired with this transaction, even though, Appellant's alleged endorsement upon the original Note is unauthorized and the signature is indeed a forgery. Especially because the Appellant did not sign the alleged Note,

¹⁸ dalton cv 10-0081-phx-jat wrongful foreclosure; green cv 10-0080-phx-jat; vargas cv 09-2616-phx-jat cal.

¹⁹ SC 33-15-101 certificate of authority

Respondent introduced as evidence on June 22, 2017. (See Copy of Adjustable Rate Note, Exh.#2²⁰). Thus, there is a reasonable inference that the signature endorsement on the alleged Note were placed on the original Note after September 18, 2006, when Appellant left closing (*See Exh.57 Email dated September 19, 2006*), thereby making the endorsement unauthorized and the signature a forgery (*Boulevard National Bank of Miami v. Air Metal Industries, Inc.* 176 So. 2d 94, 97 (Fla. 1965)).

111) The Appellant was prejudiced by the last minute production of the endorsed alleged original Note, because she was not provided with 20 days notice in which to assert A specific denial as to the authenticity of the signature on the endorsement. Fla. Stat. § 673.3081(1) 2009).

112) Fifth, Appellant objected that Deutsche Bank “didn’t attach [or] reference Exhibits” to the motion for summary judgment. (See Summary Judgment Transcript,). Nevertheless, no attempt was made by Deutsche Bank prior to or at the summary judgment hearing to introduce into evidence the Original Note, the Assignment of Mortgage or the Original Mortgage. Instead, Deutsche Bank chose only to make the Original Note, Assignment of Mortgage and Mortgage exhibits to the Motion for Summary Judgment. (See, Respondent’s Exhibits to Motion for Summary Judgment June 22, 2017 and resubmitted on June 29, 2023²¹ according to Special Referee’s Order pg. 9, ¶26).

113) Sixth, Respondent testified at a hearing on May 4, 2023 to the trial Court that 1) Respondent is aware that there was an unsigned HUD-1 closing Settlement statement²².

²⁰ Fed.Nat’l Mortg. Assn v. Bradley, 2011 ME 120 ¶¶2-7, 32 A.3d, 1014, 1015-16 actually fraudulent; dalton cv 10-0081-phx-jat wrongful foreclosure

²¹ See Exhibit# 61 Order Dated June 28, 2023 page 9

²² HUD 4155.2.6.b.5,7,8; 4155.2.6..e; 4155.2.a.c; 4155.2.6a2.6; 4155.1.1.b.1a; 4155.2.6.a.1.c. must be signed by borrower; 4155.2 6.A.5.b Lender’s Certificate; The borrower, seller, and the selling real estate agent or broker involved in the sales transaction must certify...

The HUD-1 closing settlement statement was not certified nor signed²³ by the alleged borrower, lender and not certified by the closing attorney. (*See Exhibit# 50 Transcript of May 4, 2023 hearing*).

114) Seventh, Respondent testified at a hearing held on May 4, 2023 to the trial Court that Respondent could not find any supporting evidence that Appellant owed federal taxes that unsigned HUD-1 closing settlement Statement indicated it paid.

115) Eighth, Respondent testified at hearing held May 4, 2023 to trial Court that Deutsche Bank paid off two mortgages 1) to GreenPoint Mortgage Funding, Inc in the amount on the unsigned HUD-1 Closing Settlement statement in the amount of \$387,910.25; however, did not and can not produce an assignment of mortgage from GreenPoint to Respondent substantiating that disbursement. Appellant clearly supported that GreenPoint Mortgage was satisfied in full in April of 2004 (See exhibit# 4 Greenpoint Release) as evidence with documents she provided GreenPoint Mortgage release in the amount of the Original Mortgage \$398,000.

116) Ninth, Respondents filed not (1), not (2) but (3) three foreclosure lawsuits Against Appellant. The first was filed on December 1, 2009, it was dismissed on February 12, 2010. The second was filed on April 12, 2010, it was vacated and dismissed on January 14, 2016. The third was filed on June 29, 2016 and was dismissed and vacated by mutual consent to attempt to get relief of Judgment based on the record of the major fraud and irregularities within this process. During these dismissals Respondent has several documents created and/or fabricated and introduced into the record which further supported the Appellant defense of fraud and deception within this foreclosure action. 1) An assignment of Mortgage was created on December 2, 2009 after a lawsuit was filed against Appellant; 2) An allonge to Note was created June 25, 2012 three years after the

²³ SC 30-5-35 two witnesses all written instruments

initial foreclosure lawsuit was filed and almost two years after the second lawsuit was filed April 12, 2010; 3) A Corrective assignment of Mortgage (See exhibit# 27 was created and/or fabricated on November 9, 2018, while the case was stayed due to bankruptcy; however, it was introduced by recording it in the Beaufort County Record of Deed and documents on or around November 16, 2018. Further proving that Respondent were not and are not a holder of the Original Note and Original Mortgage.

