

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Mikell R. Scarborough
Master in Equity for Charleston County

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SC Court of Appeals

Case No. 2010-CP-10-6060

Appellate Case No. 2023-000819

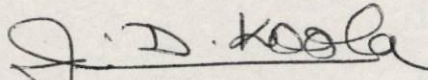
U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, Respondent,

v.

Johnson D. Koola, First Citizens Bank and Trust Company, Inc. f/k/a/ First Citizens Bank and Trust Company of South Carolina, and Cambridge Lakes Condominium Homeowners Association, Inc., f/k/a Cambridge Lakes Horizontal Property Regime, Defendants,

Of whom Johnson D. Koola is the appellant.

APPELLANT'S FINAL RELPY BRIEF



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Appellant's Response to U.S. Bank Trust's Argument I

U.S. BANK TRUST LACKED STATUTORY STANDING AND, MORE IMPORTANTLY, CONSTITUTIONAL STANDING IN ITS FORECLOSURE ACTION.

In argument I, U.S. Bank Trust has argued, "The Trial Court did not err in concluding U.S. Bank Trust has standing to foreclose." (Appellee's Initial Brief, p. 8, line 10). Under South Carolina laws, the party moving for summary judgment in a foreclosure action has the burden to prove standing, which it did not. Instead, it provided a lengthy summation of the issues from the Master in Equity's April 13, 2023, Order. Koola replies to each of the summations from the Master in Equity's Order.

1 An assignment of mortgage conveying the subject debt to U.S. Bank Trust was recorded on January 31, 2019. (Appellee's Initial Brief, p. 8, lines 16-19).

U.S. Bank Trust filed copies of the Assignment of the Mortgage from Ditech Financial, LLC to it. (R. p. 230, p. 232, p. 234). The Master in Equity *erred in claiming that assignment of the mortgage conveyed debt* to U.S. Bank Trust. The Note conveys the debt from one creditor to another.

2 An Order substituting U.S. Bank Trust as plaintiff was filed on October 25, 2019.

The Order substituting U.S. Bank Trust has no relevance in the Summary Judgment Motion Hearing in March 2023. (Appellee's Initial Brief, p. 8, lines 19-20).

3 Koola filed a Supplemental Brief opposing Plaintiff's Motion for Summary Judgment. (Appellee's Initial Brief, p. 8, lines 21-29).

In the Brief, Koola argued that U.S. Bank Trust: (i) is not the holder of Koola's Note and Mortgage, (ii) lacked statutory and constitutional standing, and (iii) the Master in Equity lacked jurisdiction over U.S. Bank Trust and its claims. (R. p. 101, line 8-p. 107, line 24; p. 107, line 30-p. 108, line 9).

In the Motion for Summary Judgment, U.S. Bank Trust did not provide any proof to show that it is the holder of Koola's Note to pursue the foreclosure action. Nevertheless, the

Master in Equity Court concluded as law that *U.S. Bank Trust produced the Note and Mortgage*, granted Summary Judgment to U.S. Bank Trust, and ordered foreclosure sale. (R. p. 017, lines 20-21). This is a ground for reversing the Master in Equity's Order. (R. pp. 006-023).

The Master in Equity did not address U.S. Bank Trust's lack of standing in the foreclosure case. Nevertheless, U.S. Bank Trust claim, "The Trial Court did not err in concluding U.S. Bank Trust has standing to foreclosure," is a frivolous claim. Koola cited several case laws to prove that U.S. Bank Trust lacked standing – statutory and constitutional standing – in the foreclosure case. U.S. Bank Trust has also raised standing and jurisdiction in Argument 1 a. (Appellee's Brief, p. 9, line 27-p. 11, line 3). Case laws in support of Koola's argument that U.S. Bank Trust lacked standing are presented under Koola's response to U. S. Bank Trust's Argument 1.a. (This Final Reply Brief, p. 9, p. 10, line 20-p. 12, line22; Appellant's Final Brief, p. 8, line 13-p. 10, line 11; R. p. 101, line 9-p. 107, line 24).

4 *U.S. Bank Trust and its servicer Fay Servicing "lack standing in Koola's foreclosure case as they have not established that they have standing in Koola's foreclosure case and have a right to enforce a claim against Koola in the foreclosure case under substantive laws of South Carolina; they are not the real party in interest under South Carolina Rules of Civil Procedure."* (Appellees' Brief, p. 8, lines 23-29).

Koola did not make any unsubstantiated claims. Every claim or argument was supported by laws or case laws. (Appellant's Final Brief, p. 6, line 17-p. 7, line 28).

5 *"Defendant Koola cites the lack of an endorsement on the promissory note conveying the promissory note to U.S. Bank and the assignment of mortgage allegedly being defective and invalid."* (Appellee's Brief, p. 8, lines 29-31).

Attached to the Motion for Summary Judgment was a copy of the Note originally executed by Koola in favor of Countrywide Home Loans Inc., which was not *indorsed in blank or to the order of U.S. Bank Trust*. (R. pp. 090-091). "Negotiable instrument...is payable to bearer or order...." S.C. Code Ann. § 36-3-104(a)(1). "Indorsement means a signature...made on an instrument for the purpose of negotiating the instrument." S.C. Code Ann. § 36-3-204.

“Negotiation means a transfer of possession...of an instrument by a person other than the issuer to a person who thereby becomes its holder. S.C. Code Ann. § 36-3-201(a). “[I]f an instrument is payable to an identified person, negotiation requires transfer of possession who thereby becomes its holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.” S.C. Code Ann. § 36-3-201(b). “An instrument is transferred by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.” S.C. Code Ann. § 36-3-203(a). Under the laws of South Carolina cited above, the copy of the Note without indorsement either in blank or to the Order did not provide U.S. Bank Trust the right to enforce the instrument. Instead of denying U.S. Bank Trust’s Motion for Summary Judgment, the Court granted summary judgment and ordered a foreclosure sale. (R. pp. 006-023).

