

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.....Plaintiff/Respondents,

v.

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

**MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR
STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

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MOTION TO STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS

TABLE OF CONTENTS

	PAGE
TABLE OF EXHIBITS.....	i-iv
TABLE OF AUTHORITIES.....	v-viii
VERIFIED PETITION.....	1-12
VERIFICATION.....	13
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS.....	14
I. INTRODUCTION.....	14
II. JUDICIAL NOTICE REQUESTED.....	16
III. BOND.....	16
IV. STATEMENT OF CASE AND FACTS.....	17-27
V. DISCUSSION and ARGUMENT.....	27-35
VI. CONCLUSION.....	35
VII. SIGNATURE PAGE.....	36
VIII. PROOF OF SERVICE.....	37

Table of Exhibits

	Page
Exhibit #1: November 21, 2023 1 Order.....	1,11,14
Exhibit #2: Order by Special Referee dated June 12, 2023 and filed June 28, 2023.....	2,11,14
Exhibit #3: Appellant’s Motion to Reconsider Decision of granting Respondent’s Motion for Summary Judgment July 7, 2023.....	2
Exhibit #4: Order denying Appellant’s Motion to Reconsider September 1, 2023.....	2,11,14
Exhibit #5: Notice of Appeal to South Carolina Court of Appeals September 5, 2023.....	2,15
Exhibit #6: Order of Sale dated October 4, 2023.....	2,11,14
Exhibit #7: The Beaufort County Public Auction Foreclosure Procedure.....	3,14,23
Exhibit #7a: Public Foreclosure Schedule that does not reflect a sale schedule for November 3, 2023 or November 7, 2023.....	3,12,14,23
Exhibit #8: October 18th’s email from Chad W. Burgess November 7th auction dated told to Appellant.....	3,23
Exhibit #9: Appellant Motion to Stay Pending Appeal (MSPA) to Special Referee November 2, 2023.....	3
Exhibit#10: Brock & Scott PLLC website depicting three upcoming Beaufort County Foreclosure Sales scheduled according to proper foreclosure procedure, first Monday of the Month; Respondent/Plaintiff deliberately deceived Defendant by having sale November 3, 2023 on Friday against procedure ..	3,4,23
Exhibit#11: Respondent’s email to Appellant dated November 9, 2023 with proposed order attached.....	4
Exhibit#12: Respondent/Plaintiff’s Proposed Order Denying Appellant’s Motion to Stay dated November 9, 2023.....	4
Exhibit#13: Appellant email Response to Plaintiff/Respondent’s email dated November 9, 2023 with Appellant’s Proposed Order Granting Appellant’s Motion to Stay.....	4

Exhibit#14:	Proposed Order Prepared by Respondent/Plaintiff and emailed to Defendant On November 9, 2023.....	5,14
Exhibit#15:	Assignment of Mortgage dated December 2, 2009.....	5,15,17,20, 25,30
Exhibit#16:	Respondent/Plaintiff’s 1st Complaint filed December 1, 2009 C/A No: 2009CP0705612.....	5,17,25,30
Exhibit#16a	Respondent/Plaintiff’s 1st Dismissal (Notice of Dismissal) of 1st Complaint filed February 12, 2010.....	13,15,20
Exhibit#17:	Respondent/Plaintiff’s 2nd Complaint filed April 12, 2010 C/A No: 2010CP0701690.....	6,15,20,25,30
Exhibit#17a:	Respondent/Plaintiff’s 2nd Dismissal Order vacating judgment, cancel lis pendens and dismissing C/A 2010CP0701690 citing not to pursue Judgment of Foreclosure “it is no longer Equitable” entered on January 14, 2016.....	15,16
Exhibit#18:	Respondent/Plaintiff’s 3rd filed Complaint June 29, 2016 C/A No: 2016CP0701466.....	6,15,21,22,25,26,30
Exhibit#18a:	Respondent/Plaintiff’s 3rd Dismissal/vacating, this was by Consent Order Vacate Judgment entered on May 6, 2022.....	15,16
Exhibit#19:	1st Allonge to Note dated June 25, 2012.....	6,18,21,25,26,31
Exhibit#19a:	2nd created Allonge to Note not dated, introduced on January 13, 2023’s Deposition.....	6,18,21,25,26,31
Exhibit#20:	Page 5 of Adjustable Rate Note dated electronic stamp June 22, 2017 by clerk of court with no Judgment Stamps.....	7-8,17, 24,29
Exhibit#20a:	Page 5 of Adjustable Rate Note submitted on January 13, 2023 no electronic stamp by clerk of court and two blue ink stamp one dated 5/28/2014 and the other 8/3/2021	7-8 ,24,29
Exhibit#21:	Transcripts of hearing August 3, 2021.....	17,21
Exhibit#21a:	Judge Dukes Order granting foreclosure judgment (Note or Mortgage) was not examined or even looked at prior to ruling Aug 6, 2021.....	17,21

Exhibit#22:	Corrective Assignment of Mortgage.....	9,21,26,30
Exhibit#23:	Credit Reports-Transunion, Experian and Equifax.....	9,16
Exhibit#24:	Eighteen (18) year Title Search December 27, 2016.....	10,16
Exhibit#25:	Correspondence between lender and the closing attorney’s law firm September 19, 2006 email day after alleged closing.....	10,14,17,19
Exhibit#26:	Unsigned HUD 1 Settlement Statement.....	10,17,19,27,31,32
Exhibit#27:	Transcript from May 4, 2023 Motion for Summary Judgment hearing..	10,17,27,32
Exhibit#28:	Business Search Plaintiff SC Secretary of State website No Record Found.....	18
Exhibit#29:	NovaStar Mortgage Funding Inc LLC dissolved Aug. 3, 2009.....	18
Exhibit#30:	MERS LLC Dissolved in 2004 from SC Secretary of State.....	19
Exhibit#30a:	MERS Reserved Name only in 7292009 SC Secretary of State.....	19
Exhibit#30b:	MERS no record found in SC Secretary of State.....	19
Exhibit#30c:	MERS Reserved Name Only Dec. 1, 2009 in SC Secretary of State.....	19
Exhibit#31:	SC Public Index, Clerk of Court entry.....	23
Exhibit #32:	Order granting Partial MSJ and Reforming Mortgage	23
Exhibit#33:	ORDER dated May 28, 2014 granting Plaintiff/Respondent Foreclosure Judgment.....	24
Exhibit#34:	Order vacating Judgment, canceling Lis Pendens 2010LP070897 and dismissing case 2010CP0701690.....	25
Exhibit#35:	William Sloan, Esquire’s Disposition.....	29
Exhibit#36:	2010 Action - Filed order vacating judgment and dismissing January 14, 2016 Plaintiff/Respondent cited it was no longer equitable”.....	32-33

Exhibit#37:	Greenpoint Mortgage December 8, 2003.....	31
Exhibit#38:	Release of Green Point Mortgage.pdf April 21, 2004.....	31
Exhibit#39:	Satisfaction and Affidavit Lost Mortgage and Lost Note GreenPoint	31
Exhibit#40:	NovaStar Mortgage Funding, Inc September 18, 2006.....	31
Exhibit#41:	SCBT Mortgage.pdf August.....	31
Exhibit#41a:	Satisfaction of SCBT Mortgage.pdf	31
Exhibit#42:	SCDOR TAX LIEN.....	32
Exhibit#42a	SCDOR TAX LIEN Satisfaction.....	32
Exhibit#43:	Judge Marvin H Dukes, III, Order of Recusal dated December 1, 2022.....	32

TABLE OF AUTHORITIES

	Page
CODE OF FEDERAL REGULATIONS	
12 CFR Part 226 Truth in Lending (Regulation Z).....	19
12 CFR Part 1024.8.....	20
12 CFR Part 227 Unfair or Deceptive Acts or Practices (Regulation AA).....	30
ACTS	
Truth in Lending Act (TILA) of 1968.....	19
Real Estate Settlement Procedure Act 12 U.S.C. § 2603.....	19
Truth in Lending Act.....	19
Fair Debts Collections Practices Act	10
UNITED STATES CODES	
UCC Article 9:9-108(b)(2) and (3).....	5,6
Restatement (third) of property (mortgages) section 5.54.....	5,6
UCC Article 9:9-103(g).....	5,6
UCC § 3- 204(a).....	7
UCC Section 3-204(a)	7,22
15 U.S.C. 1692 §802(A)(C).....	10,28
15 U.S.C. 1692a §803.....	28
15 U.S.C. 1692 §805.....	10
15 U.S.C. 1692 §806(E).....	10
15 USC 1692d Section 806.....	28
15 U.S.C. 1692e §807.....	10,28