Nevertheless, no attempt was made by Respondent Bank prior to or at the summary judgment hearing to introduce into evidence the Original Note, the Assignment of Mortgage or the Original Mortgage. (See Summary Judgment Hearing Transcript). Instead, Respondent Bank chose only to make the Alleged Original Note, Assignment of Mortgage and Mortgage exhibits to the Judgment. See, Exhibit #25 Plaintiff's Exhibits to Motion for Summary Judgment, dated June 22, 2017).

For all of the above stated reasons the trial court reversibly erred in granting summary judgment to Deutsche Bank..

117) “A trial court's ruling on a motion for summary judgment posing a pure question of law is subject to de novo review.” Major League Baseball v Morsani, 790 So. 2d 1071, 1074 (Fla. 2001); and Business Specialists, Inc. v. Land & Sea Petroleum, Inc., 25 So. 3d 693, 695 (Fla. 4th DCA 2010).

I. The Documents Attached to the Complaint and the Motion for Summary Judgment Fail to Provide the Appellee, Deutsche Bank National Trust Company, with Standing

- (A) Appellant did not and could not have complete the closing process
 - (a) Respondent lacked the required documentation to complete a closing as allegedly took place on September 18, 2006.
 - (i) Uniform Residential Loan Application HUD - 1003²⁴ must be signed by Appellant and Lender
 - (ii) HUD Addendum to Uniform Residential Loan Application 92900-A must be signed by Appellant prior to or at closing²⁵.

²⁴ HUD 4155.1 1.B.1a Signature Requirements for Application Forms (must contain signature of borrower

²⁵ FHA requirement and must contain signatures from the underwriter or “other lender representatives”, along with the loan applicant.

- (iii) Mortgage Instrument must be signed by Appellant
- (iv) Certified HUD - 1 Settlement Statement must be signed by Appellant (Borrower), signed Lender (NovaStar, Mortgage Inc.) and Signed by closing attorney or agent (Peter Wolf Law Firm)²⁶
- (v) Note identifying Appellant as Borrower accompanied by Appellant's signature on Note.

119) It is evident that the all required documents that must be signed by Appellant were Not signed as the Respondent is allegeding. An email dated September 19, 2006 (See Exhibit#57), clearly states that there were documents not signed by the Appellant. It also stated that the HUD-1 Settlement Statement was not correct and not signed²⁷. The email also stated that they were confused as to the property to be the subject of this alleged mortgage and note, 3.95 acres or .46 acres? It is understandable that the Appellant walked out and did not complete the closing.

|(B) Respondent created documents to force Appellant to appear to have participated in a closing that did not take place.

- 1) On December 1, 2009, when the foreclosure action was filed, Respondent did not attach either the Original Note, Original Mortgage. Allonge to Note which was created on June 25, 2012 and again created for January 13, 2023's deposition or Assignment of Mortgage which was created on December 2, 2009. Corrective Assignment of Mortgage created while Appellant was in bankruptcy on November 9, 2018 this document was created and recorded in Beaufort County Record of Deeds.

(C) An Equitable Transfer of the Note and Mortgage was Not Proven.....

- 1) For the above reason, equitable transfer of Note was not proven. Respondent created or had created Assignment of Mortgage. The note was not mentioned until they created an Allonge dated June 25, 2012.
- 2) The June 22, 2017 copy of the alleged Note does not depict the May 28, 2014 Judge Stamp as it appears in the January 13, 2023 copy introduced as an exhibit.

|(D) The Appellant Raised the Defense of Standing, Doctrine of Res Judicata and SCRCF 60(b) 2, 3, 5, in a Timely Manner.....

²⁶ Title 18 U.S. Code Section 1001 and 1010 It's a crime to knowingly make false statements to the United States on this or any other similar form.

