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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

APPEAL FROM BEAUFORT COUNTY

Benjamin C.P. Sapp, Special Referee, Circuit Court

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 . . . . . Respondent,

v.

Terry Lennette Grant . . . . . Appellant.

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APPELLANT AMENDED INITIAL BRIEF

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## STATEMENT OF ISSUES ON APPEAL

- 1) DID THE TRIAL COURT ERR IN FAILING TO FIND THIS ACTION BARRED BY RES JUDICATA?
- 2) DID THE TRIAL COURT ERR IN GRANTING RESPONDENT FORECLOSURE JUDGMENT WHEN CLEAR AND CONVINCING EVIDENCE PROVED FRAUD, MISREPRESENTATION AND DECEPTION BY A PREPONDERANCE OF THE EVIDENCE AT THE HANDS OF RESPONDENT'S REPRESENTATIVES THROUGHOUT THESE PROCEEDINGS?
- 3) DID THE TRIAL COURT ERR BY GRANTING RESPONDENT JUDGMENTS WHEN RESPONDENT NEVER PROVIDED ORIGINAL NOTE OR THE ORIGINAL MORTGAGE AS BY BY LAW WHEN EACH LAWSUIT WAS FILED?

## STATEMENT OF THE CASE

Plaintiff 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 brought this foreclosure action against Terry Lennette Grant on December 1, 2009<sup>1</sup>, April 12, 2010<sup>2</sup> and June 29, 2016<sup>3</sup>. Grant answered by alleging Deutsche Bank National Trust Company's claim was precluded by "Order" in prior actions against Grant for the same cause of action. Foreclosure judgment granted to Respondent on May 28, 2014 by Judge Marvin H. Dukes, III was dismissed and vacated along with all supplement judgments in this case on January 14, 2016<sup>4</sup> by and through the Order of Judge Marvin H. Dukes, III, case, which included

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<sup>1</sup> See Exhibit #1 Complaint and Summons dated December 1, 2009 C/A No.:2009CP0705612

<sup>2</sup> See Exhibit #2 Complaint and Summons dated April 12, 2010 C/A No.:2010CP0701690

<sup>3</sup> See Exhibit #3 Complaint and Summons dated June 29, 2016 C/A No.: 2016CP07001466

<sup>4</sup> See Exhibit #4 Order by Judge Marvin H. Dukes, III dated January 14, 2016 Vacating and dismissing C/A No.: 2010CP0701690 foreclosure judgment granted on May 28, 2014 and any supplemental judgments.

Judgment Order dated February 7, 2014.

After Judge Dukes' recusal, the Special Referee was appointed without a hearing or consideration of Grant's rejection and opposition to this appointment. A hearing was scheduled by the Special Referee for May 4, 2023<sup>5</sup> to hear all Motions, Plaintiff's and Defendants'. Grant was under medical care and she sent her Power Of Attorney in order not to delay the process. The Respondent and Special Referee denied Grant's Power of Attorney to make any statement nor present any information that was already submitted on the record. Grant's Power of Attorney offered to answer from all documents Grant has already prepared and submitted. Special Referee stated that he will read<sup>6</sup> everything prior to making a ruling. The Special Referee continue to allow Burgess, Respondent's attorney of record to present their case.

At the conclusion of the hearing, the Special Referee ordered both parties to prepare a proposed order. He requested to have proposed orders emailed to him within 30 days<sup>7</sup>. Grant<sup>8</sup> and Burgess entered proposed orders by June 5, 2023. On June 12, 2023 the Special Referee signed Respondent's proposed order. Then it was filed on June 28, 2023 in the record. Grant filed a Motion to Reconsider Special Referee's decision on July 7, 2023<sup>9</sup>; however, it was denied on September 1, 2023<sup>10</sup>.

Grant sought dismissal of all claims, judgments and sale of her property based on the

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<sup>5</sup> See Exhibit #5 Transcript of hearing dated May 4, 2023

<sup>6</sup> See Exhibit #5 Transcript of hearing dated May 4, 2023 pg.6, line 15-pg.9 line 4

<sup>7</sup> See Exhibit #5 Transcript of hearing dated May 4, 2023 pg.27, line 2-pg.28 line 20

<sup>8</sup> See Exhibit # 6: Grant's Proposed Order filed on June 5, 2023

<sup>9</sup> See Exhibit # 7: Grant Motion to Reconsider dated July 7, 2023

<sup>10</sup> See Exhibit #8: Order By Special Referee dated September 1, 2023, (On Appeal) Denying Grant Motion to Reconsider dated July 7, 2023

following: (1) Doctrine of Res Judicata , (2) Fraud, Misrepresentation and (3) Lack of Standing. Instead of reviewing the facts and evidence Grant submitted throughout this case since December 1, 2009 up to last filing from Grant, the Special Referee, appointed to 14th Circuit Court entered an order granting Plaintiff's/Respondent Motion for Summary Judgment, Foreclosure and Sale of Grant's .46 acre parcel with house at 226 Wild Horse Rd on Hilton Head Island, South Carolina 29926. The Court denied Grant Motion for Summary Judgment and Motion to Reconsider decision. Further Special Referee just signed every document prepared by Respondent as noted in the identifying, law firm's file, referenced by number B&S File Reference Number 15-22471<sup>11</sup> and 15-471 FC02. Grant filed her notice of appeal on September 5, 2023.