15 USC 1692f Section 80828

15 USC 1692j.....28

15 U.S.C. 700119

12 USC 1818 section 3q (a) (b).....28

STATUTES

Model Code For Judicial Conduct

Canon 1.....11

Canon 2.....11

Canon 3.....11

Civil Code § SC Title 33 Section 33-15-101(a)18

Conn. Gen. Stat. § 42a-1-201(21).....22

Conn. Gen. Stat. §§ 42a-3-201.....22

Conn. Gen. Stat. §§ 42a-3-203(c).....22

South Carolina Rules of Civil Procedure

Rule 60.....28

Rule 62(d).....15,22

Rule 241(c)(1).....15,22

Rule 241(c)(2).....15,26,27

Rule 60(b).....15

Rule 60(b)(2).....15

SCACR.....22

Rule 60(b)(3).....15,28

Rule 60(b)(5).....16,33

Rule 642.....34

CASES

Fed. Home Loan Mtge. Corp. v. Schwartzwald 2012-Ohio-50176,9,18

RBS Citizens, N.A. v. Sabatelli, No. CV14-6016519S, 2016 WL 1099090 (Conn. Super. Ct. Feb. 19, 2016).....6

U.S. Supreme Court case Carpenter v. Longan, 83 U.S. 271 (1872).....7,8

Conn. Gen. Stat. § 42a-1-201(21).....7

Conn. Gen. Stat. §§ 42a-3-201 and 42a-3-203(c).....7

BAC Home 9 Loan Serv. v. McFerren, 2013-Ohio-3228 (9th Dist.)9

Fiske v. Buder (C.C.A.8th, 1942) 125 F.(2d) 841..... 15,28

Bucy v. Nevada Construction Co. (C.C.A.9th, 1942) 125 F.(2d) 213.....15,28

Hazel-Atlas Glass Co. v. Hartford Empire Co. (1944) 322 U.S. 238.....15,28

Supreme Court of Ohio - Case No. 2014-0791 Deutsche Bank National Trust Company as Trustee v. Glenn E. Holden et al.....17-18

Schwartzwald, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214.....18

Deutsche Bank Natl. Trust Co. v. Najjar, Sth Dist. Cuyahoga No. 98502,2013-Ohio1657, U17-(1).....20

US Supreme Court case Carpenter v. longan.....20-21

Deutsche Bank Trust Co. v. Jones , 2018-Ohio-587, 107 N.E.3d 117, ¶ 26 (8th Dist.).....22

Deutsche Bank Natl. Trust Co. v. Najjar, Sth Dist. Cuyahoga No. 98502,2013-Ohio1657, U17-(1).22

Aiken v. Ingram, 652 F.3d 496, 500-01 (4th Cir.).....25

Doctrine of Res Judicata; Lanneau D. Lide, Res Judicata in South Carolina, 4 S.C.L.R. 333. (1952).....30

First Natl Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945).....33

Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992).....33

Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996).....	33
Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).....	33
Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986).....	34
Rogers, 336 S.C. at 537, 520 S.E.2d at 817.....	34
Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993).....	34
Reed v. Superior Court (2001) 92 Cal.App 4th 448,455 [111 Cal.Rptr,2d 8421.....	34
Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999).....	34
Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999).....	34
Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Commn of South Carolina, 294 S.C. 9, 11, 362 S.E 2d 176, 177 (1987).....	34
See Hart v. O'Malley, 647 A.2d 542, 551 (Pa. Super. Ct. 1994).....	35

MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS

VERIFIED PETITION

Pursuant to Rules 204(b), 240(a), and 241(c), SCACR, Defendant/Appellant petition this Court for a writ of supersedeas to stay the Order and foreclosure sale entered by Special Referee in the circuit court/court of common pleas on November 21, 2023 (*See Exhibit# 1 Order*), during the pendency of this appeal, or alternatively, for an expedited briefing schedule or transfer of this matter to the Court's original jurisdiction docket. In light of the relief requested, and for the reasons detailed further below, Defendant/Appellant move that the Court expedite consideration of this Emergency Petition.

The other supersedeas factors also support a stay. Defendant/Appellant will suffer irreparable harm without this stay and because the representative process is damaged every time the Plaintiff/Respondent is allowed to illegally foreclose on property, this will harm not only the Appellant and her immediate family, it will harm the judicial process if Plaintiff/Respondent is allowed to file fraudulent documents to secure foreclosure across the country. They cannot legally represent the interests of anyone in this foreclosure action without being in possession of the Original Note and Mortgage or the Assignment or Allonge thereof and they face no harm themselves from complying with state law. And a stay of the Order and foreclosure sale pending appeal will protect the sanctity of the judicial process, Defendant/Appellant's home including her aging and ailing family members and lives of countless other homeowners in this same position.

By this verified Petition, Petitioner Terry Lennette Grant alleges as follows:

1. This Petition is supported by attached Memorandum of Law in Support of Defendant's

Motion for Stay Pending Appeal or for Writ of Supersedeas, Appellant's Writ Appendix, which includes the Declaration of Terry Lennette Grant submitted pursuant to South Carolina Rule of Procedure.....

2. Terry Lennette Grant is the Defendant in this action and Deutsche Bank National Trust Company is the Plaintiff.

3. The operative complaints of the Plaintiff has been amended multiple times;

4. On June 28, 2023 the trial court Order (*See Exhibit# 2 Order by Special Referee dated June 12, 2023 and filed June 28, 2023*) granted Plaintiff's motion for summary judgment and denied Defendant's Motion for Summary Judgment;

5. On July 7, 2023 Defendant/Appellant filed a Motion to Reconsider (*See Exhibit#3 Defendant/Appellant's Motion to Reconsider Decision of granting Plaintiff/Respondent's Motion for Summary Judgment*) trial court's decision;

6. On September 1, 2023 trial court denied Defendant/Appellant Motion to Reconsider (*See Exhibit #4 Order denying Defendant/Appellant's Motion to Reconsider*);

7. On September 5, 2023 Defendant/Appellant filed a timely Notice of appeal (*See Exhibit #5 Notice of Appeal to South Carolina Court of Appeals September 5, 2023*);

8. While the appeal was pending, Plaintiff/Respondent attempted to proceed with foreclosure sale, via Order of Sale dated October 4, 2023 (*See Exhibit #6 Order of Sale dated October 4, 2023*). In this Order the foreclosure sale was allegedly scheduled for November 3, 2023 which was a Friday. The Beaufort County Public Auction clearly states foreclosure auction

sale will be held on the first Monday of each month (*See Exhibit #7 Foreclosure Procedure on Public Website*¹ *See Exhibit #7a* Public Foreclosure Schedule that does not reflect a sale schedule for November 3, 2023 or November 7, 2023).

9. On October 18, 2023 Defendant/Appellant received an email (*See Exhibit # 8 October 18th's email*) from Plaintiff/Respondent clearly stating that the foreclosure sale for subject property will be on November 7, 2023, which is consistent with the Beaufort County Foreclosure Sale procedure² (Referee to Exhibit #7 Foreclosure Sale Procedure). This communication mislead the Appellant.

10. On November 2, 2023 Defendant/Appellant filed a Motion to Stay Pending Appeal (*See Exhibit#9* MSPA), which was filed timely because the correct date for the foreclosure was supposed to had been the first Monday of November 2023 which was November 7, 2023, unless that Monday fell on a Holiday, then it was supposed to be held on Tuesday (*See Exhibit #10* Brock & Scott PLLC's³ website has three upcoming foreclosure sales in Beaufort County, SC; scheduled consistent with proper procedure.)

11. On November 3, 2023 Defendant/Appellant looked at the Public Record to ensure that the foreclosure sale was scheduled on November 3, or November 7, 2023; however, the was no record of the foreclosure sale scheduled for either date. Defendant/Appellant further researched to see if the Special Referee advertised the Public Auction in the Island Packet and/or Beaufort

¹ <https://www.beaufortcountysc.gov/master-in-equity/faq.html>

² https://www.brockandscott.com/foreclosure-sales/?_sft_foreclosure_state=sc&_sft_foreclosure_county=beaufort (These sales are scheduled according to the Beaufort County foreclosure sale procedure first Monday of the month, unless Monday falls on holiday, then it will be held on that Tuesday)

³ Attorney for Plaintiff/Respondent

Gazette for three consecutive weeks prior to the Auction as required by law; however, Defendant/Appellant was unsuccessful in finding this necessary requirement has been met. Plaintiff/Respondent deliberately deceived Defendant/Appellant by violating proper procedure of Beaufort County and having this sale on Friday, November 3, 2023.

12. On November 9, 2023, Defendant/Appellant received an email (*See Exhibit #11*) from Plaintiff/Respondent with a copy of Plaintiff/Respondent's Proposed Order⁴ (*See Exhibit #12*) denying Defendant/Appellant Motion to Stay. The email stated that the trial court Order Plaintiff/Respondent to prepare a proposed order from the November 3, 2023 hearing.

13. On November 10, 2023 Defendant/Appellant replied (*See Exhibit #13 Defendant/Appellant's Proposed Order*) to the email from Plaintiff/Respondent on November 9, 2023. Defendant/Appellant informed the Special Referee that they participated in ex parte communication by excluding the Defendant/Appellant and the public from this alleged auction that took place on Friday, November 3, 2023. Defendant/Appellant was excluded by deception. Plaintiff/Respondent deliberately confused the dates of this alleged foreclosure sale by sending Defendant/Appellant various emails with conflicting dates. Defendant/Appellant was following the proper procedure of Beaufort County in regards to foreclosure sales being held on the first Monday of each month (*See Exhibit #10 Brock & Scott's [attorneys for Plaintiff/Respondent] website has three upcoming foreclosures*⁵.) Defendant/Appellant submitted a proposed order as did Plaintiff/Respondent. In this email response, Defendant/Appellant asked who presided over

⁴ See Exh. 12: Respondent/Plaintiff's Proposed Order dated November 9, 2023

⁵ (These sales are scheduled according to the Beaufort County foreclosure sale procedure first Monday of the month, unless Monday falls on holiday, then it will be held on that Tuesday)

this alleged foreclosure sale and who allegedly purchased her property. Plaintiff/Respondent stated they (Plaintiff) were the highest bidder⁶. They conspired to make sure they were the only ones present, because they converted from a public auction to a private sale for their benefit.