Koola did not claim that the assignment of the Mortgage was defective. Assignment of the Mortgage is a contract between two parties other than Koola. Koola did not question the validity of the assignment of mortgage. When the mortgage is assigned, the assignor must transfer the original mortgage to the assignee, which hasn’t taken place. Therefore, the Assignment of the Mortgage is not legally valid. The United States Supreme Court and the Supreme Court of South Carolina have ruled that the assignment of the mortgage as distinct from the debt which it secures is nugatory and confers no rights upon the assignee. *Carpenter v. Longan*, 83 U.S. 271, 274 (U.S. 1872); *Hahn v. Smith*, 157 S.C. 157; 154 S.E. 112, 1930 S.C. LEXIS 150***, ***7 (S.C. 1930). The Master in Equity granted U.S. Bank Trust summary judgment to U.S. Bank Trust based on the Assignment of Mortgage defying the Supreme Courts, which should be reversed. (R. p. 017, lines 20-23).

6 Koola’s 2018 Bankruptcy

Next, the Master in Equity referred to Koola's 2018 Chapter 13 Bankruptcy, 18-01373-jw, in which Ditech and later U.S. Bank Trust filed claims.

Ditech, the Bankruptcy Court's September 28, 2019, Order, and the Master in Equity's April 13, 2023, Order

On September 28, 2018, the Bankruptcy Court had issued an Order in favor of Ditech, in which the Court concluded as law: (i) *Ditech was the servicer of Fannie Mae*; and (ii) Ditech, which was allowed a 'secured claim' in the amount of \$173,580.30, shall administer any funds paid on the debt for the benefit of the owner of the debt, Fannie Mae. (R. p. 085, lines 5-11).

In the Master in Equity's Order filed on April 13, 2023, the Court stated: "*The United States Bankruptcy Court issued an Order filed on September 28, 2018, making a finding that Ditech was the holder of the Note and Mortgage and was the proper party authorized to enforce the debt,*" (R. p. 008, lines 27-29, (Emphasis added), and granted Summary Judgment in favor of U. S. Bank Trust. The Master in Equity *fraudulently altered* Bankruptcy Court's Order from *Ditech was the servicer of the owner of the debt Fannie Mae to Ditech was the holder of the Note and Mortgage and* granted Summary Judgment to U.S. Bank Trust and ordered foreclosure sale. This fraudulent alteration of the Bankruptcy Court's Order was the result of Fraud upon the Court. Fraud upon the Court is "fraud which...subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Chewing v. Ford Motor Co.*, 346 S.C. 28, 33; 550 S.E.2d 584, 587 (S.C. Ct. App. 2001). This issue has been discussed in detail under "Koola's response to U.S. Bank Trust's Argument III." (This Reply Brief, p. 22, line 6-p. 25, line 10; Appellant's Final Brief, p.22-p.26, line 20).

U.S. Bank Trust, the Bankruptcy Court's September 28, 2019, Order, and the Master in Equity's April 13, 2023 Order

On January 15, 2019, the Bankruptcy Court issued an Order in favor of U.S. Bank Trust, which the Master in Equity adopted as its own in its April 13, 2023 Order, "By Order filed on January 15, 2019, the United States Bankruptcy Court...made a specific finding that U.S. Bank was the owner of the Note and Mortgage and the proper party to enforce the debt and expressly approved the proof of claim filed by U.S. Bank Trust." (R. p. 008, line 33-p. 4, line 2). The said Order is invalid in South Carolina as well as in the Bankruptcy Court. Under South Carolina law S.C. Code Ann. § 36-3-301(i), only the holder, but not the owner, of the Note has the right to enforce the instrument or the debt. The owner of the Note is not entitled to enforce the Note. Official comments to S.C. Code Ann. § 36-3-203 paragraph 2, have made it abundantly clear the difference between the holder of the note and owner of the Note:

"[A] person who has an ownership right in an instrument might not be a person entitled to enforce the instrument. For example, suppose X is the owner and holder of an instrument payable to X. X sells the instrument to Y but is unable to deliver immediate possession to Y. Instead, X signs a document conveying all of X's rights, title, and interest in the instrument to Y. Although the document may be effective to give Y a claim to ownership of the instrument, Y is not a person entitled to enforce the instrument until Y obtains possession of the instrument. No transfer of the instrument occurs under Section 3-203(a) until it is delivered to Y."

The owner of the Note has no right to enforce the instrument as explained in Official comments to S.C. Code Ann. § 36-3-203. In *Draper*, this Court had emphatically concluded as law:

"Rule 17(a) of the South Carolina Rules of Civil Procedure requires that every action be prosecuted "in the name of the real party in interest"...The South Carolina rule...has been regarded as embodying the concept that an action shall be prosecuted "in the name of the party who, by the substantive law, has the right sought to be enforced." *It is ownership of the right sought to be enforced* [holder of the Note] *which qualifies one as a real party in interest, rather than absolute ownership of specific property* [owner of the Note]."

Bank of America v. Draper, 405 S.C. 214, 220; 746 S.E.2d 478, 481 (S.C. Ct. App. 2013). (Emphasis added).

7 ***“Defendant’s claim in his motion that U.S. Bank Trust lacks standing is barred under res judicata and judicial estoppel.”***

“Plaintiffs bear the burden of establishing standing.” *S. Walk at Broadlands Homeowner’s Ass’n v. Openband at Broadlands, LLC*, 713 F.3d 175, 181 (4th Cir.) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). “As the party moving for summary judgment, the initial burden was on Bank to prove standing.” *Bank of N.Y. Mellon v. Lanier*, 2019 S.C. App. Unpub. LEXIS 288, *5-*6, 2019 WL 3714838 (S.C. Ct.App. 2019). (Emphasis added). “A plaintiff must have standing to institute an action.”...“The burden of compliance with Rule 17(a) and its real party in interest falls to the plaintiff.” *Murray v. Estate of Murray*, 436 S.C. 99, 111; 871 S.E.2d 173, 179-80 (S.C. Ct. App. 2022). (Internal citations omitted). *It is plainly unconceivable how res judicata and judicial estoppel can bar Koola from raising U.S. Bank Trust’s standing in the foreclosure action when Koola does not have the legal duty to raise those issues.*

“Res judicata applies where three conditions are met:

(1) *there is a prior judgment which was final, on the merits, “and rendered by a Court of competent jurisdiction in accordance with the requirements of due process;”* (2) the parties to the second matter are identical to, or in privity with, the parties in the first action; and (3) “the claims in the second matter are based upon the same cause of action involved in the earlier proceeding.”

LVNV Funding, LLC v. Harling, 852 F.3d 367, 371 (4th Cir. 2017). (Emphasis added).

Koola addresses whether the Bankruptcy Court had jurisdiction over U.S. Bank Trust and its claims against Koola.

