

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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**Jan 02 2024**

**SC Court of Appeals**

APPEAL FROM BERKELEY COUNTY

Court of Common Pleas

Dale E. Van Slambrook #3079

CASE No.: 2022CP0802386

RONALD D. PRINGLE

CLEO R. PRINGLE

Appellants,

v.

VAK M250 FUND LLC

Respondent.

\*\*\*\*\*

AN APPEAL FROM FINAL JUDGMENT OF MORTGAGE FORECLOSURE

\*\*\*\*\*

INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

Did the trial court err in adjudicating the action using the Uniform Commercial Code?

Did the trial court err its legal conclusion regarding the validity and usage of the allonge(s)?

## STATEMENT OF THE CASE

The Appellants on or about December 27, 1996, signed a contract for an alleged loan to purchase a home for personal, family, and household use. The contract was to serve as a legally binding agreement between the Appellants and First Family Financial Services Inc.

On October 4, 2022, by and through its counsel VAK M 250 Fund LLC commenced a foreclosure action alleging, they were the holder of the instrument entitled to enforce the note. To establish they were the holder of entitled to enforce the alleged note the Plaintiff presented a consumer contract signed by the Appellants titled Combined Note/ Security Agreement and two allonges.

On or about November 22,2023, the Appellants filed a Motion to Dismiss Plaintiff's Complaint for Legal Insufficiency, Lack of Standing and Lack of Jurisdiction. In relevant part the Appellants argued that the South Carolina Commercial Code as its title implies governs commercial transactions on November 29, 2023, the lower court denied the said motion stating " based upon a review of the file this Court concludes that all matters raised in the Plaintiff's Motions have been addressed, waived, or have not been timely raised, therefore Defendant's Motion for Relief has been Denied.

On or about November 22, 2023, the Appellants filed a Petition to Reconsider and Notice of Abuse of Discretion. In relevant part the Appellant requested the petition be heard and ruled under the principles of equity as the proceedings were held, heard, and decided under the court of equity. The Appellants alleged and argued that the court overlooked the previously raised and valid arguments regarding the use and validity of the allonge. On November 29, 2023, the lower court denied relief of the motion. By order of the court the Plaintiff was granted judgment to foreclose on the Appellants property and a sale date of December 6, 2023, was issued. To stop the sale of their property the Appellants under duress paid the alleged amount that was due and owing.

ARGUMENT REGARDING THE APPLICABILITY OF  
THE UNIFORM COMMERCIAL CODE

The standard review for questions of law are reviewed de novo. The recent adjudication in this case raised a fundamental concern regarding the application of the Uniform Commercial Code (UCC) . It is the Appellants contention that the UCC was not the applicable or proper law to adjudicate this action and its application has led to an erroneous outcome.

The Uniform Commercial Code (UCC) is a comprehensive set of laws in the United States that governs various commercial transactions. Its primary purpose is to provide a standardized set of rules and regulations to facilitate and streamline commercial activities ensuring consistency and predictability in business transactions. The legal definition of “commercial” is that which “relates to or is connected with trade and traffic or commerce in general; is occupied with business or commerce”. Black Law Dictionary 270 (6<sup>th</sup> ed. 1990). “Commercial activities is defined as any type of business or activity which is carried on for profit.” (Brown v. Eurocopter S.A. 111 F. Supp. 2d 859 (S.D. Tex. 2000). The transaction subject to the commenced foreclosure does not fall within the scope of a commercial transaction or dealings governed by the UCC. Instead, it involves the nature of a consumer transaction . A transaction is a consumer transaction when the obligation is primarily for personal, family, or household purposes and the collateral is held or acquired primarily for personal, family, or household purposes. (Crozier v. Wint 736 F.3d 1134 (8<sup>th</sup> Cir. 2013). In light of these arguments, we respectfully request this Court to reconsider the choice of the UCC as the governing law for this action. A more appropriate legal framework such as a contract law should be considered to ensure a fair and just adjudication.