²⁷ HUD 4155.1 1.B.1a Signature Requirements for Application Forms (must contain signature of borrower)

- 1) From the time of the first lawsuit filed December 1, 2009 until the third lawsuit filed on June 29, 2016 Appellant has not changed her defense of standing and fraud.
- 2) Respondent never had standing to file foreclosure against the Appellant and her property. Correcting an assignment 9 years after the alleged first assignment serves as evidence that Respondent never had standing to sue.
- 3) Respondent raised the Res judicata doctrine in the Order that was granted on June 28, 2023; however; the Appellant raised the same defense. Under the doctrine of res judicata, “a litigant is barred from raising any issues which were adjudicated in the former suit and any issues might have been raised in the former suit.” Plum Creek Dec. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). It is not the same as what the Respondent is engaged in when they filed (3) three foreclosure lawsuits with the identical issues. This case should have been barred for this reason alone. Trial court erred by ignoring Appellant’s defense submitted during this process and her Proposed Order.
- 4) Respondent was granted multiple foreclosure judgments; however, Respondent abandoned each one that was granted. According to the Order Signed by the Special Referee page 3 para. 13-page 4, para.
 - a) The initial 2009 foreclosure was voluntarily dismissed on February 12, 2010
 - b) The second 2010 foreclosure judgment was granted May 28, 2014; however, the foreclosure judgment Order was vacated and dismissed January 14, 2016.
 - c) The third 2016 foreclosure action was vacated by mutual consent in order to give Respondent opportunity to give Appellant relief of judgment on its merits; however, the presiding Judge recused himself on December 1, 2022

II. The Original Note and Assignment of Mortgage²⁸ Were Not properly introduced as evidence at Summary Judgment Hearing.....

- 1) The alleged note was not introduced in to this case until June 22, 2017 as evidence by (Exhibit # 25 Copy of alleged Note, page 5 of 5) and compare it with (Exhibit #2 page 5 of 5) Judge Duke's foreclosure stamped does not appear on the June 22, 2017’s copy of alleged Note; however, the same alleged original Note submitted January 13, 2023’s deposition a stamp appears falsely indicating it was stamped on May 28, 2014.
- 2) The trial Court asserted in his June 28, 2023 Order that on August 3, 2021’s hearing, Judge Marvin H Dukes was presented the original Note; however, the

²⁸*Glaski v. Bank of America, N.A.*, 218 Cal.App.4th 1079, 160 Cal. Rptr. 3d 449 (Cal. Ct. App. 2013); 135 S.Ct. 790 (2015) 574 U.S. 259 *Larry D. JESINOSKI, v. COUNTRYWIDE HOME LOANS, INC., et al*

transcript states to the contrary that Judge Duke did not lay eyes on the alleged Original Note (See Exhibit #30 Transcript of that hearing). Judge Dukes told Respondent's lawyer at that time William P Stork, I will take your word for it, that you have it in your hand. I am asking you to go and let Jackie stamp it. On this day Respondents were allowed to use the Judges stamped and they stamped both entries on the day and back dated the 5/28/2014 stamp. In addition, to further deceive the Appellant, the Court and the legal process, Respondent changed ink pens to make it appear that those dates were written or penned at two different times.

III. Genuine Issues of Material Fact Exists Within the Records.....

A. Preliminary Requirements Which Must Be Met By the Moving Party in Order to Prevail on a Motion for Summary Judgment.....

1. The preliminary requirement was not met as you examine the process by which they attempted to pursue or not pursue these foreclosure judgments that were granted which they dismissed multiple times.
2. Respondent stated it was not equitable to continue to pursue the foreclosure action on several dismissals.
3. Respondents stated in the Order signed by the Special Referee on June 12, 2023 and filed on June 28, 2023, " which is what Appellant is appealing.

B. A Genuine Issue of Material Fact Exists Concerning what Entity is the Holder and Owner of the alleged Mortgage.....

1. NovaStar Mortgage, Inc dissolved in SC on August 3, 2009
2. Deutsche Bank National Trust Company never existed in the State of South Carolina
3. Mortgage Electronic registration Systems, Inc just reserved the name July 2009 and December 1, 2009 in order to give the appearance of being a business entity in the state of South Carolina for the purpose of Respondent's filing their lawsuit on the same date.
4. Allonge of Note was created June 25, 2012, (3) three years after initial filing of the first foreclosure action, (2) two months after filing the second foreclosure action
5. Creation of the Corrective Assignment of Mortgage, November 9, 2018, (9) years after the first foreclosure action, (7) seven years after the second foreclosure action and finally (3) three years after third foreclosure action. This document was created during the Stay of this case due to Appellant filing bankruptcy. Case was Stayed from September of 2018 and restored May 2020.