In Bankruptcy, a creditor’s standing is determined by the application of 11 U.S.C. §§101(5)(A), (10)(A). The term creditor means entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor (meaning, the date of the filing of the Bankruptcy Petition). 11 U.S.C. §101(5)(A). The term “claim” means right to payment. 11 U.S.C. §101(10)(A). Pursuant to *Midland Funding, LLC v. Johnson*, 137 S.Ct. 1407,

1411 (2017), the term “right to payment” is not defined by the Bankruptcy law but by state law. Pursuant to South Carolina law, S.C. Code Ann. § 36-3-301(i), “the person entitled to enforce the instrument is the holder of the instrument [‘the Note’]. In summary, a creditor would have *standing* in Bankruptcy only if it is the holder of the Note on or before the date when the Bankruptcy Petition is filed.

In the 2018 Bankruptcy, U.S. Bank Trust claimed that Ditech transferred a *claim other than for security* to U.S. Bank Trust on June 8, 2018, under Fed. R. Bankr. P. 3001(e)(2). (R. p. 136). Under 11 U.S.C. §101(49)(A)(i), the term security includes “note”. Thus, *transfer of a claim other than for security means transfer of a claim without transfer of the note – an unsecured claim*.

In the Proof of Claim filed in the Bankruptcy Court on November 13, 2018, (R. pp. 37-139), U.S. Bank Trust stated that: (i) U.S. Bank Trust was the current creditor; and (ii) The claim had been acquired from Fannie Mae. (R. p. 137, lines 16-20). It did not file any proof to prove that it had acquired the claim from Fannie Mae and received the Note.

Since U.S. Bank Trust had no claim – right to enforce the instrument – that arose at the time of or before the order for relief concerning the debtor, it was not a creditor under 11 U.S.C. §§101(5)(A),(10)(A), and it was not the holder of Koola’s Note under S.C. Code Ann. §36-3-301(i). Therefore, it lacked *standing* in Koola’s Bankruptcy.

In Bankruptcy, “[A] “person entitled to enforce the note,” as defined in U.C.C. 3-301 [corresponding to S.C. Code Ann. § 36-3-301] has the requisite standing to file a proof of claim in a bankruptcy case.” *Allen v. U.S. Bank NA (In re Allen)*, 472 B.R. 559, 565 (BAP, 9th Cir. 2012). “In order to have standing to prosecute an action, a plaintiff must have a personal stake or interest in the subject matter of the lawsuit.” *Brock v. Bennett*, 313 S.C. 513, 517; 443 S.E.2d 409, 411 (S.C. Ct. App. 1994). “A plaintiff must have *standing* to institute an action.” *Brock v.*

Bennett, 313 S.C. 513, 517; 443 S.E.2d 409, 411 (S.C. Ct. App. 1994). “Plaintiffs bear the burden of establishing standing.” *S. Walk at Broadlands Homeowner’s Ass’n v. Openband at Broadlands, LLC*, 713 F.3d at 181 citing *Lujan v. Defenders of Wildlife*, 504 U.S. at 561. In summary, U.S. Bank Trust lacked standing in Koola’s Bankruptcy.

“The Court is obligated to raise an issue implicating standing *sua sponte*, even if the parties fail to raise it, because it implicates the Court’s subject matter jurisdiction.” *Densmore v. Litton Loan Servicing, L.P. (In re Densmore)*, 445 B.R. 307, 312 (Bankr. D. Vt., 2011). (Internal citation is omitted). “Standing poses the potential for a domino effect. *If a party lack standing to bring a matter before the court, the court lacks jurisdiction to decide the merits of the underlying case.*” *United States v. AVX Corp.* 962 F.2d 108, 113 (1st Cir. 1992). (Internal citation omitted). (Emphasis added). Because U.S. Bank Trust lacked standing in Koola’s 2018 Bankruptcy case, the Bankruptcy Court lacked subject matter jurisdiction over U.S. Bank Trust and its claims.

“Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.” *Limehouse v. Hulsey*, 404 S.C. 93, 104; 744 S.E.2d 566, 572 (S.C. 2013) (Internal citation omitted). “A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4)...A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely ‘voidable.’” *Gainey v. Gainey*, 382 S.C. 414, 424; 675 S.E.2d 792, 797 (Ct. App. S.C. 2009). (Internal citations omitted). “A judgment is void if a court acts without personal jurisdiction.” *BB&T v. Taylor*, 369 S.C. 548, 551; 633 S.E.2d 501, 503 (S.C. 2006). (Internal citations omitted). In summary, the Bankruptcy Court lacked jurisdiction over U.S. Bank Trust and its claims, and therefore, the Court’s January 15, 2019 Order is void.

Because the Bankruptcy Court lacked subject matter jurisdiction, the Bankruptcy Court's Order does not have any res judicata effect on Koola's claims against U.S. Bank Trust. Judicial estoppel is also not applicable for the same reason.

Appellant's Response to U.S. Bank Trust's Argument 1. a

In Argument I. a, U.S. Bank Trust has argued, "*Koola's Challenge to U.S. Bank Trust's Standing to Foreclose is Irrelevant.*" (Appellee's Brief, p. 9, line 27). It argued further, "U.S. Bank Trust demonstrated that it was an "owner" of a lost Note." (Appellee's Brief, p. 10, line 3).

S.C. Code Ann. § 36-3-804 has provided in pertinent parts, "The owner of an instrument which is lost, whether by destruction, theft, or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. *Prima facie*, U.S. Bank Trust is not entitled to claim that it is the owner of Lost Note under S.C. Code Ann. § 36-3-804 because it never claimed that it was the owner of lost Note and did not prove its ownership of the Lost Note as mandated by the Code, if it had any, in the Bankruptcy Court, in the Affidavit filed in the Motion for Summary Judgment, or during the Summary Judgment Hearing. Its claim that *U.S. Bank Trust was owner of the lost note is a false claim.*

South Carolina Appellate Courts have not interpreted S.C. Code Ann. § 36-3-804. *Dennis Joslin Company, LLC v. Robinson Broadcasting Corp.*, 977 F. Supp. 491, 495; 1997 U.S. Dist. LEXIS 14725, *13 (D.D.C. 1997) is the only case law that has interpreted the UCC equivalent of S.C. Code Ann. § 36-3-804, UCC § 3-804, which had ruled, "[T]he party suing on the note must meet two tests, not just one: it must have been both in possession of the note when it was lost and entitled to enforce the note when it was lost." The Court explained that only the noteholder has the right to enforce the instrument, and only the noteholder can lose it. *A mere owner of the Note has no possession of the note and cannot lose it. Therefore, the Court reasoned that the owner, if*

he had possession of the note and had the right to enforce the note when it was lost, can pursue an action against the plaintiff.