14. On November 21, 2023 the trial court, Special Referee denied Defendant/Appellant's Motion to Stay Pending the Appeal by Special Referee just signing the Proposed Order (*See Exhibit #14 Proposed Order filed November 21, 2023*) that the Plaintiff/Respondent prepared claiming that the foreclosure sale was successful as of November 3, 2023. The Plaintiff/Respondent allegedly was the highest bidder. Defendant/Appellant finds this to be suspect, illegal, violates foreclosure sale protocols and borders the appearance of a conspiracy.

15. Plaintiff/Respondent and Special Referee turned a public auction to a private sale and Special Referee allowed Plaintiff/Respondent to purchase Defendant/Appellant's property which was illegally foreclosed on. Plaintiff/Respondent's stated that the property was not equitable for them to enforce the foreclosure judgment they were granted.

16. Plaintiff/Respondent does not have the right to foreclose on subject property (*See Exhibit #15 Assignment of Mortgage dated December 2, 2009*). It was filed after the Plaintiff/Respondent filed the initial complaint (*See Exhibit#16 Initial Complaint filed December 1, 2009*). The alleged Original Note or the Original Mortgage was not included nor attached as an exhibit when the lawsuit was filed as required by law⁷. Trial Judge and Special

⁶ <https://www.beaufortcountysc.gov/master-in-equity/faq.html> **(It is almost always in a Plaintiff's best interest not to be the high bidder at the sale.** Plaintiffs would generally prefer to have the sales proceeds rather than the property itself. For this reason, many Plaintiffs attorneys will reveal their bidding instructions prior to sale. Check with Plaintiff's attorneys websites for details.)

⁷ UCC Section 9-108(b)(2) and (3); Restatement (third) of property (mortgages) section 5.4 UCC Section 9-103(g)

Referee erred when granting Plaintiff foreclosure judgment because they were not in possession of the Original Note and Mortgage nor was attached to the complaints when they were filed.

17. Plaintiff/Respondent does not and never possessed the original Note and Original Mortgage required by law in order to foreclose on said property (*See Exhibit#17 2nd Complaint filed April 12, 2010*) and (*See Exhibit#18 third Complaint filed June 29, 2016*). The Original Note and the Original Mortgage was not included nor attached as exhibits when this second a lawsuit was filed as required by law⁸⁹. The Judge and Special Referee erred when granting foreclosure judgment to Plaintiff/Respondent. Who is the alleged owner of the note and mortgage when the case was filed December 1, 2009? Who is the alleged owner of the note and mortgage when the case was filed April 12, 2010? Who was the alleged owner of the note and mortgage when the case was filed June 16, 2016?

18. Plaintiff/Respondent submitted fraudulent documents to the court and the Special Referee relied upon these same fraudulent documents when he ruled in favor for Plaintiff/Respondent (*See Exhibits 19 and 19a Allonge of Notes*)¹⁰. The first allonge of Note (Exhibit #19) was created June 25, 2012; however, was never submitted into the records until three years after the initial Lawsuit filed December 1, 2009 and almost two years after the second lawsuit was filed

⁸ UCC Section 9-108(b)(2) and (3); Restatement (third) of property (mortgages) section 5.4UCC Section 9-103(g)

•*Fed. Home Loan Mtge. Corp. v. Schwartzwald 2012-Ohio-5017* (“[B]ecause [the plaintiff] failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing to invoke the jurisdiction of the common pleas court.”)

¹⁰ *RBS Citizens, N.A. v. Sabatelli*, No. CV14-6016519S, 2016 WL 1099090 (Conn. Super. Ct. Feb. 19, 2016), the Superior Court similarly denied a lender’s summary judgment motion in a foreclosure action for a number of reasons, including that there was no evidence that the allonge endorsing the note to the plaintiff had ever been attached to the underlying note.

April 12, 2010. This allonge of Note¹¹ was supposed to be attached to the Original Note¹² and Original Mortgage and filed at the same time each action was filed as required by law. It was not. The second allonge of Note (Exhibit #19a) was created and submitted as Plaintiff/Respondent's exhibit for the January 13, 2023 deposition of Defendant/Appellant's former attorney William Sloan, Esq. The second allonge was never attached to the alleged Original Note¹³ as required by law and neither was it filed as an attachment when either lawsuit was filed as required by law.

19. The Alleged "Note" called "Adjustable Rate Note" has 5 pages. The fifth page is the signature page of this alleged document. The Plaintiff/Respondent alleged that the Defendant/Appellant signed this on September 18, 2006 (See Exhibit# September 19, 2006's email) ; however, it was never submitted into the records until June 22, 2017 (**See Exhibit# 20 Page 5 of Adjustable Rate Note dated electronic stamp June 22, 2017**) officially and resubmitted as exhibits in the January 13, 2023 (**See Exhibits #20a Page 5 of Adjustable Rate Note submitted on January 13, 2023**) deposition of William Sloan, Esq. However, on May 28, 2014 Judge Duke ruled in favor of Plaintiff/Respondent for foreclosure judgment. It was never entered into the records officially until August 3, 2021 at a hearing. Judge Dukes did not

¹¹ UCC § 3-204(a) provides that the signature negotiating the note be made on the note itself or on "a paper to be affixed to the" note, the Court held that the allonges needed to be attached to the note for it to have been negotiated.

¹² U.S. Supreme Court case *Carpenter v. Longan*, 83 U.S. 271 (1872), which held that a "note and a mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.

¹³ Section 3-204(a) of the UCC defines endorsement as follows: "Endorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument 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. Conn. Gen. Stat. § 42a-1-201(21). Conn. Gen. Stat. §§ 42a-3-201 and 42a-3-203(c).

examine the Alleged Original Note, but he instructed William Stork, Esq¹⁴ to have it stamped by Jackie, (*See Exhibit 21 Transcripts of hearing August 3, 2021, Page 6, lines 6-13*¹⁵). When you look at the alleged signature page 5 of this Adjustable Rate Note on the version filed in Beaufort County Court on June 22, 2017, it does not reflect any stamp for the foreclosure judgment that was granted on May 28, 2014. However, the exhibit (Adjustable Rate Note Page 5) submitted by Plaintiff/Respondent for the January 13, 2023 deposition reflects 2 two stamps: (1) (*See Exhibits 20*)¹⁶ “Judgment Entered on this Note Case No:10-1690 Date 5/28/2014, Hon. Marvin H. Dukes, III Master-In-Equity Beaufort County South Carolina” in blue ink; (2) *See Exhibits 20a* “Judgment Entered on this Note Case No:16-1466 Date 8/3/2021 Hon. Marvin H. Dukes, III¹⁷ Master-In-Equity Beaufort County South Carolina” in blue ink. To add insult to injury the ink pens used to write in the case number and dates were changed to give the appearance they were entered at two different times. Clear acts of fraud and deception.

20. William Stork, Esq, attorney for the Plaintiff/Respondent claimed to allegedly have the original note in his possession; however, by law¹⁸ in order to have standing to foreclose on property Plaintiff/Respondent must be in possession of the Original Note and the Original

¹⁴ William Stork, Esq testified at this hearing, “You Honor, I do have the properly endorsed original note in my possession if you would like to inspect prior to ruling”.

¹⁵ Judge Dukes stated, “I will take Counsel’s word...”

¹⁶ Fraudulent Note *See Exhibit#20a* resubmitted to Special Referee on May 4, 2023 hearing reflecting a stamp 5/28/2014, “5/28/16” (*See Exhibit # 20 compare both exhibits*) according to Special Referee *See Exhibit Transcript* page 23, line 25; page 24, lines 1-2; page 24, line 7-15

¹⁷ Judge Marvin H Dukes, III recused himself from this case on December 1, 2022 citing a conflict of.

¹⁸ U.S. Supreme Court case *Carpenter v. Longan*, 83 U.S. 271 (1872), which held that a “note and a mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.

Mortgage. His testimony contradicts their alleged standing to foreclosure¹⁹.

21. Defendant/Appellant filed Bankruptcy on or around August 16, 2018 and dismissed the bankruptcy on or around December 2018. During the bankruptcy Plaintiff/Respondent failed to supply the bankruptcy court with the Original Note or the Original Mortgage²⁰; however, Plaintiff/Respondent had another document created, "Corrective Assignment of Mortgage" dated November 9, 2018 and filed on or around November 16, 2018 (*See Exhibit#22 Corrective Assignment of Mortgage*) into the Beaufort County Recorder of Deeds. Plaintiff/Respondent made a correction to this alleged assignment of mortgage nine years after creating the first assignment of mortgage and six years after creating an allonge to note. Further substantiating that Plaintiff/Respondent never had standing to foreclose on a note that does not exist. In the prior foreclosure cases, awarded in their favor, they did not have standing. They created and falsified documents to "create" standing after the fact and had the benefit of Judges who did not read documents, but rather accepted the word of attorneys and instructed them to file said documents without reviewing and granting foreclosures.