### **STANDARD OF REVIEW**

1. Substantial Evidence. Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971).

2. Clearly Erroneous. “Review under the clearly erroneous standard is significantly deferential.” Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court's findings unless it's left with the “definite and firm conviction that a mistake has been committed.” Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982).

3. Abuse of Discretion. Under this standard, an appellate court with “uphold any district court determination that falls within a permissible range of permissible

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<sup>11</sup> See Exhibit #:9: Order by Special Referee Benjamin C. P. Sapp signed on June 12, 2023 but filed on June 28, 2023 (On Appeal)

conclusions.” Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 400 (1990). Under this standard, the court of appeals must affirm unless it determines that “the district court has made a clear error of judgment, or has applied an incorrect legal standard.” Alexander v. Fulton County, 207 F.3d 1303, 1326 (11th Cir. 2000).

4. De Novo. The court gives no deference to the lower court’s decision and applies the same standard as the district court. Whatley v. CNA Ins. Co., 189 F.3d 1310, 1313 (11th Cir. 1999).

5. When reviewing the grant of a summary judgment motion, appellate courts apply the same standard which governs the trial court under Rule 56(c), SCRPC, which states that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 150-51, 607 S.E.2d 63, 65 (2004); see also Schmidt v. Courtney, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003) (stating all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party)

## **FACTS**

On December 1, 2009 Respondent filed a lawsuit against Terry Lennette Grant without having attached Note or Mortgage as required by law. (See C/A No.2009CP0705612) Respondent filed this lawsuit on an alleged Note and Mortgage dated September 18, 2006. The Mortgage Respondent claim that was with GreenPoint Mortgage and Grant has been assigned to

Deutsche Bank. However, the Mortgage that Grant had with GreenPoint Mortgage was dated December 8, 2003 for \$398,000<sup>12</sup> and it was paid in full April 21, 2004<sup>13</sup> as evidenced by the release in the amount of \$398,000, well before this Mortgage in 2006. Once Grant provided the release Respondent, then had an assignment of Mortgage created.

On December 2, 2009 Respondent had an assignment of mortgage created and filed on December 10, 2009. (See Assignment of Mortgage<sup>14</sup>)<sup>15</sup> This assignment of mortgage has nothing to do with GreenPoint Mortgage and what Grant is being sued for did not mention GreenPoint. The Lender was allegedly NovaStar Mortgage, Inc. on this September 18, 2006 document. The Note allegedly signed on September 18, 2006<sup>16</sup> did not and does not have the original signature of Grant at a closing that allegedly took place on September 18, 2006. There is an email<sup>17</sup> dated September 19, 2006 that clearly shows that a closing did not take place as Respondent claims.

On February 12, 2010 Respondent filed a Notice of Dismissal<sup>18</sup>, dismissing the case they filed on December 1, 2009. (See Exh.#17 Notice of Dismissal)

On April 12, 2010 Respondent filed a lawsuit against Terry Lennette Grant without

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<sup>12</sup> See **Exhibit# 10**: GreenPoint Mortgage for \$398,000 dated December 8, 2003

<sup>13</sup> See **Exhibit #11**: Release of Mortgage for \$398,000 dated April 21, 2004 and **Exhibit #12** Satisfaction of Mortgage for Grant dated January 13, 2023 from GreenPoint

<sup>14</sup> See **Exhibit #13** Assignment of Mortgage dated December 2, 2009 filed December 10, 2009 after lawsuit was initiated

<sup>15</sup> BAC Home 9 Loan Serv. v. McFerren, 2013-Ohio-3228 (9th Dist.)

<sup>16</sup> See **Exhibit#14**: Alleged Mortgage dated September 18, 2006 and See **Exhibit #15**: Alleged Note dated September 18, 2006

<sup>17</sup> See **Exhibit # 16**: email dated September 19, 2006 closing did not have taken place as evidenced within this email

<sup>18</sup> See **Exhibit #17**: Notice of Case Dismissal dated February 12, 2010 (Why did they dismiss the case?)

having attached Note or Mortgage as required by law. (See Exh. #2 C/A No.2010CP0701690)

On June 25, 2012 Respondent had an allonge<sup>19</sup> created and submitted to the court at some point of this process. It was not attached to the Original Note or to the Complaint when lawsuits were filed. (See **Exhibit #18 and 18a** Allonges<sup>20</sup>)

On February 7, 2014 Judge Marvin H Dukes, III granted Respondent's Motion for Summary Judgment and Ordered a reformation of subject mortgage

On May 28, 2014 Judgment Marvin H Dukes, III granted Respondent a foreclosure judgment. (See **Exhibit # 19** Judge Dukes Order granting foreclosure judgment)

On or around January 05, 2016 Respondent filed to have this case vacated and dismissed claiming it was no longer equitable; on January 14, 2016, Judge Marvin H Dukes, III Order granted Respondent's Motion and he vacated and dismissed this foreclosure judgment actions and any supplemental judgment's in this case which included February 7, 2014 reformation judgment. (See **Exhibit #4** Order dated January 14, 2016<sup>21</sup> pages 1 & 2) Form 4 indicates that the Judgment against Grant was dismissed and this order ends the case.