IV. The Original Note Produced throughout this proceeding was Materially Altered and

was never attached to any of the Complaints when cases was filed and Was Provided in An Untimely Manner Precluding its Use

- 1) Respondent by way of the three different law firms used throughout this case has allowed their representative to fabricate, create and introduce document that was materially altered:
 - a) Finkel Law Firm, LLC created, had created or used the created “Assignment of Mortgage” dated December 2, 2009 day after foreclosure action was filed and they entered it into the Recorder of Deeds in Beaufort County, South Carolina
 - i) Joseph T Merli signed two documents on June 15, 2010, the court date stamped both at 1:10 pm on this same date; however, the same document was signed by two different people.
 - b) Callison, Tighe & Robinson, LLC created, had created or used the created “Allonge”, to Alleged Note (dated June 25, 2012)
 - c) Brock & Scott PLLC created, had created or used the created “Allonge” that was introduced at the January 13, 2023 deposition; however, it was complete different from the Allonge created and/or used by Callison Tighe, & Robinson, LLC
 - i) Adjustable Rate Note page 5 of 5 two different copies introduced into this legal process and through the Court one date stamped by Clerk of Court June 22, 2017, that does not show Judge stamped of 5/28/2014 judgment; however, second one introduce on January 13, 2023 deposition shows two Judge stamps 5/28/2014 and 8/3/2021

V. Reasonable Inferences Within the Record Support the Conclusion that the Endorsement Signature on the Alleged Original Note is an Unauthorized Forgery and that Terry Lennette Grant Was denied her Constitutional Right to a fair Trial on the Merits. Examine this entire case with the supporting documents, it would be almost impossible to find that this case should be dismissed. The evidence outweighs the Respondents position; however, being practical, it may appear that Courts have overlooked the most important details of a case before granting Respondent Motion for Summary Judgment and Denying the Appellant’s Motion for Summary Judgment

- 1) Respondent clearly stated in their June 28, 2023 proposed order in paragraph 27 that “Plaintiff is ONLY party to the mortgage”, in which the Special Referee signed. Even though it appears that Respondent is allegedly quoting a cited case as their supporting precedent, the language suggests an admission that they were aware their clients were not in possession of Note. With this admission it is clear that Respondent did not and does not have standing to foreclose on Appellants property.
- 2) The See Exhibits # 2 page 5, alleged “Note” was presented in the Court of

Common Pleas for Beaufort County, South Carolina by a Callison Associate, it was disputed as genuine because the Appellant's name was signed with an 'i'. Even that did not get the attention of the Master in Equity. Not many people endorse documents by misspelling their name. Compare to Exhibit # 1 page 14.

CONCLUSION

Appellant has submitted the a 18 year (*title search See Exhibit# 24*), (3) major credit reporting agency's report July 26, 2023 all reflecting Appellant does not have a Mortgage of any kind (*Credit Reports See Exhibits#58*).

Appellant is respectfully requesting that the Court of Appeals review the entire record from start to finish before making any ruling. Appellant respectfully requests that the Order Signed by Special Referee Benjamin C. P. Sapp be reversed and grant Appellant relief by dismissing this case with Prejudice pursuant to SCRCP 60(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party\or its legal representative from a final judgment, order, or proceeding for the Following reasons: (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an Opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or Discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Appellant requested this Court to rule that based on Doctrine of Res Judicata, this case should be dismissed with prejudice because Respondent was granted foreclosure judgment on multiple occasions and failed to pursue the judgment. Instead Respondent vacated and dismissed the case and has refiled (Re-litigated) foreclosure actions (3) three different times for the same issues. Res Judicata in South Carolina, Lanneau D. Lids, 4

S.C.L.R.333 (1952)²⁹. Please put an end to the 14 years wrongful foreclosure battle once and for all.

Respectfully Submitted,

November 16, 2023

THIS AREA WAS INTENTIONALLY LEFT BLANK

APPELLANT SIGNATURE PAGE TO FOLLOW

²⁹ Lawton v. New York Life Insurance Co., 181 S.C. 230, 186 S.E. 909 (1986), Watson v GoldSmith, 205 S.C. 215, 31 S.E. 2d 317 (1944), Hart v. Bates 17 S.C. 35 (1881), Johnston-Crews Co. v Folk, 118 S.C. 470, 111 S. E. 15 (1921)

SIGNATURE PAGE OF APPELLANT'S INITIAL BRIEF



Terry Lennette Grant, Pro Se
P O Box 21936
Hilton Head Island, SC 29925
843-301-5750
terrygrantseries@gmail.com

Chad W. Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Rd Ste 110
Columbia, SC 29210
Email: chad.burgess@brockandscott.com

Counsel for Respondents