22. Defendant/Appellant has submitted to the lower court the following documents to support her position that she does not have a note or a mortgage on subject property; 1) all three major credit reports (*See Exhibit #23 Credit Reports*) recent as July 26, 2023, in which one covers all

¹⁹ [Fed. Home Loan Mtge. Corp. v. Schwartzwald 2012-Ohio-5017](#) (“[B]ecause [the plaintiff] failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing to invoke the jurisdiction of the common pleas court.”)

²⁰ [BAC Home 9 Loan Serv. v. McFerren, 2013-Ohio-3228 \(9th Dist.\)](#) (Concluding that *Schwartzwald* did not overturn long-standing property and foreclosure principles and, therefore, to bring action, a party must hold the note and the mortgage at the time it initiates an action order to have standing.)

debts dating back to 2005 and reflects no mortgage, Experian, Transunion and Equifax; 2) a 18 years title search dated December 2016 (*See Exhibit # 24 Title Search*), six months after Plaintiff/Respondent filed the third foreclosure action. The title search reflects that there was no mortgage on the property she is being sued for. 3) The September 19, 2006 email (*See Exhibit #25 September 19, 2006 email*)²¹ that reflects that a closing could not have taken place because they did not have a signed HUD 1003 Uniform Residential Loan Application as required by law and they were still asking if the loan should be on land or house.

4) Unsigned HUD 1 Closing Settlement (*See Exhibit #26 HUD 1 Statement*) which must be certified and signed by borrower, lender and closing attorney. Neither party signed these closing documents as required by law; however, Chad W. Burgess, Esq.²² testified that “I do stipulate that it is an unsigned copy of HUD”(See *Exhibit#27 Transcript from May 4, 2023, page 22, line 19-20*). He also testified that he could not produce any written evidence to support that the Defendant/Appellant owed Federal taxes over \$100,000 (*See Exhibit#27 Transcript from May 4, 2023, page 22, line 8-12*). This is the Order and decision the Defendant/Appellant has on appeal.

23. Because trial court erred in denying Appellant’s Motion to Stay Pending Appeal and an alleged successful illegal foreclosure sale of Defendant/Appellant’s house, Grant has no choice but to bring this application to seek an immediate reversal of the foreclosure sale and stay of all

²¹ FDCPA prohibits debt collection companies from using abusive, unfair, or deceptive practices to collect debts. 15 USC 1692 section 802 (a); (c) 805; Section 806 (e) 807 false or misleading representations

²² Attorney for Plaintiff/Respondent

trial court orders, the last order of October 4, 2023 Notice of Sale to be rescinded.

24. Absent immediate intervention, Defendant/Appellant, Grant will suffer severe and irreparable harm because she will be forced to become displaced, homeless along with the aging relatives that are residing with her. Her father just passed away in April of 2023, leaving her to care for her aging and an ailing mother. Defendant/Appellant also has a 100% disabled vet as well as an uncle that is an amputee that she is responsible for caring for in her home.

25. A writ of supersedeas is appropriate here to stay the Orders and foreclosure pending appeal. Upon information and belief most importantly, Defendant/Appellant is likely to succeed on the merits and can show that Judge and Special Referee erred as well as violated Canon 1²³, 2²⁴, and 3²⁵.

26. This Petition satisfies all the requirements for issuance of a Writ of Supersedeas, to wit: (i) there is an appeal pending; (ii) Defendant/Appellant has exhausted her trial remedies; (iii) Defendant/Appellant will suffer irreparable harm and/or the balance of harm tilts decidedly in Defendant/Appellant's favor; and (iv) the pending appeal has merit, as demonstrated by this Court's decision to grant review.

²³ **CANON 1:** A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

²⁴ **CANON 2:** A judge shall perform the duties of judicial office impartially, competently, and diligently.

²⁵ **CANON 3:** A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

CONCLUSION

WHEREFORE, Petitioner Terry Lennette Grant prays relief as follows:

- 1) That all orders June 28, 2023, September 1, 2023, October 4, 2023 and November 21, 2023 in the trial court be set aside, vacated and dismissed, reversed or stayed pending appeal, which shall include the illegal foreclosure sale that allegedly took place on November 3, 2023 against Beaufort County foreclosure sale procedure that was supposed to be held on the first Monday of each Month, which would have been November 6, 2023.
- 2) For Sanctions in an amount estimated to be \$2,500-\$5,000, and to be substantiated by declaration to be separately filed if granted;
- 3) Defendant further requests that the stay, if granted, be granted without the requirement of a bond (or the posting of a minimal bond), because Defendant already has possession of subject property and does not have a Note due or mortgage or lien as evidence provided herein. A bond would put a financial strain on Defendant and her family.
- 4) For such other or further relief as this Court may deem proper.

Dated: December 29, 2023

Respectfully Submitted



Terry Lennette Grant, Defendant, Appellant, Pro Se
Post Office Box 21936
Hilton Head Island, South Carolina 29925
terrygrantseries@gmail.com
(843) 301-5750

VERIFICATION

I, Terry Lennette Grant, Pro Se Litigant, declare as follows:

I am the Defendant and Appellant the Petitioner herein. I had prepared the foregoing Petition for Writ of Supersedeas and know its contents. The facts alleged in the Petition pertaining to the judicial proceedings and the judicial record of the underlying lawsuit are within my own knowledge and I know these facts to be true.

I declare under the penalty of perjury that the foregoing is true and correct and that this verification was executed on December 29, 2023 in Hilton Head Island, South Carolina.



Terry Lennette Grant, Defendant, Appellant, Pro Se
Post Office Box 21936
Hilton Head Island, South Carolina 29925
terrygrantseries@gmail.com
(843) 301-5750

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR
STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

I. Introduction

1) Pursuant to Rule 62(d), SCRCP and Rule 241(c)(1), SCACR, and Rule 62(d), SCRCP. Defendant, Terry Lennette Grant, Pro Se files this Motion for Stay Pending Appeal or for Writ of Supersedeas of Foreclosure Judgment pursuant to Rule 60(b) SCRCP. Defendant requests a stay of this Court's Order of June 28 2023²⁶, September 1, 2023²⁷, October 4, 2023 and November 21, 2023²⁸ granting foreclosure judgment and sale of Defendant's property in favor of Plaintiff, scheduled for November 3, 2023²⁹ and allegedly sold to Plaintiff on November 3, 2023. Defendant is hereby requesting that the foreclosure sale be Stayed, Suspended, Canceled and/or Dismissed or Dismissed Completely with prejudice during the pendency of her appeal of that Order. The grounds for this motion are as follows: (1) such a stay or writ is necessary to preserve jurisdiction of the appeal or to prevent contested issues in the appeal from becoming moot; (2) such a stay or writ is necessary to protect Defendant from losing her home and becoming homeless for a wrongful and illegal foreclosure sale of the Defendant's property which has been in her family for over 100 years; and (3) such stay or vacating foreclosure judgment is necessary to preserve Defendant's rights to protect her right to life, liberty, property and the pursuit of happiness, as well as the quiet enjoyment of her property, which has been lost of these past (13) thirteen years. (4) Defendant's appeal will present serious legal questions; and (5) absent a stay Defendant will suffer a continuation of the irreparable

²⁶ See Exh.#2 June 28, 2023 Order by Special Referee Benjamin C.P. Sapp

²⁷ See Exh.#4: September 1, 2023 Order by Special Referee Benjamin C.P. Sapp

²⁸ See Exh.#1 and 14: November 21, 2023 Order by Special Referee Benjamin C.P. Sapp and Proposed Order prepared by Plaintiff emailed to Defendant November 9, 2023

²⁹ See Exh.#7 and 7a: Beaufort County Public Auction Roster does not reflect a Sale for November 3 or 7, 2023.

injury/harm that began over thirteen (13) years ago with the first initial filing of this case on December 1, 2009³⁰,³¹, second filing of this case April 12, 2010³² and third filing of this case June 29, 2016³³. (6) there is an appeal pending³⁴; (7) Appellant has exhausted her trial remedies; (8) and (9) the pending appeal has merit, as demonstrated by this Court's decision to grant review.