On January 29, 2016 Respondent (Same and/or almost identical) filed a third lawsuit against Terry Lennette Grant for the same causes of action in the previous two lawsuits and arised from the alleged same transaction.(See **Exhibit #3** C/A No. 2016CP01466)

On June 22, 2017 Respondent filed Memorandum in Support of Motion for Summary

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<sup>19</sup> See **Exhibit #18** Allonge dated June 25, 2012, almost three years after the initial lawsuit in 2009 and the second lawsuit.in 2010

<sup>20</sup> See **Exhibit #18a**:the second Allonge created sometime in January of 2023. It was introduced as an exhibit at William H Sloan, Jr.'s deposition. Totally different Allonge lacking information such as date and not attached to Original Note as required by law.

<sup>21</sup> Order dated January 14, 2016 and Form 4 attached

Judgment with attached exhibits<sup>22</sup>. (See **Exhibit #20** exhibits in Support of Memorandum dated June 22, 2017 )

On or around September 15, 2018, Grant filed bankruptcy.

On or around September 20, 2018 Respondent filed a Motion to Stay case due to bankruptcy.

On November 9, 2018 Respondent had a document created entitled “Corrective Assignment of Mortgage<sup>23</sup>”, which was filed in the Beaufort County Record of Deed on November 16, 2018.

On or around December 18, 2018 Grant came out of bankruptcy.

On May 5, 2020 Respondent filed Motion to restore foreclosure action against Grant.

On August 3, 2021 hearing was held without the presence of Grant, because she was not served<sup>24</sup>. Respondent in concerted effect with the assistance of the Clerk of the Court, violated Judge Marvin H Dukes, III Order date May 22, 2018<sup>25</sup>, “ all correspondence should be sent to Grant P O Box 21936, Hilton Head Island, SC 29925”. The Clerk of Court sent a hearing notice for August 3, 2021 to Grant’s physical address where there is no receptacle<sup>26</sup>. She was not in attendance because she was not served. Judge Marvin H Dukes, III did not examine or even look

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<sup>22</sup> The Alleged Note was introduced at this time. Electronic Clock stamped by clerk of Court dated June 22, 2017; however, foreclosure judgment stamp by Hon. Marvin H. Dukes, III from May 28, 2014 not present on this 2017 document. (**Exhibit # 21**) Alleged Note submitted as exhibit for January 13, 2023 deposition. Compare Alleged Noted signature from January 13, 2023 to the one dated June 22, 2017.

<sup>23</sup> See **Exhibit #22** Corrective Assignment of Mortgage dated November 9, 2018 and record to Beaufort County Recorder of Deeds On November 16, 2018 while Grant was under bankruptcy protection

<sup>24</sup>Roche v. Young Bros., 318 S.C.207,,456 S.E. 2d 897 (1995) Service of process serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of a reasonable notice of action.

<sup>25</sup> See **Exhibit #23**: Dukes Order of May 22, 2018

<sup>26</sup> See **Exhibit #24** Return of Clerk of Court August 6, 2021

at alleged Original Note or Mortgage prior to granting foreclosure judgment against Grant. (See Exhibit #25 Transcript of hearing stated August 3, 2021 pg. 6, line No. 6-10).

On August 6, 2021 Judge Marvin H Dukes, III granted Respondent's foreclosure judgment against Grant.

On August 6, 2021 clerk of court entered into the Public index system a Return of August 3, 2021 Notice of hearing for August 3, 2021. Clerk of Court mailed notice of August 3, 2021's hearing to Grant physical address, in violation of Judge Dukes' May 22, 2018's Order. (See **Exhibit # 24** Return to Clerk)

On September 3, 2021 Notice of Appeal was received by the Court of Appeals. It was filed and served on Judge Dukes court halting any foreclosure sale of her property. Judge Dukes pulled Grant's property after receiving notice from the September 7, 2021 foreclosure sale.

October 13, 2021 SC Court of Appeal filed and Order remanding case to Master-In-Equity for consideration of Grant's Motion for Relief. It was not clocked into Beaufort County Public Index until November 19, 2021, over 30-days later.

On January 18, 2022 Notice and Motion for Relief of Judgment<sup>27</sup> filed by Grant's then attorney of record.