ARGUMENT REGARDING THE USE AND  
VALIDITY OF AN ALLONGE

The standard review for questions of law are reviewed de novo. In an attempt to prove standing and interest the Respondent presented two allonges. In relevant part the Appellants argue that the allonge used is not valid. The purpose of an allonge is to provide additional space for indorsements when the “negotiable instrument” doesn’t have enough space for additional indorsements (Black Law Dictionary 4<sup>th</sup> Ed.) If a negotiable instrument has space on the back sufficient for an indorsement the allonge is considered void and ineffective. In this instant the consumer contract subject to this action is not a negotiable instrument. Considering for a moment the contract was a negotiable instrument the instrument/ contract presented by the Respondent has sufficient space for additional indorsements therefore the use of the allonge was not needed and therefore is not valid as a mater of law.

In the Court of Appeal in California, Fourth District (*Pribus v Bush* 118 Cal. App 3d 1003 Cal Ct. App. 1981 173 Cal. Rptr. 747) affirmed judgment of the trial court who ruled signature on the paper attached 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 paper so firmly affixed thereof. The code, however, 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 issued under the code, however the court ruled "the code did instruct where to look for the law with to resolve the issue. Section 1103 states that unless displaced by the particular provision of this code, the principle of law and equity, including the law merchant shall supplement its provisions and that the sections Uniform Commercial Code comment notes state "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 issued the court decided the case according to the rules on allonge of the law merchant. The majority view was that the law merchant introduced and permitted the use of an allonge only when there was no longer room on the negotiable instrument itself to write and indorsement. 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.

*Bishop v Chase* (1990)156 Mo. 158 {56 S.W 1080} indicates the law of merchant rule on allonges was developed as a refinement of the basic rules that an indorsement must be on the instrument itself. The basic rule must have become impractical when strictly applied in certain multiple indorsement 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 wafer because the back of the note was covered with previous indorsement. The defendants, citing the basic rule contended that no indorsement had been made and 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 bills and notes because it was a convenient mode of making the transfer, and in order that the evidence thereof might accompany the note. The Court found the Negotiable Instrument Act intended prior law not in conflict with the act to supplement the act.

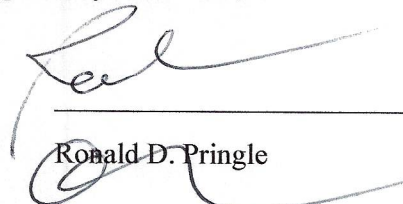
In any case nor provided for in this title the rule of the law merchant shall govern. (Stats. 1921, Ch. 194, 12, p. 215) thus it has been held that the act was but a statutory affirmation of the rule of the old law merchant and that an allonge was only allowable when the back of the instrument itself was so covered with previous indorsements. The Court concluded that the majority view of the law merchant relating to allonges is the better reasoned one, and is the view adopted by Legislature. The cited cases has persuasive authority based on the quality of reason, consistency with legal principles, the facts and circumstances of the persuasive cases cited is similar to the instant action The California Code definition of holder is like South Carolina 36-1-201(b)(21)(a) which defines a holder as the person in possession of a negotiable instrument that is payable either to the bearer or an identified person that is in possession.

The California Code regarding the indorsement is like South Carolina Code 36-3-204 in relevant part which state that “for the purpose of determining whether a signature is made on an instrument a paper affixed to the instrument is part of the instrument. The South Carolina Uniformed Commercial Code also does not say whether 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 provision of this act, the principles of law and equity, including the law of merchant and the law relative to capacity to contract, principle, and agent ,estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions therefore the lower court would also look to the law merchant would result to the same decision and conclusion as the cited case(s). In light of these arguments, we respectfully request the appellate court to apply the proper legal standards and precedent that will render the use and validity of the allonge in this action invalid and inadmissible.

#### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the of the Court of Common Pleas.

Respectfully Submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that on January 2, 2024, the Appellants Ronald D. Pringle and Cleo R. Pringle Appellant Initial Brief were served to counsel of record, via first class and electronic mail as follows:

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