U.S. Bank Trust's claim that it is the owner of lost Note is not supported by law.

Appellant's Response to U.S. Bank Trust's Argument 1. b

In Argument I. b, U.S. Bank Trust argued, "Koola's Challenge to the Trial Court's Jurisdiction was not preserved and is frivolous." (Appellee's Brief, p. 11, lines 4-5). U.S. Bank Trust has only argued, "Subject matter jurisdiction is "the power to hear and determine cases of the general class to which the proceeding belong." In Appellant's Initial Brief, Koola had argued that the Master in Equity lacked subject matter jurisdiction – lack of *in rem and in personam jurisdictions* – to hear and determine the *specific case* of U.S. Bank Trust's foreclosure action against Koola. (Appellant's Brief, p. 10, line 12-p. 13, line 16). The Master in Equity's Court lacks jurisdiction if a plaintiff in a foreclosure action lack standing – statutory and constitutional standing.

A foreclosure case is initially filed in the Court of Common Pleas and then referred to the Master in Equity, which confers subject matter jurisdiction on the Master in Equity to hear and determine cases of *general class* under foreclosure. Rule 53, SCRCP. Koola is not challenging this jurisdiction. In the Supplemental Brief of Defendants filed on March 2, 2023, (R. pp. 101-107) and in the Appellant's Brief, (Appellants' Brief, pp 8 – line 14 – p. 10, line 11), Koola stated that U.S. Bank Trust lacked standing in Koola's foreclosure case, and consequently, the Master in Equity lacked jurisdiction to hear and determine the specific case of U.S. Bank Trust and its claims against Koola. (R. 107, line 25 – p.p. 108, line 9). Koola also raised jurisdictional issues in the Appellant's Brief. (Appellant's Brief, p. 10, line 12 – p. 13, line 17).

Statutory standing

In the foreclosure action, U.S. Bank Trust lacked statutory standing and constitutional standing. Under South Carolina law S.C. Code Ann. § 36-3-301(i), the person entitled to enforce the instrument is the holder of the Note. Thus, the determination of U.S. Bank Trust's statutory standing has been reduced to determination of whether U.S. Bank Trust is the holder of Koola's Note and Mortgage. In the foreclosure case, U.S. Bank Trust produced only a copy of the Note originally executed by Koola in favor of Countrywide, which was not indorsed in blank or to the Order of U.S. Bank Trust or any other party. As a result, U.S. Bank Trust lacked statutory standing in the foreclosure case. (Appellant's Brief, p. 8, lines 14 - p. 10, line 11).

"Once it is determined a plaintiff has no standing to prosecute, the court must dismiss the action.

Brock v. Bennett, 313 S.C. at 519; 443 S.E.2d at 413.

"In order to have standing to prosecute an action, a plaintiff must have a *personal standing* or *interest in the subject matter of the lawsuit*...Standing is a fundamental requirement for instituting an action...No justiciable controversy is presented unless the plaintiff has standing to maintain an action."

Brock v. Bennett, 313 S.C. at 517, 519; 443 S.E.2d at 411-13.

"*As the party moving for summary judgment, the initial burden was on Bank to prove standing*... In support of its motion for summary judgment, Bank submitted copies of the original note and mortgage, copies of allonges to the note and assignments of the mortgage, and the affidavit of Joseph G. Devine, Jr....Accordingly, we find Bank established that it is a holder of the note and mortgage and, as a result, met its initial burden of demonstrating standing." (Emphasis added).

Bank of N.Y. Mellon v. Lanier, 2019 S.C. App. Unpub. LEXIS 288, *5-*6, 2019 WL 3714838 (S.C. Ct.App. 2019).

"A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action."

Bank of America v. Draper, 405 S.C. at 220-21; 746 S.E.2d at 481.

"Draper originally executed the note to America's Wholesale Lender. Through a series of transactions and mergers, the Bank became the holder of the note...*Because the evidence indicates the Bank did hold the note, the master did not err in granting summary judgment on this issue*."

Id., 405 S.C. at 223-24, 746 S.E.2d at 483.

Constitutional standing

The “irreducible constitutional minimum of standing” has three components:

“First, the plaintiff must have suffered an “injury in fact” – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be “fairly...trace(able) to the challenged action of the defendant, and not...th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely” as opposed to merely “speculative” that the injury will be redressed by a favorable decision.”

Smiley v. S.C. Dep’t of Health & Envtl. Control, 374 S.C. 326, 329; 649 S.E.2d 31, 32-33 (S.C. 2007). (Internal citations omitted). (Alterations in the original).

For a plaintiff to possess standing, he must have suffered an injury-in-fact, which is a concrete, particularized, and actual or imminent invasion of a legally protected interest.

Sea Pines Ass’n for the Port. Of Wildlife v. S.C. Dept. of Natural Res., 345 S.C. 594, 600-01; 500 S.E.2d 287, 291-92 (2001).

“Plaintiffs bear the burden of establishing standing.”

S. Walk at Broadlands Homeowners’ Ass’n v. Openband at Broadlands, LLC, 713 F.3d at 181 citing *Lujan v. Defenders of Wildlife*, 504 U.S. at 561 (1992).

The substantive law referred to in *Draper* above has been enshrined in the South Carolina Code of Laws: The Person entitled to enforce the instrument, S.C. Code Ann. § 36-3-301(i).

Draper has also interpreted the statutory provisions of S.C. Code Ann. § 36-3-301(i): “A holder is a person in possession of instrument drawn, issued, transferred, or indorsed to him. S.C. Code Ann. § 36-3-201(2003).” *Bank of America v. Draper*, 405 S.C. at 223; 746 S.E.2d at 482.

Id., 405 S.C. at 220-21, 746 S.E.2d at 481. (Internal citation omitted).