On January 20, 2022 by and through Grant's attorney of record filed additional exhibits to support Motion for Relief (See Exhibits that were attached 1-30k of that Motion).

On May 6, 2022 Consent Order granted to Vacate Foreclosure Judgment. (See **Exhibit # 26** Consent Order)

On September 7, 2022 Respondent filed a Motion for Summary Judgment

On October 6, 2022 Grant filed Response in Opposition to Respondent's Motion for

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<sup>27</sup> See **Exhibit # 25** Grant's Motion for Relief of Judgment

Summary Judgment. (See **Exhibit #27** Grant Response in Opposition)

On October 21, 2022 Grant filed Motion for Summary Judgment. Memo in Support of MSJ with exhibits to support her motion. (See **Exhibit # 28** Grant's MSJ)

On October 26, 2022 Respondent filed Memo in Opposition to Motion for Summary Judgment. (See Exhibit #29 Respondent Memo in Opposition to Grant's MSJ)

On October 28, 2022 hearing was held and Grant filed a Return to Respondent Opposition of Defendant's MSJ. (See **Exhibit #30** Grant's Return to Respondent Opposition)

On November 30, 2022 hearing was held however, no court reporter was available. Hearing did not commence. Grant served on Respondent and the Court additional case.

On December 1, 2022 Judge Marvin H Dukes, III filed an Order vacating Order of Reference and Order of Recusal. (See **Exhibit #31** Order of Recusal)

On December 19, 2022 Respondent filed Notice of Deposition for William H Sloan Jr, Appellant's previous attorney. Deposition scheduled for January 13, 2023.

On January 13, 2023 Grant attended the virtual deposition of her former attorney William H. Sloan, Jr. (See Exhibit #32 and 32a: pg 65, line no. 12-21 and pg. 87, line no. 14, specifically)

On February 14, 2023 Respondent filed an Order/Order Cover Sheet; however, Grant was never served this Order and can not retrieve this Order from the Public Index.

On February 21, 2023 another document created by Respondent entitled Order of Reference appointing Special Referee and signed by Judge Carmen T Mullen also bears the Respondents in-house file number B&S No.: 15-22471 as do all other documents that was signed by Judge and Special Referee. (See **Exhibits #33** Order of Carmen T Mullen)

On March 3, 2023 Grant filed a Supplement to Memo in Support of her Motion for

Summary Judgment and Supplement Response in Opposition to Respondent MSJ. (See Exhibit #34 Grant's supplement to her memo in support of her MSJ.)

On March 9, 2023 Grant filed Opposition/Reconsideration and Appeal of appointment of Special Referee. See Exhibit# 36 Opposition to Judge Mullen's appointment of Special Referee)

On May 4, 2023 a hearing was held. The Special Referee stated from the bench that he would read everything submitted during this case. Respondent conceded that HUD Closing Settlement Statement was unsigned. (See Exhibit #5 Transcript of hearing May 4, 2023 pg. 17, line no. 8-10; See Exhibit # 33 Sloan's Deposition pg. 65, line no. 12-21)

On June 28, 2023 Respondent again prepared another document from in-house file identified by File reference: 15-22741 for the Special Referee to sign Order<sup>28</sup> granting Foreclosure Judgment and Sale and Denying Grant Motion for Summary Judgment. It was signed on June 12, 2023.

On July 28, 2023, Clerk of Court entered another Return that Clerk sent Order to Grant physical address in violation of Judge Dukes' May 22, 2018 Order to mail correspondence to Grant's P O Box 21936, Hilton Head Island, SC 29925.

On September 1, 2023 Special Referee signed another Order<sup>29</sup> Denying Grant's Motion to Reconsider. As with the other documents he signed, it was prepared by the Respondent identified by in-house file reference numbers 15-22471 and CID541361, DID200284. Form 4 in blank and does not identify the alleged Judgment or case status.

On September 5, 2023 Grant filed and served Notice of Appeal on Court and Respondent.

On September 7, 2023, Respondent created another document from their in-house file

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<sup>28</sup> See Exhibit #9 June 28, 2023 Special Referee Order

<sup>29</sup> See Exhibit #8 September 1, 2023 Special Refere's Order

identified by B&S 15-22471 as do all others that were signed by the Judge and Special Referee. Here it was prepared for the Special Referee's signature. On this same day Grant filed Notice of Appeal of Special Referee's Order and Reconsideration of Decision granting Plaintiff Motion for Summary Judgment.

On September 18, 2023 Clerk of Court entered another Return Order Denying grant Motion to Reconsider, which was mailed in violation of Judge Dukes' May 22, 2018 Order that all correspondence be mailed to Grant's P O Box 21936, Hilton Head Island, SC 29925.

October 4, 2023 Special Referee electronically filed Notice of Sale, even though Respondent claimed that the Special Referee document must be submitted and stamped by Court not electronically filed. This notice stated that foreclosure sale is scheduled for November 3, 2023, which is a Friday, not consistent with Beaufort County foreclosure sale procedures.