2) Furthermore, Pursuant to South Carolina Rule of Civil Procedure 60(b) Defendant is requesting this Motion to Vacate Judgment pursuant to: (1) **SCRCP 60(b)(3) clear GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING (3) fraud³⁵ (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;** (2) **SCRCP 60(b)(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) SCRCP 60(b)(5) the judgment has been satisfied, released, or discharged; it is

³⁰ See Exh.#16: 1st Complaint filed C/A No:2009CP0705612

³¹ See Exh.#16a: 1st Dismissal of C/A No 2009CP0705612 on February 12, 2010

³² See Exh. #: 2nd Complaint filed C/A No.2010CP01690 on April 12, 2010 and dismissal January 14, 2016

³³ See Exh.#: 3rd complaint filed C/A No 2016CP0701466 on June 29, 2016 and vacate consent May 6, 2022

³⁴ See Exh.#5: Notice of Appeal September 5, 2023, Appellate C/A No:2023-001394

³⁵ Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are express grounds for relief by motion under amended subdivision (b). There is no sound reason for their exclusion. The incorporation of fraud and the like within the scope of the rule also removes confusion as to the proper procedure. It has been held that relief from a judgment obtained by extrinsic fraud could be secured by motion within a "reasonable time," which might be after the time stated in the rule had run. *Fiske v. Buder* (C.C.A.8th, 1942) 125 F.(2d) 841; see also inferentially *Bucy v. Nevada Construction Co.* (C.C.A.9th, 1942) 125 F.(2d) 213. On the other hand, it has been suggested that in view of the fact that fraud was omitted from original Rule 60(b) as a ground for relief, an independent action was the only proper remedy. Commentary, *Effect of Rule 60(b) on Other Methods of Relief From Judgment* (1941) 4 Fed.Rules Serv. 942, 945. The amendment settles this problem by making fraud an express ground for relief by motion; and under the saving clause, fraud may be urged as a basis for relief by independent action insofar as established doctrine permits. See Moore and Rogers, *Federal Relief from Civil Judgments* (1946) 55 Yale L.J. 623, 653-659; 3 *Moore's Federal Practice* (1938) 3267 *et seq.* And the rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause. As an illustration of this situation, see *Hazel-Atlas Glass Co. v. Hartford Empire Co.* (1944) 322 U.S. 238.

based on an earlier judgment that has been reversed or vacated³⁶; or applying it prospectively is no longer equitable³⁷;

II. JUDICIAL NOTICE REQUESTED

3) The Court is requested to take judicial notice of all pleadings and other documents in the Court file in this matter.

III. Bond

4) Defendant further requests that the stay, if granted, be granted without the requirement of a bond (or the posting of a minimal bond), because Defendant already has possession of subject property and does not have a mortgage or lien (*See Exhibit # 24 Title Search on subject property dated December 27, 2016, specifically pages 1-6*) reflecting no mortgage or any lien on Defendant's property that is the subject of this case. This was an (18) eighteen year title search that was conducted. Defendant has submitted her (3) three major credit reporting agencies report (*See Exhibits#23 Transunion, Equifax, and Experian*), Defendant's most recent credit reports)³⁸, that are used nationally to reflect that the Defendant does not have a mortgage or any kind of lien on any property, specifically the property Plaintiff is attempting to foreclose on schedule foreclosure sale November 3, 2023 or anytime thereafter. Defendant has also submitted a copy of those (3) three major credit reporting agencies report from 2012-2013 reflecting owing Plaintiff \$0.

5) Plaintiff has been unable to produce original mortgage and original note dated

³⁶ See Exh.#18a: Consent Order to vacate foreclosure judgment May 6, 2022

³⁷ See Exh.#17a: Order vacating and dismiss case "it is no longer equitable" January 14, 2016

³⁸Transunion, Equifax, and Experian three major credit reporting agencies used nationally reflects no evidence of any outstanding mortgages on Defendant's property dating as far as 2005

September 18, 2006 that has the Defendant's property and her signature and other legally³⁹ required documents to substantiate a legal closing and that they are real parties of interest to have standing to foreclose on Defendant's property, despite their claim to have produced these signed documents in court, in the August 3, 2021's hearing⁴⁰ (*See Exhibit #21 Transcript from hearing date August 3, 2021, Pge No. 6 and line No. 9-10*). The appeal in the case will reveal exactly how the Plaintiff proceeded to close on Defendants' property: 1) without a HUD 1003 (*See Exhibit #25 email date September 19, 2006*) Uniform Residential Loan Application which was supposed to have been signed by Defendant; 2) with having a unsigned HUD 1 Settlement Statement (*See Exhibit #26 unsigned HUD - 1*) which was not signed by the Defendant, the Lender nor the Closing Attorney; 3) without Assignment of Mortgage (*See Exhibit #15 Assignment of Mortgage dated December 2, 2009*) after filing foreclosure action on December 1, 2009 against Defendant; much is owed to Defendant.

IV Statement of Case and FACTS

6) On or around December 1st 2009, Plaintiff filed Summons, Complaint and Lis Pendens entitled (Non-Jury Mortgage Foreclosure) (*See Exhibit #16:C/A No 2009CP075612*). Who owns the Note and Who owns the mortgage? Note nor mortgage was attached when complaint was filed as required by law (Supreme Court of Ohio - Case No. 2014-0791 Deutsche Bank National Trust Company as Trustee v. Glenn E. Holden et al.) Citing *Schwartzwald*, 134 Ohio St.3d 13,

³⁹(*See Exh.#25* Email dated September 19, 2006) correspondence with NovaStar Mortgage, Inc and Wolf & Mogil LLC Law Firm.

⁴⁰ Plaintiff asserted that they were in possession of the "Properly Endorsed Note"; however, when offered to Judge for review, Judge declined to inspect or examine the alleged Original Note he stated. "I take your Counsel's word that, in fact that's what you have in your hand, but will ask you to go down the hall at the conclusion of this and get Jackie to stamp it and give it back to you." August 3, 2021 (no other stamp was on this alleged Original Note prior to August 3, 2021) (*See Exh.#20*: copy of the same alleged Original Note submitted to court June 22, 2017). Does not appear to be a stamp for 5/28/2014. Fraud and deception upon the court when resubmitted on May 4, 2023 hearing. (*See Exh.#27*: Transcript of May 4, 2023, page 23, lines 24-page 24, lines 1-15).

2012-Ohio-5017, 979 N.E.2d 1214, and cases from the highest courts of Connecticut, Illinois, Maine, New Mexico, Oklahoma, South Carolina, Vermont, and Wisconsin, they assert that only the person owning both the note and the mortgage has standing to file a foreclosure action.

7) Plaintiff claims to be a corporation or other legal entity doing business in the State of South Carolina (See Complaint para. 1). Plaintiff does not legally exist as a business entity authorized to do business in the state of South Carolina, according to the South Carolina Secretary of State (*See Exhibit #28 Business Search Plaintiff SC Secretary of State website No Record Found*)⁴¹.

8) Plaintiff claims “is the owner and holder of the note and mortgage covering real property which is the subject of the foreclosure action herein” See, para. 2 of Complaint filed. There was no copy of the promissory note attached to the complaint, as required by law⁴². There was no allegations that the promissory note was ever indorsed to the Plaintiff and/or its predecessors interest or that there was an allonge attached to said note made payable to the Plaintiff and/or its predecessors interest.

9) Plaintiff’s Complaint alleges in para. 6, that On or around September 18, 2006, for value received, Defendant executed and delivered to *NovaStar Mortgage, Inc . (See Exhibit #29 Secretary of State corporation dissolved Aug. 3, 2009)* a certain promissory note in the sum of \$680,000.00 together with interest thereon at an adjustable rate pursuant to the terms of the note.

⁴¹ SC Title 33 Section 33-15-101(a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

⁴² *Fed. Home Loan Mtge. Corp. v. Schwartzwald 2012-Ohio-5017* (“[B]ecause [the plaintiff] failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing to invoke the jurisdiction of the common pleas court.”)

Paragraph 7 alleges the the Defendant executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., (*See Exhibit#30 MERS no record found in SC Secretary of State*)⁴³ its successors and assigns a mortgage covering the following property: “TMS R510-007-017B 000 being .38 acres a recombination of .10 acres and .38 acres also .10 acres...”.

10) On September 19, 2006, (**Refer to email Exhibit #25**) the day after the alleged closing, Plaintiff’s email correspondence in regards to this alleged mortgage and note, HUD 1003⁴⁴ and HUD-1 was being discussed. Plaintiff’s representatives (NovaStar Mortgage, Inc) of the alleged mortgage and note, the closing attorney’s office exchanged communication via email attempting to establish which property was being covered under this alleged mortgage and note .46 acres or 3.95 acres (*Refer to Exhibit #25 the emailed dated September 19, 2006) page 2 of 2 lines 10 & 11*)?. They further communicated that they were not in possession of a HUD 1003 Uniform Residential Loan Application signed by Defendant for closing as required by law⁴⁵. The Email dated September 19, 2006 was the day after alleged closing, which allegedly took place on September 18, 2006. HUD -1 Settlement Statement⁴⁶ was not signed and not Certified by Defendant, the Lender or the Closing Attorney(*Refer to Exhibit#26 Unsigned HUD-1 Closing*

⁴³ Neither business entity existed in the State of South Carolina; they were not registered to transact business.

⁴⁴ Unsigned closing document HUD 1003 required by Regulation Z known as Truth in Lending Act must be signed by the borrower.

⁴⁵ Unsigned closing document HUD -1 Settlement Statement required by Regulation Z known as Truth in Lending Act must be signed by the borrower.

⁴⁶ RESPA 12 USC 2603 and 15 US Code Section 7001 rule of law requires signature CFPB

Settlement Statement)⁴⁷.

11) On December 10, 2009 Plaintiff filed a document entitled “Assignment of Mortgage” which was created and/or fabricated on December 2, 2009 (*Refer to Exhibit #15 Assignment of Mortgage*⁴⁸) The Finkel Law Firm was representing the Plaintiff at this time. Who owns the Note? and Who owns the mortgage? This assignment of mortgage severed the Note from the mortgage⁴⁹

12) On December 15, 2009 Plaintiff filed an Affidavit of Due and Diligent Search on the Defendant.