With respect to jurisdiction, the Master in Equity Koola only determined that the Court has subject matter jurisdiction because it had the power to hear and determine “cases of the general class to which the proceedings in question belong.” Koola argued that the Master in Equity lacked subject matter jurisdiction – *in rem* and *in personam* jurisdictions – to hear the specific case of U.S. Bank Trust’s foreclosure action. (Appellants, Brief, p.10, line 12-p.13, line 16). In the Brief, U.S. Bank Trust claimed, “This is an action for *in rem* foreclosure....” (Appellee’s Brief, p. 1, line 22). For the Court to render a judicial determination of an *in rem*

foreclosure action, the Court should have *in rem jurisdiction*. The Court lacked *in personam jurisdiction* over U.S. Bank Trust because it was prosecuting the claims of Countrywide Home Loans, Inc., claims against Koola rather than its own claims. The Supreme Court of South Carolina has ruled: “Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.” *Limehouse v. Hulsey*, 404 S.C. at 104; 744 S.E.2d at 572. (Internal citation omitted).

“The injury in fact” is Koola’s default on mortgage loan payment which is concrete and particularized and actual or imminent. In the “Affidavit of Indebtedness” filed on February 15, 2023, the affiant on behalf of U.S. Bank Trust stated, “[On] February 20, 2004, Johnson D. Koola (“Borrower”) obtained a mortgage loan from Countrywide Home Loans, Inc. and signed a promissory note (the ‘Note’) in the amount of One Hundred Thirty-Six Thousand Ninety-Two and 00/100 (\$136,192.00) dollars, with interest accruing at 5.75% per annum, *payable to Countrywide Home Loans, Inc., its successors and assigns*. A true and accurate copy of the Note is attached and incorporated herein as Exhibit A.” (R. p. 088, lines 1-6). The copy of the Note attached to the Affidavit showed that the Note was not indorsed to U.S. Bank Trust or any party. (R. p. 091). There is no causal connection between the injury and Koola’s conduct complained of by U.S. Bank Trust. U.S. Bank Trust did not prove that it has suffered any injury because of default on the mortgage debt owed by Koola to Countrywide. U.S. Bank Trust has no legally protected interest to pursue a foreclosure action against Koola.

“Once it is determined a plaintiff has no standing to prosecute, the court must dismiss the action. *Brock v. Bennett*, 313 S.C. at 519; 443 S.C.2d at 413. U. S. Bank Trust did not prove that it has standing – statutory standing as well as constitutional standing – in the foreclosure case.

The Master in Equity also failed to ascertain whether U.S. Bank Trust had standing in the foreclosure case.

The Supreme Court of South Carolina has determined, “[J]urisdiction is composed of three elements: (1) personal jurisdiction, (2) subject matter jurisdiction, and (3) the court’s power to render the particular judgment requested.” *Limehouse v. Hulsey*, 404 S.C. at 104; 744 S.E.2d at 572. “The Court is obligated to raise an issue implicating standing *sua sponte*, even if the parties fail to raise it, because it implicates the Court’s subject matter jurisdiction.” *Densmore v. Litton Loan Servicing, L.P. (In re Densmore)*, 445 B.R. at 312. “*Standing poses the potential for a domino effect. If a party lack standing to bring a matter before the court, the court lacks jurisdiction to decide the merits of the underlying case.*” *United States v. AVX Corp.* 962 F.2d at 113. (Emphasis added).

The Supreme Court of South Carolina has ruled: “Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.” *Limehouse v. Hulsey*, 404 S.C. at 104; 744 S.E.2d at 572. (Internal citation omitted). “A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4)...A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely ‘voidable.’” *Gainey v. Gainey*, 382 S.C. 414, 424; 675 S.E.2d 792, 797 (Ct. App. S.C. 2009). (Internal citations omitted). “A judgment is void if a court acts without personal jurisdiction.” *BB&T v. Taylor*, 369 S.C. 548, 551; 633 S.E.2d 501, 503 (S.C. 2006). (Internal citations omitted). Subject matter jurisdiction cannot be forfeited or waived, and can be raised by a party, or by the court *sua sponte*, at any time prior to final judgment.” *Arbaugh v. Y& H Corp.* 546 U.S. 500, 514, 126 S.Ct. 1244.

In *Bunkum v. Manor Properties*, 311 S.C. 95, 99-100; 467 S.E.2d 758, 761 (S.C. Ct.App. 1996), this Court reversed the Order of the Courts below stating,

“We are mindful of Bunkum’s [debtor’s] failure to appear before the master at the hearing on the motion, and her failure to directly appeal the master’s order. Ordinarily, she should have been procedurally barred from challenging the order. However, issues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by this court on our own motion.” (Internal citations omitted.)

The Master in Equity’s April 13, 2023 Order

In the April 13, 2023 Order under the heading ‘Findings’, the Master in Equity *acknowledged* Koola’s arguments that (i) U.S. Bank Trust and Fay Servicing “lack standing in Koola’s foreclosure case; (ii) they have not established that they have claims against Koola and have a right to enforce the claim against Koola in the foreclosure case under substantive law of South Carolina; (iii) they are not the real party in interest under South Carolina Rule of Civil Procedure; (iv) Koola cited “Lack of an indorsement on the promissory note conveying the promissory note to the U.S. Bank Trust.” (R. p. 008, lines 12-18).

Instead of making a judicial determination of Koola’s arguments, the Master in Equity concluded as law:

“With the production of the Note, Mortgage, applicable Assignment(s), and affidavit of indebtedness and Affidavit of Attorney fees Plaintiff has provided ample evidence that it is entitled to foreclosure in this matter and has properly established its damages due to the Defendant’s breach of the terms and conditions of the Note and Mortgage.” (R. 017, lines 20-23).

In coming to the above conclusion of law, the Master in Equity erred on multiple grounds. Under Findings of Fact, the Mater in Equity did not find that U.S. Bank Trust was the holder of Koola’s Note and Mortgage. Therefore, *the Court’s conclusion that U.S. Bank Trust produced the Note and Mortgage was an erroneous conclusion of law and was not supported by the evidence in the record.* A plaintiff in a foreclosure action proves its standing by producing

the original Note and Mortgage. U.S. Bank Trust did not produce the original Note and Mortgage in the Court.