October 18, 2023 Respondent sent email to Grant with foreclosure sale date of November 7, 2023, Tuesday which is also not consistent with Beaufort County foreclosure sale procedure.

On November 2, 2023 Grant filed Motion for a Stay Pending Appeal and/or Motion to Vacate.

On November 9, 2023 Grant received an email from Respondent with an unsigned Order, stating that the foreclosure sale was successful on November 3, 2023 and Deutsche Bank was the highest bidder.

On November 21, 2023 an Order<sup>30</sup> was filed that was prepared by Respondent identified by file reference:15-22471 for Special Referee's signature which was allegedly signed on November 16, 2023. It was not clocked in by the Clerk of Court; however, it was electronically filed. Form 4 is not complete, Judgment

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<sup>30</sup> See Exhibit #37 Order of Special Referee dated November 21, 2023

Index Information area is blank, just like the previous Form 4 and all identified by B&S File No.: 15-224741 FC02 from in-house of Brock and Scott, PLLC Law firm filing system.

## **ARGUMENTS**

### **I. STANDARD OF REVIEW**

**Substantial Evidence.** Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

**Clearly Erroneous.** “Review under the clearly erroneous standard is significantly deferential.” *Concrete Pipe and Prods. v. Construction Laborers Pension Trust*, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court’s findings unless it’s left with the “definite and firm conviction that a mistake has been committed.” *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855 (1982).

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard which governs the trial court under Rule 56(c), SCRPC, which states that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 150-51, 607 S.E.2d 63, 65 (2004); see also *Schmidt v. Courtney*, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003) (stating all ambiguities,

conclusions, and inferences arising from the evidence must be construed most strongly against the moving party)

**I. BECAUSE RESPONDENT FILED THREE OR MORE LAWSUITS AGAINST APPELLANT, RESPONDENT IS BARRED BY RES JUDICATA<sup>31</sup> FROM BRING THIS SUIT**

Respondent “Deutsche Bank National Trust Company” filed its initial lawsuit December 1, 2009. Respondent filed 2nd lawsuit April 12, 2010 and Respondent filed 3rd lawsuit on June 29, 2016<sup>32</sup>. The doctrine of res judicata bars subsequent litigation where four elements were met: (1) the prior decision was rendered by a court of competent jurisdiction; (2) there was a final judgment on the merits; (3) the parties were identical in both suits; (4) the prior and present causes of action are the same<sup>33</sup>. Further Grant has submitted substantial evidence to support that this case should have been barred on the Doctrine of Res Judicata<sup>34</sup> as a matter of law<sup>35</sup>.

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<sup>31</sup> *Trustmark Insurance v. ESLU, Inc.*, 299 F.3d 1265 (11th Cir. 2002) Holding that res judicata prevented a plaintiff from bringing successive lawsuits for separate breaches of the same contract, committed by the same party, and involving the same general type of conduct even where different causes of action are alleged

<sup>32</sup> *Modern Pharmacy, LLC v. JM Smith Corp.*, Civil Action No. 19-25246-Civ-Scola, 3-4 (S.D. Fla. Mar. 4, 2020) (“*See Trustmark Ins. v. ESLU, Inc.*, 299 F.3d 1265, 1270 (11th Cir. 2002) (holding that res judicata prevented a plaintiff from bringing successive lawsuits for separate breaches of the same contract, committed by the same party even where different causes of action are alleged). Moreover, the “factual bases for both lawsuits are related in time, origin, and motivation, and they form a convenient trial unit,” and therefore, this second case constitutes claim splitting”)

<sup>33</sup> *Lobo v. Celebrity Cruises, Inc.*, 704 F.3d 882, 892 (11th Cir. 2013). Eleventh Circuit precedent explains that claims are part of the same cause of action when they “arise out of the same transaction or series of transactions.”

<sup>34</sup> Res judicata bars subsequent suit by the same parties on the same issues. *Bell v. Boyd*, 252 S.C. 289, 166 S.E. (2d) 104 (1969). Res judicata also bars subsequent suit by the same parties when the claims arise out of the same transaction or occurrence that is the subject of the \*191 prior suit between those parties. *Jaynes v. County of Fairfield*, 303 S.C. 434, 401 S.E. (2d) 183 (Ct. App. 1991).[1]

<sup>35</sup> 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.*

- 1) The first factor is met in this case because prior decisions were rendered by a court of competent jurisdiction. Twice the court granted Respondent foreclosure judgments against Grant. Twice Respondent had them vacated and dismissed.
- 2) The second factors was met because there were final judgments of the merits; however, Respondent decided not to pursue the foreclosure judgment when granted writing, “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” and “further request that the Judgment of Foreclosure entered on May 28, 2014 be vacated”.
- 3) The third factor is met in this case because these three cases involve the same parties or their privies. The parties in the original action, the second action and this action are almost identical. All are brought against the Defendant Terry Lennette Grant.
  - a) The original action was brought by Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust Series 2006-5, Susan S. White, and Finkel Law Firm LLC dated December 1, 2009. The Law Firm is in privity with Susan S. White because Susan S. White is closely aligned to the Law Firm as to be the Respondent’s representative.
  - b) The second action and this action is brought by Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust Series 2006-5, Susan S White and Finkel Law Firm LLC dated April 12, 2010. The Law Firm is in privity with Susan S. White because Susan S. White is closely aligned to the Law Firm as to be the Respondent’s representative.
  - c) This third action is brought by 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, Wesley

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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).