13) On February 12, 2010 Plaintiff filed a Notice of Dismissal (*See Exhibit #16a Notice of Dismissal*) which was dated February 8, 2010 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.

14) On April 12, 2010 Plaintiff filed its second foreclosure action Summons, Complaint and Lis Pendens (*See Exhibit #17*) lawsuit against Defendant See C/A No. 2010CP0701690. Who owns the Note? And Who owns the mortgage? The Note nor Mortgage was attached when this case was filed as required by law (US Supreme Court case Carpenter v. Longan it was ruled that where the promissory note goes, a deed of trust must follow. In other words, the deed and the note cannot be separated.

⁴⁷ 12 CFR Section 1024.8

⁴⁸ Deutsche Bank Natl. Trust Co. v. Najjar, Sth Dist. Cuyahoga No. 98502,2013-Ohio1657, U17-(1) that the plaintiff is the holder of the note and mortgage, or is a party entitled to enforce the instrument; (2) if the plaintiff is not the original mortgagee, the chain of assignments and transfers; Elements that was never satisfied.

⁴⁹ US Supreme Court case Carpenter v. Longan it was ruled that where the promissory note goes, a deed of trust must follow. In other words, the deed and the note cannot be separated.

15) On April 19-May 10, 2010, Plaintiff filed several Affidavits of Due and Diligent Search on Defendant;

16) On May 10, 2010 Plaintiff filed Order on Defendant;

17) On June 15, 2010 ORDER of Reference to Master In Equity was filed.

18) On April 19, 2011 the following documents was filed: a) ORDER to Amend Complaint to reform legal description Entered by CLERK; b) Amended Lis Pendens filed by Plaintiff; c) Amended Summons and Notices, Complaint filed by Plaintiff; d) Certificate of Exemption filed by Plaintiff;

19) On or around April 28-May 12, 2011 Plaintiff filed Affidavit of Due and Diligent Search on Lindberg Bing;

20) On or around May 24, 2011 Defendant filed Objection to Amended Lis Penden, and Order to Amend Complaint to reform legal description of alleged mortgage;

21) On or around June 17, 2011 Plaintiff filed Notice of Foreclosure Intervention;

22) On or around June 28, 2011 Plaintiff filed the following: a) Affidavit and Order of Publication; b) Amended Complaint and Summons; c) Amended Lis Pendens;

23) On or around July 15, 2011 Defendant filed objection to the amended complaint, summons and Lis Penden for the second time;

24) On or around June 25, 2012 Plaintiff 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)⁵⁰ for the alleged note Plaintiff claimed to be in possession on December 1, 2009 when Plaintiff first initiated this foreclosure action. Who owns the Note? And Who owns the Mortgage? Allonge must be affixed to the Original Note as required by law. To be a “holder” of a note under Article 3 of the UCC, a person must be in possession of the note that is either payable to the bearer or to that person. 1) Holder status of a note (that is not payable to the bearer) can be transferred to an assignee by a “negotiation,” which requires that the note be endorsed to the assignee. 2) The Court in REO Holdings held that there were factual issues as to the endorsement of the note that precluded summary judgment. Section 3-204(a) of the UCC defines endorsement as follows: “Endorsement” means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument⁵¹.

25) On or around June 12, 2013 Judge/Clerk entered an ORDER to Amend Complaint; this was the second time the Complaint, Summons, Lis Pendens was amended;

26) On or around July 15, 2013 Defendant filed another objection to 2nd Amended Complaint, Summons and Notices. Defendant also filed Affidavit of Truth;

27) On or around September 4, 2013 Plaintiff filed Motion to Compel;

28) On or around September 9, 2013 an ORDER was enter granting Plaintiff’s Motion to

⁵⁰ “ *Deutsche Bank Trust Co. v. Jones* , 2018-Ohio-587, [107 N.E.3d 117](#), ¶ 26 (8th Dist.).” *Deutsche Bank Natl. Trust Co. v. Najjar*, *Sth Dist. Cuyahoga No. 98502, 2013-Ohio1657, U17-(1)* that the plaintiff is the holder of the note and mortgage, or is a party entitled to enforce the instrument; (2) if the plaintiff is not the original mortgagee, the chain of assignments and transfers; Elements was not satisfied

⁵¹Conn. Gen. Stat. § 42a-1-201(21). Conn. Gen. Stat. §§ 42a-3-201 and 42a-3-203(c).

Compel Defendant to Deposition;

29) On or around October 8, 2013 Defendant filed the following: a) First Request for Admission; b) First Interrogatories; c) First Request for Production of Documents; d) Action was taken to Compel Defendant to Submits Questions;

30) On or around October 18, 2013 Hearing scheduled before Master In Equity Marvin H. Dukes, III for November 18, 2013;

31) On October 28, 2013 Defendant received email from Plaintiff, which she answered on November 8, 2013;

32) On November 12, 2013 Plaintiff filed Motion for Partial Summary Judgment;

33) On or around November 18, 2013 Plaintiff filed Ocwen Loan Servicing Company's Affidavit to Support Plaintiff Motion for Partial Summary Judgment;

34) On December 20, 2013 Plaintiff's representing attorney received a letter from Judge Dukes instructing him to....(*See Exhibit #31 SC Public Index, Clerk of Court entry,pg 2*);

35) On November 26, 2013 Defendant filed Objection for Lack of standing and Coram Non Judice;

36) December 2, 2013 Defendant filed a Notice and Motion to Reconsider Proposed Summary Judgment;

37) December 30, 2013 Defendant filed a Motion to Vacate claims against Defendant;

38) February 5, 2014 Letter from Master In Equity reschedule hearing for March 3, 2014;

39) On or around February 7, 2014 ORDER (*See Exhibit #32*  **Order granting Partial**

MSJ and reforming MT...) entered granting Plaintiff's Motion for Partial Summary Judgment;

40) On or around February 28, 2014 Plaintiffs filed the following: a) Motion Summary Judgment of Foreclosure and Sale; b) Plaintiffs return in Opposition to Defendant's Motion to Vacate;

41) On or around March 3, 2014 ORDER entered denying Defendant's Motion to vacate Plaintiff's MSJ was filed December 30, 2013;

42) May 28, 2014 ORDER entered granting Foreclosure Judgment in favor of Plaintiff second time Foreclosure was granted (*See Exhibit #33 ORDER dated May 28, 2014*). Who owns the Note?and Who owns the mortgage?

43) On or around June 25, 2014 Plaintiff filed Notice of Sale, Order Judgment;

44) On or around July 21, 2014 Plaintiff filed Affidavit of Publication;

45) On or around October 23, 2015 through November 10, 2015 Clerk sent out Notices to release or destroyed exhibits submitted in this case. Why were exhibits returned and or destroyed? Upon information and belief, exhibits are apart of the official court records, especially if a case is ongoing.

46) On or around November 18, 2015 Plaintiff filed Motion and Consent Order Substituting law firms from Finkel Law Firm LLC to Brock & Scott, PLLC. The consent was agreed upon by the lawyers themselves and signed off by Judge Dukes. Defendant was not given opportunity to consent or deny this strategic legal maneuvering by those parties involved. Defendant was not informed which established ex parte communication.

47) On or around November 30, 2015 Plaintiff decided not to pursue the foreclosure judgment that was granted on May 28, 2014, for the second time. Plaintiff filed a Motion and Order Vacating Judgment, Canceling Lis Pendens and Dismissing the Case”. Plaintiff stated, “it is no longer equitable that the Judgment of Foreclosure should have prospective application”. Why? If foreclosure judgment granted is no longer equitable, Why did the court continue to allow Plaintiff to re-file a case they vacated and dismissed for not being equitable? Rule 60(b) authorizes a district court, on motion and upon such terms as are just, to relieve a party from a final judgment, order or proceeding for any “ reason justifying relief from the operation of the judgment. “Aiken v. Ingram, 652 F.3d 496, 500-01 (4th Cir.)

48) On December 18, 2015 Defendant via sent letter to counsel of record Brock & Scott, PLLC requesting Validation Of Alleged Debt. Instead of Validating the Debt as required by law, Plaintiff filed the Motion to Vacate Judgment, Cancel Lis Pendens and Dismiss the case.

49) On or around December 28, 2015 Defendant filed a response to the Motion and Order Vacating Judgment.

50) On or around January 14, 2016 ORDER entered by Judge/Clerk Vacating Foreclosure Judgment without prejudice and canceled Lis Pendens in this case 2010CP0701690; however, Plaintiff once again chose not to pursue the foreclosure, stating “it is no longer equitable that the judgment of foreclosure should have prospective application”, that being conveyed to the court case Summons and Complaint dismissed and Judgment of Foreclosure entered on May 28. 2014 was vacated (*See Exhibit #34 Order vacating Judgment, canceling Lis Pendens 2010LP070897*

and dismissing case 2010CP0701690). Why?

