

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
VAK M250 FUND LLC,

vs.

Ronald D. Pringle, Cleo R. Pringle

)
) IN THE COURT OF COMMON PLEAS
)
) C/A NO: 2022-CP-08-02386
)
) **DEFENDANT’S VERIFIED MOTION TO STAY**
) **FORECLOSURE SALE PENDING APPEAL &**
) **MOTION FOR AN EX PARTE TEMPORARY**
) **RESTRAINING ORDER**
)

**DEFENDANT’S VERIFIED MOTION FOR AN EX PARTE TEMPORARY RESTRAINING ORDER
& MOTION TO STAY FORECLOSURE SALE PENDING APPEAL**

Ronald D. Pringle and Cleo R. Pringle (“hereinafter Defendants) respectfully move this Court to issue a Temporary Restraining Order (“TRO”) to prevent the foreclosure sale scheduled on December 6, 2023, involving the property located at 1298 Old Gilliard Road, Ridgeville, SC 29472.

FACTUAL ALLEGATIONS

1. On or about September 30, 2022, by way of alleged counsel Plaintiff VAK M250 Fund LLC brought this action to foreclose.
2. To sustain a foreclosure action in South Carolina the lender must sue the borrower and prove they are entitled to foreclose.
3. Black Law defines lender as he from whom a thing is borrowed(the bailor of an article loaned). The Defendant’s contend that they never borrowed anything from the Plaintiffs. Meriam Webster defines lender as to let out money for temporary use on condition of repayment with interest. The Defendant’s contend that the Plaintiff did not let out money to them and therefore is not a lender who is entitled to sue as a matter of law.
4. To prove entitlement to sue the Plaintiff allege in their initial complaint that they are the holder of or otherwise entitled to enforce the Note and Mortgage.
5. The Plaintiff presented an alleged combined note and security agreement. Attached to the purported note and security agreement was two (2) allonges to establish and prove they are the holder of the legal valid note and mortgage entitled to bring and sustain this foreclosure action. The combined note and security agreement appears fraudulent with inconsistent font and text. However, considering for a moment the

combined note and security agreement was valid the allonges provided are not valid nor legal. An allonge is a legal term related to

negotiable instruments such as a promissory note. It is a separate piece of paper that is securely affixed and attached to the original instrument when there is insufficient space on the original document to include endorsements or additional indorsements.

III: LEGAL ARGUMENT REGARDING THE USE OF AN ALLONGE

6. Black Law (4th Edition) defines an allonge as a piece of paper annexed to a bill of exchange or promissory note on which to write endorsements for which there is no room on the instrument itself. The Plaintiff presented an alleged copy of the Combined Note and Agreement Defendants that had sufficient room to write endorsements.

7. Mrs. Pringle challenged the validity and use of the allonge. Specifying in relevant part the purpose of an allonge is to provide additional space for endorsements when the “negotiable instrument” doesn’t have enough space for additional endorsements (*Black Law Dictionary 4th Ed.*). She contends that if a negotiable instrument has space on the back sufficient for an endorsement the allonge is considered void and ineffective. In this instance the alleged negotiable instrument presented by the Plaintiff had more than enough space for additional endorsements and the use of not one but multiple allonges was not needed or valid in this action. The Plaintiff does not provide a valid reason and the record is devoid of valid reason for the use of the allonges.

8. In response to this argument counsel for the Plaintiff purposely diminished and did not respond to the argument. She irrelevantly responded with a generic undisputed definition that an allonge is a slip of paper affixed to a negotiable instrument. She did not put forth a valid argument whether an allonge is valid or effective when the negotiable instrument has sufficient space on the back endorsements which was and is the direct argument presented.

9. In this instance the Court did not address the matter or make a finding of fact. There is no South Carolina case directly on point that answers if an allonge is rendered void and ineffective when the original negotiable instrument has sufficient space on the back for endorsements. It is well established that where there is no case directly on point the court may look to other states to determine if the issue has been decided and if the decision is persuasive.

10. In the Court of Appeal of California, Fourth District (*Pribus v. Bush* 118 Cal. App. 3d 1003 Cal Ct. App. 1981 173 Cal. Rptr. 747; Exhibit A) affirmed judgement of the trial court who ruled signature on the paper attached to the promissory note did not qualify as an indorsement because there was adequate space for the indorsement on the note itself. The Court stated Section 3202, subdivision (2) states, “An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereof.” Thus, the code does not say whether or not such a paper, called an allonge,” may be used when there is still room for an indorsement on the instrument itself. At the time no case dealt with this issue under the code, however the court stated “The code does, however, instruct us as to where to look for the law with which to resolve the issue. Section 1103 states that unless displaced by the particular provision of this code, the principles of law and equity, including the law merchant shall supplement its provisions and that sections Uniform Commercial Code comment notes “the continued applicability to commercial contracts of all supplemental bodies of law except so insofar as they are explicitly displaced by this Act. Therefore, since the Commercial code had not addressed the issue, the court decided the case according to the rules on allonges of the law merchant.