The United States Supreme Court and the Supreme Court of South Carolina have ruled that the assignment of the mortgage as distinct from the debt, which it secures is nugatory and confers no rights upon the assignee. *Carpenter v. Longan*, 83 U.S. at 274; *Hahn v. Smith*, 157 S.C. 157; 154 S.E. 112, 1930 S.C. LEXIS 150***, ***7. Therefore, the Court's conclusion that the Assignments of Mortgage entitled U.S. Bank Trust to foreclosure is a collateral attack on the supremacy and authority of the Supreme Courts.

In the Affidavit of Indebtedness filed on February 15, 2023, the affiant didn't state that Koola received a mortgage loan from U.S. Bank Trust. It only stated that Koola received a mortgage loan from Countrywide. (R. pp. 087-089, p. 088, lines 1-6). Therefore, the Master in Equity's conclusion that Affidavit of Indebtedness entitled U.S. Bank Trust to foreclose on Koola's property is an erroneous conclusion of law.

Under South Carolina law, S.C. Code Ann. § 36-3-301(1), Affidavit of Attorney fees does not entitle U.S. Bank Trust to the right to enforce the instrument. Therefore, the Master's Conclusion of Law that Affidavit of Attorney fees entitled U.S. Bank Trust the right to foreclose on Koola's property is erroneous.

Summary

Upon Appellate Review, this Court should reverse the Master on Equity's Order granting Summary Judgment to U.S. Bank Trust and annul the foreclosure sale.

Appellant's Response to Appellee's Argument II

The Master in Equity adopted the Bankruptcy Court's January 15, 2019, Order as its own Order, which stated, "United Staes Bankruptcy Court...made a specific finding that U.S. Bank was the owner of the Note and Mortgage and the proper party to enforce the debt...." Under South Carolina law, only the holder of the Note but not the owner of the Note has the right to enforce the debt. Additionally, U.S. Bank Trust lacked standing in

the Bankruptcy case, and the Bankruptcy Cour had no jurisdiction over U.S. Bank Trust and its claims against Koola.

In Argument II of the Appellee's Initial Brief, U.S. Bank Trust claimed, "In Arguments II, III, and IV, Koola attempts to collaterally attack the Bankruptcy Court Orders on which the Trial Court relied by contending the Bankruptcy Court lacked jurisdiction and/or that U.S. Bank lacked Article III standing. These Orders are not amenable to collateral attacks." (Appellee's Brief, p. 12, lines 13-17).

The Bankruptcy Court's January 15, 2019, Order conflicts with South Carolina law.

In the April 13, 2023 Order, the Master in Equity adopted the Bankruptcy Court's January 15, 2019 Order as its own Order, which stated, "By Order filed on January 15, 2019, the United Staes Bankruptcy Court...made a specific finding that U.S. Bank was the owner of the Note and Mortgage and the proper party to enforce the debt and expressly approved the proof of claim filed by U.S. Bank Trust." (R. pp. 006-023; p. 008, line 32-p.009, line 2). The Bankruptcy Court's January 15 Order, as stated above, is not valid in South Carlina because it conflicts with S.C. Code Ann. 36-3-301(i) and can be subjected to collateral attack in the State Court. There is no proof anywhere in the record to claim that U.S. Bank Trust was the owner of the Note. In the Appellant's Brief, Koola also claimed that (i) U.S. Bank Trust lacked standing in Koola's 2018 Bankruptcy, and (ii) the Bankruptcy Court lacked jurisdiction over U.S. Bank Trust and its claims. (Appellant's Brief, p. 16, line 21-p.18, line 19; Appellant's Reply Brief, p.-19- line p. 21, line 24).).

South Carolina law S.C. Code Ann. 36-3-301(i) has provided in pertinent parts that the person entitled to enforce the instrument (the Note or the debt) is the holder of the Note. The law has precluded owners of the Note from enforcement of the Note or debt. The owner of the Note is not entitled to enforce the Note. Official comments to S.C. Code Ann. § 36-3-203 have made it abundantly clear the difference between the holder of the note and owner of the Note:

“[A] person who has an ownership right in an instrument might not be a person entitled to enforce the instrument. For example, suppose X is the owner and holder of an instrument payable to X. X sells the instrument to Y but is unable to deliver immediate possession to Y. Instead, X signs a document conveying all of X’s rights, title, and interest in the instrument to Y. Although the document may be effective to give Y a claim to ownership of the instrument, Y is not a person entitled to enforce the instrument until Y obtains possession of the instrument. No transfer of the instrument occurs under Section 3-203(a) until it is delivered to Y.”

Official comments to S.C. Code Ann. § 36-3-203.

“[Rule 17(a) of the South Carolina Rules of Civil Procedure] ... has been regarded as embodying the concept that an action shall be prosecuted “in the name of the party who, by *the substantive law*, has the right sought to be enforced.” *It is ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property.*”

Bank of America v. Draper, 405 S.C. at 220; 746 S.E.2d at 481. (Emphasis by italics added).

The owner of the Note has no right to enforce the instrument. The Bankruptcy Court’s Order that as owner of the Note, U.S. Bank is the proper party to enforce the debt conflicts with South Carolina law and is not valid in South Carolina.

“Judgments of the bankruptcy courts are normally immune to collateral attack. They can be relied upon by state courts. And when the judgment is final and valid, it is given appropriate effect as *res judicata* or as collateral estoppel in subsequent proceedings in the state courts, where it is there entitled to full faith and credit.”

McNaughton-McKay Elec. Co. of N.C. v. Andrich, 324 S.C. 275, 280; 482 S.E.2d 564, 567 (Ct.App. 1997); *Marks v. Old S. Mortg. Corp.*, 2015 S.C. App. Unpub. LEXIS 289 *3 (S.C. Ct. pp. 2015). (Emphasis by italics added).

Pursuant to the above-cited case laws, the invalid orders of the Bankruptcy Court can be collaterally attacked in the State Court.

In *Limehouse v. Hulsey*, 404 S.C. at 104; 744 S.E.2d at 572 (S.C. 2013), the South Carolina Supreme Court explained, “Although federal and state courts form one system of jurisprudence, federal courts have no general supervisory power over the state courts, and there is nothing a state court can do to affect federal practice and procedure...The United States Supreme Court has explained that “courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction

partly different and partly concurrent.” In *the said case*, the issue was the United States District Court’s Order remanding the underlying case from the District Court to the State Court without certifying as mandated under 28 U.S.C.S §1447(c), and therefore, the District Court’s Order contradicted with the federal law. Based on these jurisdictional considerations, the South Carolina Supreme Court reversed the lower court’s proceedings on the ground that it has no obligation to honor a federal court’s Order when that Order contradicted with the federal law. Accordingly, the South Carolina Supreme Court ruled that the State court proceedings conducted after the federal court’s entry of the remand were void. *Id.* 404 S.C. at 109-110; 566 S.E.2d at 575. The same considerations apply to Orders of the Bankruptcy Court which conflict with South Carolina law.