D.Dail, and Brock & Scott, PLLC dated June 29, 2016. The Law Firm is in privity with Wesley D. Dail, Chad w. Burgess because Wesley D Dail Chad W Burgess is closely aligned to the Law Firm as to be the Respondent's representative.

4) The fourth factor is also satisfied because three cases are based on the same nucleus of operative facts. Each case was filed against Terry Lennette Grant stating that they were a real party of interest with standing to foreclose; however, Respondent did not file original note or mortgage at the time they filed each action. Defendant Grant challenged the validity of those same documents, arguing that they were fraudulently procured and improperly altered. All Respondents' claims arise from the same alleged transaction.

The trial Court erred when Special Referee Benjamin C. P. Sapp granted Respondent foreclosure judgment knowing that all relevant facts shows that this case against Terry Lennette Grant, should have been dismissed with prejudice based on Doctrine of Res Judicata<sup>36</sup>. The trial Court erred when Special Referee Benjamin C.P. Sapp denied Appellant Grant's Motion to Reconsider his decision, even though Appellant Grant brought this defense back up to Special Referee in her Motion to Reconsider his decision granting Respondent foreclosure judgment<sup>37</sup>.

## II. STANDARD OF REVIEW

Substantial Evidence. Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).

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<sup>36</sup> 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, Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996)

<sup>37</sup> Doctrine of Res Judicata; Lanneau, Res Judicata in South Carolina, 4. S.C.L.R.333 (1952)

Clearly Erroneous. “Review under the clearly erroneous standard is significantly deferential.” *Concrete Pipe and Prods. v. Construction Laborers Pension Trust*, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court’s findings unless it’s left with the “definite and firm conviction that a mistake has been committed.” *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855 (1982).

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard which governs the trial court under Rule 56(c), SCRCP, which states that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 150-51, 607 S.E.2d 63, 65 (2004); see also *Schmidt v. Courtney*, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003) (stating all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party)

## **II. THE TRIAL COURT ERR IN GRANTING RESPONDENT FORECLOSURE JUDGMENTS WHEN CLEAR AND CONVINCING EVIDENCE PROVED FRAUD. MISREPRESENTATION AND DECEPTION BY A PREPONDERANCE OF THE EVIDENCE AT THE HANDS OF RESPONDENT’S REPRESENTATIVES THROUGHOUT THESE PROCEEDINGS**

To determine whether fraudulent misrepresentation occurred, the court will look for the following factors: A representation was made: 1)The representation was false; 2) That when made, the plaintiff knew that the representation was false or that the plaintiff made the statement recklessly without knowledge of its truth; 3) That the fraudulent misrepresentation was made

with the intention that the plaintiff or Court rely on it; 4) That the Court did rely on the Respondent's fraudulent misrepresentation; 5) That the Defendant suffered harm as a result of the fraudulent misrepresentation and 6) Grant have suffered loss or damage as a result of the misrepresentation.

Respondent's legal representative's from various law firms<sup>38</sup> fraudulently misrepresented facts, false and fraudulent documents<sup>39</sup> which were presented to the lower court. The lower court relied upon the false information and false documentation that was created, submitted and relied upon but was introduced by Respondent's legal representatives. The Courts relied upon the false documents and information which was a fraudulent misrepresentation by Respondent's legal representatives that Respondent was holder/owner of Original Note and Mortgage at the time of initial filing of each lawsuit December 1, 2009, April 10, 2012 and June 29, 2016. Grant submitted substantial evidence to support the false and fraudulent documents that were fraudulently misrepresented by the Respondent's legal representatives. The following false and fraudulent documents and information submitted, created and relied upon<sup>40</sup>:

- a. (Exhibit #15 Alleged Adjustable Rate Note dated September 18, 2006)
  - i. signature not Grant's, her names spelled with an "i" and not "y"
  
- b. (Exhibit # 15 Prepayment Rider 2 pages)
  - i. signature different from Adjustable Rate Note
  
- c. (Exhibit # 15 Adjustable Rider 3 pages) signature different from Adjustable Rate Note
  
- d. (Exhibit #13 Assignment of Mortgage dated December 2, 2009)
  - i. Evidence that "Deutsche Bank" lack standing to filed lawsuit on December 1, 2009

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<sup>38</sup> The Finkel Law Firm, Callison, Tighe & Robinson, LP and Brock & Scott, PLLC