51) On or around June 29, 2016 Defendant filed another foreclosure action against Defendant. This is the third foreclosure action filed attempting to separate Defendant from her property (*See Exhibit #18 Summons and Complaint C/A No. 2016CO0701466*). Plaintiff failed to file the original note and the original note, assignment of mortgage and the assignment of note at the time the foreclosure action was filed. Plaintiff filed a Corrective Assignment of Mortgage on November 9, 2018 (*See Exhibit #22 Corrective Assignment of Mortgage*), further evidence that Plaintiff was not owner and holder of original Mortgage and Note at the time this most recent case was filed June 29, 2016 or during the times where previous foreclosures were granted on May 28, 2014. Who owns the Note? and Who owns the Mortgage?

52) Plaintiff again claims to be a business entity duly authorized to conduct business in the State of South Carolina in para. 1 of said Complaint June 29, 2016.

53) Plaintiff again claims that Defendant made, executed and delivered to NovaStar Mortgage, Inc (Lender) a certain Adjustable Rate Note dated September 18, 2006....

54) Plaintiff again claims that Defendant did make, execute, and delivered to Mortgage Electronic Registration Systems, Inc as Nominee for NovaStar Mortgage, Inc a certain mortgage dated September 18, 2006 securing the below described real property on page 2 still depicts the TMS R510 0700 000-017B being .10 acres, A Recombination Plat of .10 and .38....(*Refer to Exhibit #18 Complaint filed June 29, 2016*); This is not Defendant's property.

55) Plaintiff alleges in para. 8 of Complaint that "The Mortgage evidence secures the

repayment of money advanced by the Lender to or on behalf of the Mortgagor(s) and constitutes a valid first lien on the property. Defendant states where is the evidence of money advanced by the Lender to or on behalf of the Defendant that would support claiming a first lien on Defendant's property. Plaintiff first must show strict proof they are the real party of interest by producing the original note and original mortgage with blue ink signature of Defendant.

V. DISCUSSION and ARGUMENT

56) Rule 241 of the South Carolina Appellate Court Rules governs stays which was on November 2, 2023 4:15PM- BEAUFORT -COMMON PLEAS - CASE#2013CP0701466 in appeal of civil actions. It was denied on November 21, 2023.

57) Pursuant to Rule 241(c)(1), SCACR, "In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after the service of the notice of appeal." Rule 241(c)(1), SCACR. Similarly,

58) Rule 62(d), SCRCP, provides, "When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules." Rule 62(d), SCRCP. There is no express deadline for the filing the motion for stay or for writ of supersedeas.

59) Rule 241(c)(1) rule merely provides that it can be filed "after the service of the Notice of appeal." Rule 241(c)(1), SCACR. Defendant was not dilatory in filing the instant motion on November 2, 2023. Plaintiff cannot show any prejudice or harm that would befall it because of the timing of Defendant's motion.

60) Rule 241(c)(2), SCACR provides, "In determining whether an order should issue pursuant

to this Rule, the lower court . . . should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. The stay requested here is necessary to prevent the appeal from becoming moot, because the Plaintiff originally proposed for Defendant’s property to be foreclosed on illegally, with fraudulent and unsigned documents, by assigning all legal rights or interests in Defendant’s ownership of her home back to the company that is illegally foreclosing effective as of November 3, 2023 or November 7, 2023, almost two months after the notice of appeal was filed. November 6, 2023 was a correct foreclosure scheduled, but the Defendant’s property was not subject to this sale date.

61) Plaintiff’s counsel’s statement in his emails was “straightforward” (Exhibit 8 email to Defendant October 18, 2023) appears to have been an effort to deceive⁵² the Defendant’s into a trap in having Defendant not to attend this alleged sale that allegedly took place on November 3, 2023 in violation of proper procedure (See Exhs. #7 and 7a and Exh.#10).

62) Pursuant to Rule SCRCR 60. Relief from a Judgment or Order (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: (1) mistake, inadvertence, surprise, or excusable neglect; (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,

⁵² 15 USC 1692 Section 802 (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. 15 USC 1692a Section 803; 15 USC 1692d Section 806 Harassment and abuse; 15 USC 1692e section 807 False or misleading representations; 15 USC 1692f Section 808 Unfair practices; 15 USC 1692j Furnishing certain deceptive forms; section 814 Administrative enforcement (a)(1) Federal Deposit Insurance Act 12 USC 1818 section 3q (a) (b)

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.

63) In this case Defendant has discovered: New evidence according to SCRCP 60(b)(2) - newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under [Rule 59\(b\)](#). On January 13, 2023 Plaintiff scheduled and conducted a Deposition of one attorney William Sloan. During this sworn deposition Plaintiff submitted the following documents as exhibits (**See Exhibit #35 William Sloan, Esquire's Disposition with attachment as exhibits**):

64) Exhibit 20a **Endorsed Note.pdf** (**See Attachments page 5 of Exhibit #20a** submitted on January 13, 2023, appears to have been dated on 5/28/2014 with a blue stamp stating "judgment entered on this Note 10-1690 Hon. Marvin H. Dukes, III Master-In-Equity Beaufort County, South Carolina". On the left side "Sloan Depo Ex 2 -Pg 5". However, it was not recorded in the Court records. There is no electronic date stamp from the Clerk of Court on the right side of this document.

65) On June 22, 2017 Plaintiff submitted a copy of this same document as an exhibit for Plaintiff's Motion for summary judgment; however, it appears that the blue ink nor black copy of that stamp dated 5/28/2014 is not present, which was supposed to state, " 5/28/14 Judgment entered on this Note 10-1690 Hon. Marvin H. Dukes, III Master-In-Equity Beaufort County, South Carolina" (See Exh. 20 Attached Adjustable Rate Note June 22, 2017 Page 5).

66) Pursuant to **SCRCP 60(b)(3) clear** GROUNDS FOR RELIEF FROM A FINAL

JUDGMENT, ORDER, OR PROCEEDING (3) *fraud*⁵³ (*whether previously called intrinsic or extrinsic*), *misrepresentation, or misconduct by an opposing party*); Defendant/Appellant has submitted numerous supporting documents substantiating the fraud that has been perpetuated by the Plaintiff/Respondent multiple counsels each time they were represented by Finkel Law Firm, Callison, Tighe & Robinson and their present counsel Brock & Scott, PLLC and each of their participating employees, co-workers, notaries, and others that created, modified, signed or had any part in this foreclosure process of these past (13) thirteen plus years.

67) Plaintiff Filed Complaint 6-29-2016 (Refer to Exhibit #18), April 12, 2010 (Refer to Exhibit# 17) and December 1, 2009⁵⁴ (Refer to Exhibit#16) Plaintiff filed third complaint without having standing, no Assignment of Mortgage giving Plaintiff standing to Foreclosure; no Allonge of Note giving Plaintiff standing to Foreclose on Defendant's property. Mortgage was separated from Note twice. No Assignment of Mortgage when case was filed either time; however, two were later created. These are all the supporting evidence to show fraud⁵⁵, misrepresentation and misconduct by the many legal representation hired by the Plaintiff:

⁵³ Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are express grounds for relief by motion under amended subdivision (b). There is no sound reason for their exclusion. The incorporation of fraud and the like within the scope of the rule also removes confusion as to the proper procedure. It has been held that relief from a judgment obtained by extrinsic fraud could be secured by motion within a "reasonable time," which might be after the time stated in the rule had run. *Fiske v. Buder* (C.C.A.8th, 1942) 125 F.(2d) 841; see also inferentially *Bucy v. Nevada Construction Co.* (C.C.A.9th, 1942) 125 F.(2d) 213. On the other hand, it has been suggested that in view of the fact that fraud was omitted from original Rule 60(b) as a ground for relief, an independent action was the only proper remedy. Commentary, *Effect of Rule 60(b) on Other Methods of Relief From Judgment* (1941) 4 Fed.Rules Serv. 942, 945. The amendment settles this problem by making fraud an express ground for relief by motion; and under the saving clause, fraud may be urged as a basis for relief by independent action insofar as established doctrine permits. See Moore and Rogers, *Federal Relief from Civil Judgments* (1946) 55 Yale L.J. 623, 653–659; 3 *Moore's Federal Practice* (1938) 3267 *et seq.* And the rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause. As an illustration of this situation, see *Hazel-Atlas Glass Co. v. Hartford Empire Co.* (1944) 322 U.S. 238.

⁵⁴ Doctrine of Res Judicata; Lanneau D. Lide, *Res Judicata in South Carolina*, 4 S.C.L.R. 333. (1952).