U.S. Bank Trust lacked standing in the Bankruptcy case, and the Bankruptcy Court had no jurisdiction over U.S. Bank Trust and its claims against Koola.

In Koola’s 2018 Bankruptcy, U.S. Bank Trust filed claims that Ditech: (i) transferred a *claim other than for security* to U.S. Bank Trust on June 8, 2018, under the provisions of Fed. R. Bankr. P. 3001(e)(2), (R. p. 135), and (ii) transferred *ownership of Ditech’s claim* to U. S. Bank Trust on July 25, 2018, (R. p. 135), respectively. Under 11 U.S.C. §101(49)(A)(i), the term security includes “note”. Thus, transfer of a claim other than for security means transfer of a claim without transfer of the note – an unsecured claim. It means, Ditech transferred an unsecured claim to U.S. Bank Trust.

In the Proof of Claim filed in the Bankruptcy Court on November 13, 2018, U.S. Bank Trust stated that: (i) U.S. Bank Trust was the current creditor; and (ii) The claim had been acquired from Fannie Mae. [R. p. 137). It did not file any proof to prove that it had acquired the claim from Fannie Mae and received the Note. That means: (i) there is no proof that it acquired the claim from Fannie Mae, and (ii) U.S. Bank Trust abandoned its previous claim that Ditech transferred a claim other than for security – an Unsecured claim – to U.S. Bank Trust.

In summary, U.S. Bank Trust was not Koola's Noteholder, and U.S. Bank had no proven claim in the Bankruptcy Court.

In Bankruptcy, a creditor's standing is determined by the application of 11 U.S.C. §§101(5)(A), (10)(A). The term creditor means entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor (meaning, the date of the filing of the Bankruptcy Petition). The term "claim" means right to payment. 11 U.S.C. §101(5)(A). Pursuant to *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1411 (2017), the term "right to payment" is not defined by the Bankruptcy law but by South Carolina law, S.C. Code Ann. § 36-3-301(i) (2018), "the person entitled to enforce the instrument is the holder of the instrument ['the Note']". In summary, a creditor would have standing in Bankruptcy only if it is the holder of the Note on or before the date when the Bankruptcy Petition is filed.

Since U.S. Bank Trust had no claim – right to enforce the instrument – that arose at the time of or before the order for relief concerning the debtor, it was not a creditor under 11 U.S.C. §§101(10)(A), (5)(A), and it was not the holder of Koola's Note under S.C. Code Ann. §36-3-301(i). Therefore, it lacked standing in Koola's Bankruptcy.

In Bankruptcy, "[A] 'person entitled to enforce the note,'" as defined in U.C.C. 3-301 [corresponding to S.C. Code Ann. § 36-3-301] has the requisite standing to file a proof of claim in a bankruptcy case." *Allen v. U.S. Bank NA (In re Allen)*, 472 B.R. 559, 565 (BAP, 9th Cir. 2012). "In order to have standing to prosecute an action, a plaintiff must have a personal stake or interest in the subject matter of the lawsuit." *Brock v. Bennett*, 313 S.C. at 517; 443 S.E.2d at 411. "A plaintiff must have standing to institute an action." *Murray v. Estate of Murray*, 436 S.C. at 111; 871 S.E.2d at 179. "Plaintiffs bear the burden of establishing standing." *S. Walk at Broadlands Homeowner's Ass'n v. Openband at Broadlands, LLC*, 713 at 181 citing *Lujan v.*

Defenders of Wildlife, 504 U.S. at 561. In summary, U.S. Bank Trust lacked standing in Koola's Bankruptcy.

"The Court is obligated to raise an issue implicating standing *sua sponte*, even if the parties fail to raise it, because it implicates the Court's subject matter jurisdiction." *Densmore v. Litton Loan Servicing, L.P. (In re Densmore)*, 445 B.R. at 312. (Internal citation is omitted). "Standing poses the potential for a domino effect. *If a party lack standing to bring a matter before the court, the court lacks jurisdiction to decide the merits of the underlying case.*" *United States v. AVX Corp.* 962 F.2d at 113. (Emphasis added).

From the above considerations, this Court should rule that U. S. Bank Trust lacked standing in Koola's Bankruptcy.

"Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." *Limehouse v. Hulsey*, 404 S.C. at 104; 744 S.E.2d at 572. (Internal citations omitted). "A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4.)...A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable.'" *Gainey v. Gainey*, 382 S.C. at 424; 675 S.E.2d at 797. "A judgment is void if a court acts without personal jurisdiction." *BB&T v. Taylor*, 369 S.C. at 551; 633 S.E.2d at 503 (S.C. 2006). (Internal citations omitted). In summary, the Bankruptcy Court lacked jurisdiction over U.S. Bank Trust and its claims, and therefore, the Court's January 15, 2019 Order is void.

Summary

Upon Appellate Review, this Court should rule that the Bankruptcy Court's January 15, 2019 Order: (i) was void for want of jurisdiction, (ii) is invalid in South Carolina Jurisdiction,

and (iii) cannot be given “full faith and credit” of the U.S. Constitution and reverse the Master in Equity’s April 13, 2023 Order granting Summary Judgment to U.S. Bank Trust and void the foreclosure sale.

Appellant’s Response to U.S. Bank Trust’s Argument III

The Master in Equity fraudulently altered the Bankruptcy Court’s September 28, 2018, moot Order from servicer to noteholder to favor Ditech, and in turn, respondent U.S. Bank Trust. In the Appellee’s Initial Brief, U.S. Bank Trust conceded, “Koola is correct that the Bankruptcy Court did not find that Ditech was the holder of the Note.”