<sup>39</sup> SC code § 41-8-70 (2013) In addition to other penalties provided for by law, a Person Who knowingly makes or makes any false, fictitious Or fraudulent document, Statement Or report Pursuant to this chapter is guilty of a felony and upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, Or both

<sup>40</sup> *Glaski v. Bank of America, N.A.*, 218 Cal.App.4th 1079, 160 Cal. Rptr. 3d 449 (Cal. Ct. App. 2013)

- e. (Exhibit #18 Allonge to Note dated June 25, 2012)
  - i. not attached to Original Note as required by law
  - ii. Not attached to lawsuits when filed as required by law
  - iii. Evidence that “Deutsche Bank” lack standing to filed lawsuit
  - iv. different loan number
- f. (Exhibit #18a Allonge created on or around January 13, 2023)
  - i. not attached to Original Note as required by law
  - ii. Not attached to lawsuits when filed as required by law
  - iii. Evidence that “Deutsche Bank” lack standing to filed lawsuit
  - iv. no loan number
- g. (Exhibit #19 Judge Dukes signed Order to Reform Mortgage dated February 7, 2014)
  - i. Changed legal description in the Mortgage from another property to make it fit Grant’s property, specifically her house, which she would never mortgage.
- h. (Exhibit #32 & 32a Transcript of William Sloan’s Deposition of January 13, 2023)
  - i. Deposed Lawyer testified that HUD Settlement Statement was unsigned
- i. (Exhibit #35 HUD-1 Settlement Statement)<sup>4142</sup>
  - i. not signed by borrower,
  - ii. Not signed by lender
  - iii. Not signed by closing attorney on September 18, 2006 as Respondent claims<sup>43</sup>
- j. (Exhibit # 16 Email dated September 19, 2006 between NovaStar Mortgage, Inc, Lender and Peter Wolf’s Law firm Closing Attorney)
  - i. support no closing could have taken place
  - ii. Asking which property 3.95 or .46 acres

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<sup>41</sup> In the state of South Carolina and federal law • the Note should be signed by the borrower and the lender. CFR 7 § 764.402 Loan closing signatures are required of the borrower, lender and closing attorney or agent.

<sup>42</sup> HUD 4155.2.6 b, 5,7,8; 4155.2.6.e; 4155.2.a.c; 4155.26a2.6; 4155.1.1.b.1a; 4155.2.6.a.1.c must be signed by borrower; 4155.2.6A.5.. Lender Certificate; The borrower, seller and the selling real estate agent or broker involved in the transaction must certify...

<sup>43</sup> SC code § 41-8-70 (2013) In addition to other penalties provided for by law, a Person Who knowingly makes or makes any false, fictitious Or fraudulent document, Statement Or report Pursuant to this chapter is guilty of a felony and upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, Or both

- iii. HUD not signed
  - iv. HUD 1003 not signed for closing (Uniform Residential Loan Application)
- k. (Exhibit # 22 Corrective Assignment of Mortgage dated November 9, 2018, and recorded November 16, 2018, during Terry Lennette Grant's bankruptcy protection)
- i. Evidence that "Deutsche Bank" lack standing<sup>44</sup> to filed lawsuit on
    - 1. December 1, 2009
    - 2. April 12, 2010, and
    - 3. June 29, 2016
- l. (Exhibit #36 Transcript of August 3, 2021 hearing William Stork, Esq. and Marvin H Dukes, III)
- i. William Stork, Esq claimed he had Original Endorsed Note, but never mentioned a Mortgage
  - ii. Marvin H Dukes, III never examined or looked at the alleged Note or a Mortgage
  - iii. Court Reporter wrote no exhibits were entered into the record.
- m. (Exhibit # 2023 documents)

Grant has suffered the following over the course of these lawsuits:

- a. Fourteen years of lost time
- b. peaceful enjoyment of property
- c. Life
- d. Liberty
- e. Pursuit of Happiness as entitled under the Constitution,
- f. Filing, mailing, and postage fees
- g. Typing assistant fee
- h. Loss of property via fraudulent foreclosure sale of said property.

### **III. STANDARD OF REVIEW**

Substantial Evidence. Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).

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<sup>44</sup> Fed. Home Loan Mtge. Corp. v. Schwartzwald 2012-Ohio-5017 this court held that standing is determined by an interest in the note or mortgage at the time of the filing of the complaint.

Clearly Erroneous. “Review under the clearly erroneous standard is significantly deferential.” Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court’s findings unless it’s left with the “definite and firm conviction that a mistake has been committed.” Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982).