The majority view is that the law merchants permit the use of an allonge only when there is no longer room on the negotiable instrument itself to write an indorsement. (See generally Annot. Indorsement of Negotiable Instrument by Writing Not on Instrument Itself (1968) 19 A.L.R. 3d 1297, 1301-1301; Annot., Indorsement of Bill or Note by Writing Not on Instrument Itself (1928) 56 A.L.R. 921, 924-926). Typical of the majority position is *Bishop v Chase* (1900) 156 Mo. 158 [56 S.W 1080]. There it was held that the general rule is that an instrument could only be indorsed only by writing on the instrument itself, but that an exception to the rule allows the use of an attached paper “when the back of the instrument is so covered as to make it necessary.” Thus, the court invalidated an attempted indorsement by allonge when there was plenty of room on the back of the note to have made the indorsement, and the only excuse for doing so was it was more convenient to assign it on a separate paper.

As the *Bishop* case indicates, the law of merchant rule on allonges was developed as a refinement of the basic rule that an indorsement must be on the instrument itself. This basic rule must have become impractical when strictly applied in certain multiple indorsements situations, due to the finite amount of space on any given instrument. The allonge, then was apparently created to remedy the inconveniences of the basic rule, not as an alternative method of indorsement. Support for this analysis is found in *Folger v Chase* (1836) 35 Mass. (18

Pick) 63. There, the Massachusetts Supreme Court dealt with an allonge indorsement as a case of first impression. The indorsement had been made on a paper attached to the back of the note by a wafer because the back of the note was covered with previous indorsements. The defendants, citing the basic rule, contended that no indorsement had been made. The court disagreed. The objection was that such an indorsement is not sanctioned by custom; and the Court supported its reasons on which the custom was originally founded. Bills of exchange and promissory notes were indorsed on the back of the bills and notes because it was a convenient mode of making the transfer, and in order that the evidence thereof might accompany the note. Such an indorsement at this will. The Court found the Negotiable Instruments Act intended prior law not in conflict with the act to supplement the act. In any case not provided for in this title the rules of the law merchant shall

govern. (Stats. 1921, Ch. 194, 12, p. 215) thus it has been held that the act was but a statutory affirmation of the rule of the old law merchant that an allonge was allowable only when the back of the instrument itself was so covered with previous indorsement that convenience or necessity required additional space for further indorsements. (Clark v. Thompson (1915) 194 Ala. 504 [69 So. 925, 926]; see also Plattsmouth State Bank v.

Redding (1935) 128 Neb. [258 N.W. 661, 663]. The Court concluded stating “ We conclude that the majority view of the law merchant relating to allonges is the better reasoned one, and is the view adopted by Legislature. It follows then that the assignment by allonge of plaintiff’s promissory note by the Williams to the defendant was ineffective as an indorsement since there was sufficient space on the note itself for the indorsement.

11. The cited case has persuasive authority based on the quality of reason, consistency with legal principles, the facts and circumstances of the persuasive case cited is similar to this instant action and full faith and credit. The California Code definition of holder is like South Carolina 36-1-201(b)(21)(a) defines holder means the person in possession of a negotiable instrument is payable either to the bearer or an identified person that is in possession. The California section regarding the endorsement is like South Carolina 36-3-204 in relevant part which states that “ for the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument. The South Carolina Uniformed Commercial Code also does not say whether or not such a paper called an “allonge” may be used when there is still room for an indorsement on the instrument itself. Just as stated in Section 1103 of the California Code South Carolina Uniformed Commercial Code 36-1-103 states “ unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law

relative to capacity to contract, principal, and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions therefore this Court would also look to the law merchant which would result to the same decision and conclusion as the cited case.

12. The Uniform Commercial Code does not specify that the paper affixed has to be an allonge, however the alleged holders titled and attached an allonge, and therefore the prerequisite of an allonge must be followed which provides usage when there is not sufficient space on the bill or original instrument itself. This pertinent factor has to be construed as defined and with the original intent and purpose. Lastly the Uniform Commercial Code governs commercial transactions, the transaction subject to this action was not a commercial transaction, therefore the use of an allonge and negotiable instrument is not applicable in this instance.

13. Because the use and applicability of allonges are not valid or lawful in this instance the Defendant's reallege and contend that the Plaintiff is not a lender as it relates to the Defendant's and is not entitled to sue or foreclose upon the Defendant's property.