⁵⁵ 12 CFR Part 227 Unfair or Deceptive Acts or Practices

- a) [Assignment of Mortgage December 2, 2009⁵⁶](#) (Refer to Exhibit # 15);
- b) [Corrective Assignment of Mortgage⁵⁷ dated Nov 9, 2018 ...](#) (Refer to Exhibit # 22);
- c) 1st Allonge Created and dated June 25, 2012 (See Exhibit#19 [Allonge dated June 25, 2012](#)) that again separated the alleged Note from Alleged Mortgage;
- d) 2nd Allonge created and appeared for the January 13, 2023 deposition (See Exhibit#19a [Endorsed Note.pdf](#), page 8). This Allonge of Note was not dated, again separating the Note from the Mortgage no information (i.e. loan number) compared to different allonges created and fabricated. This one was submitted to the sworn deposition held on January 13, 2023 by Plaintiff via counsel of Record, Chad W. Burgess.
- e) HUD - 1 Closing Settlement Statement (Refer to Exhibit #26 [HUD 1 Closing Statement.pdf](#)) is not signed by Defendant, lender or Closing Attorney on alleged settlement date September 18, 2006 as required by law.
- f) The GreenPoint Mortgage that was never assigned to Plaintiff. The Defendant GreenPoint Mortgage never was on .46 acres. It was on 3.95 acres. (See Exhibit #37 [Greenpoint Mortgage](#) December 8, 2003⁵⁸). Defendant satisfied her \$398,000 GreenPoint mortgage in 2004 (See Exhibit #38 [Release of Green Point Mortgage](#) April 21, 2004). This release of the Defendant's 3.95 acres illegally added .46 acres, by adding the save and except clause that was not in the original mortgage of December 8, 2003. However, Plaintiff is claiming that they dispersed \$387,910.25 to GreenPoint Mortgage, Inc. on September 22, 2006, according to this unsigned HUD 1 Closing Settlement Statement. (Where is the Assignment of Mortgage from GreenPoint to Plaintiff?)
- g) [Satisfaction and Affidavit Lost Mortgage and Lost Note GreenPoint Mortgage](#) (See Exhibit #39) created and filed October 10, 2006 in Beaufort County Records of Deeds. (Compare these three exhibits): Has three different loan numbers;
 - i) Allonge of Note loan #71971014 (Refer to Exhibit 19a, page 8);
 - ii) satisfaction of Lost GreenPoint Mtg loan #0082924036 (Refer to Exhibit#39);
 - iii) NovaStar Mortgage Funding, Inc (See Exhibit#40)alleged [Mortgage.pdf](#) NovaStar September 18, 2006 alleged Loan Number #06-A19021.

⁵⁶ US Supreme Court case Carpenter v. Longan it was ruled that where the promissory note goes, a deed of trust must follow. In other words, the deed and the note cannot be separated.

⁵⁷ US Supreme Court case Carpenter v. Longan it was ruled that where the promissory note goes, a deed of trust must follow. In other words, the deed and the note cannot be separated.

⁵⁸ GreenPoint Mortgage was satisfied \$398,000 according to the release satisfaction dated April 21, 2004;(Refer to Exhibit#38)

- 1) Where is the Assignment of Mortgage from GreenPoint to Plaintiff?);
- 2) Where is the Assignment of Mortgage from NovaStar Mortgage to Plaintiff?

- h) [SCBT Mortgage.pdf](#) (See Exhibit #41 & 41a) August 2005 On 3.95 acres never .46 acres with a house and Satisfaction of SCBT Mortgage. Defendant satisfied her Mortgage. If Plaintiff paid off this mortgage, Where is the Assignment of Mortgage? Plaintiff has the burden of proof that Plaintiff satisfied this lien other than the information on an unsigned HUD-1 Settlement Closing Statement; (Where is the Assignment of Mortgage from SCBT to Plaintiff?)
- i) SCDOR (See Exhibits # [42 SCDOR Tax Lien](#)) (See Exhibit #42a [SCDOR Tax Lien Satisfaction](#)): Tax Lien was satisfied in the amount of \$22,948.87; however, Plaintiff has the burden of proof that Plaintiff satisfied this lien other than the information recorded on an unsigned HUD-1 Settlement Closing Statement (Refer to Exhibit# 26), which stated the amount allegedly disbursed \$22,837.33; If Plaintiff paid the SC Taxes, why the difference in amount on the Satisfaction and the amount recorded by Plaintiff on the unsigned HUD-1 Closing Settlement Statement?
- j) Federal Taxes allegedly paid as stated on unsigned HUD-1 Settlement Closing Statement (Refer to Exhibit# 26); At the May 4, 2023 hearing Plaintiff admitted that they could find no evidence to support that Defendant owed any Federal Taxes (See Exhibit # 27 Transcript of this hearing Page No:18, Lines 12-13 and Page No:22, Lines 8-12). Where is the supporting evidence Plaintiff paid this? How can Defendant be sued for a debt that can not be verified to be owed?
- k) The Judges that oversaw these cases, erred when they ruled in favor of the Plaintiff, granting several foreclosure judgments, then allowed them to vacate and dismiss these same judgments and re-file a new lawsuit each time under different law firms, finally one disqualified and recused himself from this case stating in his order "It was a conflict..". (See Exhibit # 43 Order of Recusal dated December 1, 2022)

68) Pursuant to SCRCP 60(b)(5) clear Grounds for Relief from a Final Judgment, Order, or Proceeding (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; Plaintiff's, admission and own request should be enough to grant relief from this

Foreclosure Judgment and Order (See Exhibit#36 Attached Order Vacating and dismissing Foreclosure Judgment). The fact they dismissed and vacated this case stating to is no longer equitable should be grounds to grant Defendant/Respondent relief from final judgment. In the [2010 Action](#) Plaintiff/Respondent [Filed order vacating foreclosure judgment...](#) (Refer to Exhibit #36) This case was vacated and dismissed with the following language “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 foreclosure should have prospective application. Accordingly, pursuant to Rule60(b) (5) SCRPC,.... Hereby, requests that its Summons and Complaint be dismissed of record, and further requests that the Judgment of Foreclosure entered on May 28, 2014 be vacated”. Based on the above grounds the case was vacated and dismissed. Judge erred by ignoring Defendant's argument that this case should be dismissed with prejudice on her defense of The Doctrine of Res Judicata in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action. Res Judicata and collateral estoppel were pleaded in her defense; however, Judge and special Referee ignored this defense and ruled in favor of Plaintiff. First Natl Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992); Treadaway v.

Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993)⁵⁹.

69) To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993). The Defendant has established res judicata, by proving the three elements mentioned in 69 and the Judge and Special Referee erred when denying Defendant's Motion to Dismiss, Motion to Reconsider and Motion for Stay pending appeal.

70) Defendant/Appellant states upon information and belief a writ of supersedeas may be ordered where a trial court denies a discretionary stay (Reed v. Superior Court (2001) 92 Cal.App 4th 448,455 [111 Cal.Rptr,2d 8421]). Supersedeas is the appropriate remedy for a refusal to acknowledge the applicability of statutory provisions automatically staying the judgment while an appeal is pursued. Alternatively, Defendant/Appellant could have sought a contempt of citation against Plaintiff and his counsel for abuse of process⁶⁰ claim for abuse of process, it is

⁵⁹ Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between these parties. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999). Res judicata prevents a litigant from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Commn of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987); accord Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues. James F. Flanagan, South Carolina Civil Procedure 642 (2d ed. 1996).

⁶⁰ "process," as it pertains to the abuse of process tort, embraces the full range of activities and procedures attendant to litigation. See Hart v. O'Malley, 647 A.2d 542, 551 (Pa. Super. Ct. 1994)

axiomatic that "the judicial process must in some manner be involved." Keeton, supra, § 121 at 898; see Kirchner v. Greene, 691 N.E.2d 107 (Ill. Ct. App. 1998)

Defendant/Appellant respectfully asking this court to either Stay, Suspend, Vacate and dismiss this Foreclosure Judgment as required according to SC Rule of Civ. Proc. 60(b)(2), (3), (5) and (6).

CONCLUSION

WHEREFORE, Petitioner Terry Lennette Grant prays relief as follows:

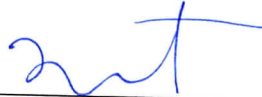
- 1) That all orders June 28, 2023, September 1, 2023, October 4, 2023 and November 21, 2023 in the trial court be set aside, vacated and dismissed, reversed or stayed pending appeal, which shall include the illegal foreclosure sale that allegedly took place on November 3, 2023 against Beaufort County foreclosure sale procedure that was supposed to be held on the first Monday of each Month, which would have been November 6, 2023.
- 2) For Sanctions in an amount estimated to be \$2,500-\$5,000, and to be substantiated by declaration to be separately filed if granted;
- 3) Defendant further requests that the stay, if granted, be granted without the requirement of a bond (or the posting of a minimal bond), because Defendant already has possession of subject property and does not have a Note due or mortgage or lien as evidence provided herein. A bond would put a financial strain on Defendant and her family.
- 4) For such other or further relief as this Court may deem proper.

SIGNATURE PAGE TO FOLLOW:

DÉFENDANT SIGNATURE PAGE

**MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR
STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

Respectfully submitted,



Terry Lennette Grant, Defendant, Pro Se
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843-301-5750

Plaintiff's Attorney of Record
Chad W. Burgess, Esq.
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December 29, 2023

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

Dec 29 2023

SC 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.....Plaintiff/Respondents,

v.

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

**MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S MOTION FOR
STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

PROOF OF SERVICE

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Counsel for Respondent

**MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR
STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

PROOF OF SERVICE

This is to certify that I, Terry Lennette Grant sent true copies of MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS and MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS was sent to the attorney of record named below. A true copy was sent via email of records and/or U.S.Postal Service, with adequate postage prepaid for the following:

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

Counsel for Respondent

December 29, 2023

**MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS,
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR STAY
PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

DEFENDANT/APPELLANT'S SIGNATURE PAGE TO FOLLOW

**MOTION FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS,
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR
STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

Defendant/Appellant's SIGNATURE PAGE



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