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard which governs the trial court under Rule 56(c), SCRCP, which states that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 150-51, 607 S.E.2d 63, 65 (2004); see also Schmidt v. Courtney, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003) (stating all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party)

**III. BECAUSE THE RESPONDENT HAS NOT PROVIDED ORIGINAL NOTE AND ORIGINAL MORTGAGE WHEN RESPONDENT FILED EACH LAWSUIT AGAINST APPELLANT RESPONDENT DID NOT HAVE **STANDING**<sup>45</sup> TO FILE THOSE ACTIONS**

Respondent did not submit an Original Note or Mortgage documents when the suit was filed December 1, 2009. The Original Note or Mortgage was not attached to the

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<sup>45</sup> *Floyd v. Bank of Am., N.A.*, CASE NO. 1:13-cv-2072 (N.D. Ohio July. 25, 2014) Dismissing OCSA claim when plaintiffs “have not shown that a consumer transaction has occurred”

complaint and summons when suit was filed on December 1, 2009<sup>46</sup>. Respondent did not file an Allonge of Note when the suit was filed on December 1, 2009. The Allonge of Note<sup>47</sup> was not attached to the Original Note when the suit was filed on December 1, 2009.

Respondent did not file Assignment of Mortgage when suit was filed on December 1, 2009, because Respondent did not have the assignment to file with the suits, as required by law<sup>48</sup>. Assignment of Mortgage was created on December 2, 2009 and filed into the Beaufort County Recorder of Deeds on December 10, 2009<sup>49</sup>. (See Exhibit #1 Complaint and Summons C/A 2009CP07005612 and Exhibit #13 Assignment of Mortgage<sup>50</sup>)

Respondent did not file that list “NovaStar Mortgage, Inc. as the Lender dated

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<sup>46</sup> *Glaski v. Bank of America, N.A.*, 218 Cal.App.4th 1079, 160 Cal. Rptr. 3d 449 (Cal. Ct. App. 2013)

<sup>47</sup> In *Carpenter v. Longan* (1872) 83 U.S. 271: The Supreme Court found the note and mortgage to be inseparable, holding that under Colorado law, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.

<sup>48</sup> In *Carpenter v. Longan* (1872) 83 U.S. 271: The Supreme Court found the note and mortgage to be inseparable, holding that under Colorado law, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.

<sup>49</sup> *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. § 36-3-203(b) (Supp. 2012) (providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note."

<sup>50</sup> *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. § 36-3-203(b) (Supp. 2012) (providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note."

September 18, 2006; however, there was no assignment of mortgage<sup>51</sup> to Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5.

The trial Court erred when Special Referee Benjamin C.P. Sapp granted Deutsche Bank foreclosure judgment without Respondent being in possession of Original Note and Mortgage when this case was filed as required by law. Each lawsuit filed by Respondent on behalf of Deutsche Bank was not accompanied by Original Note and Mortgage. This was clearly evident by Respondent's creation of multiple documents through this case since December 2, 2009 Assignment of Mortgage document until the January 13, 2023 Allonge of Note created and submitted for deposition. As the law stated, the assignment of mortgage alone is nullity. It must be accompanied by the Original Mortgage and it was not. In addition, the law states that an Allonge must be affixed to the Original Note. In this case it was never affixed to the Original Note. The law also states that the Note and Mortgage are inseparable. In *Carpenter v. Longan* (1872) 83 U.S. 271 (The Supreme Court found the note and mortgage to be inseparable, holding that under Colorado law, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. The Supreme Court held: "All the authorities agree that the debt is the principal thing and the mortgage an accessory.

The trial Court erred when Special Referee Benjamin C.P. Sapp did not examine Appellant's record filed in the Court that was before him prior to making a ruling. The transcript of the hearing dated May 4, 2023 shows that the Special Referee relied upon

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<sup>51</sup> In *Carpenter v. Longan* (1872) 83 U.S. 271 The Supreme Court found the note and mortgage to be inseparable, holding that under Colorado law, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.:

Chad W Burgess presentation and the alleged fact that Judge Dukes examined or saw these documents. ( See Exh #5 Transcript May 4, 2023 pg.23 Line No.24–pg25, line no.25) The Special Referee never asked to see the Original Note. The information relied upon is at the misrepresentation of Chad W Burgess to the Court trial Special Referee should constitute fraud and misrepresentation. The Special Referee did not examine all documents carefully and just signed an order that Chad W. Burgess out before him wrongfully granting Respondent foreclosure judgment<sup>52</sup> and illegally selling Gant’s property.

### **CONCLUSION**

For the reasons stated, this Court should reverse the judgments and orders of the circuit court Special Referee Benjamin C.P. Sapp entered on June 28, 2023 and September 1, 2023 and any other supplemental judgments and orders entered, which shall include the foreclosure judgments and sale of Grant’s property that took place on November 3, 2021.

Respectfully Submitted,

**THIS SPACE ABOVE AND BELOW  
HAVE BEEN INTENTIONALLY LEFT BLANK**

**APPELLANT SIGNATURE PAGE TO FOLLOW**

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<sup>52</sup> See Order dated November 21, 2023

**APPELLANT SIGNATURE PAGE**  
APPELLANT'S AMENDED INITIAL BRIEF

Respectfully submitted,



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February 25,, 2024