GROUNDS FOR SEEKING TEMPORARY RESTRAINING ORDER(TRO)& MOTION TO STAY

14. In South Carolina as well in many jurisdictions it is well established that the purpose of a Temporary Restraining Order (TRO) is to provide urgent and immediate legal protection in situations where there is a risk of irreparable harm or injury before a full court hearing can take place.

15. In South Carolina as well in many jurisdictions it is well established that the purpose of a motion to stay a foreclosure is to temporarily halt or delay the foreclosure process on a property to prevent imminent sale, opportunity to resolve issues, avoid irreparable harm, and court oversight.

16. The Defendants contend they are likely to succeed on the merits based on the invalid and unlawful use of the allonges which will result in the Plaintiff not being entitled to enforce the alleged note among other factors such as due process violations and abuse of discretion which is reserved for the appeal of this action.

17. The Defendant's contend that if the issue regarding the invalid use of allonges is not resolved before the sale of their property the loss of their property/home is irreversible. Once the property is sold at the foreclosure auction and ownership is transferred to a new owner it'll be impossible for the Defendants to

regain possession and therefore would cause irreparable harm to the Defendants if the TRO and motion to stay is not granted in this instance.

18. The Defendants contend that the unlawful foreclosure will have a long-lasting negative effect on their credit history making it nearly impossible to secure housing immediately or in the near future and therefore would cause irreparable harm to the Defendants if the TRO and motion to stay is not granted in this instance.

19. The Defendants contend that unlawfully losing their property/home to a party that is not entitled to their property will cause severe emotional distress and disruption that cannot be fully compensated with money therefore would cause irreparable harm to the Defendants if the TRO and motion to stay were not granted in this instance.

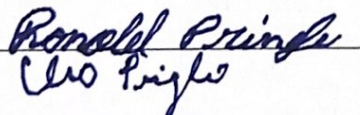
20. The Defendants contend that based on the irreparable harm they will incur and suffer would far exceed the harm suffered by the Plaintiff. In this instance the Defendants the Plaintiff is not lawfully entitled to sue the Defendants nor foreclose on their home as a matter of law therefore the balance of equity tips to the favor the Defendants.

21. Unknown lenders and subsidies to borrowers attempting to enforce and close on a borrower's property using unlawful and often fraudulent documents such as allonges is against public interest because it involves deception, misrepresentation, and dishonesty which can harm individuals, businesses, and society as a whole.

Fraud erodes trust and confidence. The issue and use of allonges need to be resolved to preserve the trust and confidence of financial institutions. In this instance it undermines the trust that individuals and consumers place in the hands of financial sectors.

For the foregoing reasons Ronald and Cleo Pringle respectfully move this Court to issue a temporary restraining order and motion to stay against the Plaintiff in this action to prevent irreparable harm, loss, and injury.

Respectfully Submitted,


Ronald and Cleo Pringle 1298 Old Gilliard Road Ridgeville, SC 29472

AFFIDAVIT OF TRUTH AND ACCURACY

I/we hereby declare that I am of legal age and competent to make this affidavit. The information and statements contained in the Defendant's Motion for an Ex Parte Temporary Restraining Order and Motion to Stay Foreclosure Sale Pending Appeal are true, accurate, complete and without any deliberate omissions, representations, or falsification to the best of my knowledge and belief.

I/we hereby declare that the Petition for a Temporary Restraining Order and Motion to Stay Foreclosure Sale pending Appeal is requested in good faith and not an attempt to delay the foreclosure sale.

This affidavit is made under the penalty of perjury.

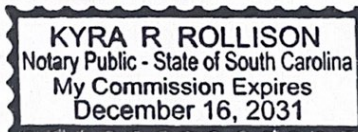
Respectfully Submitted,

Ronald Pringle 12/5/2023
Cleo R Pringle 12/5/2023

Ronald and Cleo Pringle

1298 Old Gilliard Road

Ridgeville, SC 29472



RECEIVED

Dec 05 2023

SC Court of Appeals

PROOF OF SERVICE OF SERVICE

I hereby certify that on this day December 5, 2023, I caused to be served upon a copy of the foregoing Defendant's Verified Motion for an Ex Parte Temporary Restraining Order and Motion to Stay Foreclosure Sale Pending Appeal was served on all counsel of record, Berkeley County Clerk of Court via email, certified mail, and hand delivery as follows:

The Honorable Dale Edward Van Slambrook
Court of Common Pleas Berkeley County
300-B California Avenue
Moncks Corner, SC 29641

Berkeley County Clerk of Court
300-B California Avenue
Moncks Corner, SC 29641

Stephanie M. Huggins
2838 Devine Street
Columbia, SC 29205





Ronald Pringle & Cleo Pringle