In Argument III, U.S. Bank Trust argued, “Koola’s Reckless Accusation that the trial Court fraudulently altered the Bankruptcy Court’s Order is not well-taken.” (Appellee’s Brief, p. 14, lines 13-14). Koola did not make a reckless accusation; he just presented the plain facts from the Orders of the Bankruptcy Court, (R. p. 085, lines 5-11), and the Trial Court (R. p. 008, lines 27 -29), and presented them in the Appellant’s Initial Brief. (Appellant’s Brief, p. 26, lines 6 – 22). These facts were self-explanatory that the Master in Equity altered the Bankruptcy Court’s Order to favor Ditech and in turn, respondent U.S. Bank Trust. In the Motion for Reconsideration filed on April 21, 2023, Koola brought to the attention of the Court that the Master in Equity’s conclusion of law with respect to Ditech and U.S. Bank Trust are contradicting with each other and argued, “Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law.” (R. p. 118, lines 1-4). The Master in Equity summarily denied Koola’s Motion for Reconsideration.

On September 28, 2018, the Bankruptcy Court issued an Order in favor of Ditech in which the Court concluded as law: (i) *Ditech was the servicer of Fannie Mae*; and (ii) Ditech which was allowed a ‘*secured claim*’ in the amount of \$173,580.30 shall administer any funds paid on the debt for the benefit of the owner of the debt, Fannie Mae. (R. p. 085, lines 5-11). In the Master in Equity’s Order filed on April 13, 2023, the Court concluded as law: “*The United States Bankruptcy Court issued an Order filed on September 28, 2018, making a finding that*

Ditech was the holder of the Note and Mortgage and was the proper party authorized to enforce the debt.” (R.008, lines 27 – 29).

A plain reading of the Conclusions of Law in the Orders of the Bankruptcy Court and the Master in Equity would show that the Master in Equity *altered* Bankruptcy Court’s Order from *Ditech was the servicer of the owner of the debt Fannie Mae* to *Ditech was the holder of the Note and Mortgage* and was the proper party authorized to enforce the debt. Accordingly, the Master in Equity granted Summary Judgment to U.S. Bank Trust and ordered the foreclosure sale. [R. 018, lines 20 – 25).

In the case of Ditech, the Master determined that Ditech was the holder of the Note and Mortgage. (R.008, lines 27 – 29). In the case of U.S. Bank Trust, the Master determined that U.S. Bank Trust is the owner of the Note and Mortgage. (R. p. 008, line 32 – p. 009, line 2). The Master also determined that both Ditech and U.S. Bank Trust were the proper parties to enforce the debt. In the Motion for Reconsideration filed on April 21, 2023, Koola brought to the attention of the Court that the Master in Equity’s conclusion of law with respect to Ditech and U.S. Bank Trust are contradicting with each other and argued, ““Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law.” *Evening Post Pub. Co. v. Berkeley County School Dist.* 392 S.C. 76, 82; 708 S.E.2d 745, 748 (S.C. 2011).” (R. p. 118, lines 1-4). Koola sincerely hoped that the Court would correct the error – the alteration that *Ditech was the servicer of the owner of the debt Fannie Mae* to *Ditech was the holder of the Note and Mortgage*.

On May 8, 2023, the Master in Equity denied Koola’s Motion for Reconsideration in a Form 4 Order stating, “Johnson Koola’s Motion for Reconsideration, filed on April 21, 2023, is DENIED and the Court adopts the Plaintiff’s return as its basis.” (R. p. 003). The only issues in the foreclosure case are whether U.S. Bank Trust is the holder of Koola’s Note and Mortgage

which had secured the mortgage debt, and whether U.S. Bank Trust has the right to enforce the debt under South Carolina substantive law, S.C. Code Ann. 36-3-301(i), if it were not the holder of the Note and Mortgage. The Master in Equity did not find that U.S. Bank Trust was the holder of Koola's Note and Mortgage; nevertheless, the Master in Equity granted Summary Judgment to U. S. Bank Trust concluding that U.S. Bak Trust produced the Note and Mortgage. (R. p. 017, lines 20 – 27). The Master in Equity altered the Bankruptcy Court's Order from *Ditech was the servicer of the owner of the debt, Fannie Mae*, to *Ditech was the holder of the Note and Mortgage* to strengthen U.S. Bank Trust's standing in the foreclosure case. The Master in Equity had systematically abused judicial power to confer standing on U.S. Bank Trust.

In the appellant's Initial Brief, Koola alleged that the alteration of the Bankruptcy Court's Order was the result of Fraud upon the Court. Fraud upon the Court is "fraud which...subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Chewing v. Ford Motor Co.*, 346 S.C. at 33; 550 S.E.2d 587. U.S. Bank Trust and its attorneys who appeared in the Court below subverted the judicial process in such a way that the Master in Equity fraudulently altered the Bankruptcy Court's Order and received Summary Judgment and an Order for foreclosure sale. U.S. Bank Trust should be held accountable for the Fraud committed upon the Court.

In the Appellee's Initial Brief, U.S. Bank Trust claimed: (i) "Koola's Reckless Accusation that the Trial Court Fraudulently Altered the Bankruptcy Court's Order is Not Well-Taken;" and (ii) "The gravamen of this contumacious allegation is that the Trial Court misstated a conclusion that Ditech was the "holder of the lost Note." If the Master in Equity had, indeed, misstated the Bankruptcy Court's Order, the Court had the opportunity to correct the misstatement while reviewing the Motion for Reconsideration. (R. p. 117, lines 14 – 24). On

May 8, 2023, the Master in Equity denied Motion for Reconsideration in a Form 4 Order stating, “Johnson Koola’s Motion for Reconsideration, filed on April 21, 2023, is DENIED and the Court adopts the Plaintiff’s return as its basis.” (R. p. 003). This will confirm that the Master in Equity deliberately altered the Bankruptcy Court’s Order at the behest of U.S. Bank Trust.

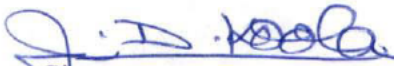
Finally, U.S. Bank Trust conceded, “Koola is correct that the Bankruptcy Court did not find that Ditech was the holder of the Note.” (Appellee’s Brief, p. 14, lines 20-21).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Master in Equity.

Respectfully submitted,

March 26, 2024



Signature

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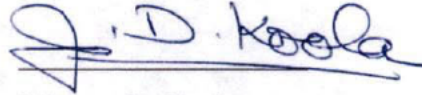
CERTIFICATE OF COMPLIANCE

The appellant, Johnson D. Koola, certifies that Appellant's Final Reply Brief complies with Rule 211(b), SCACR.

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MAR 29 2024

SC Court of Appeals



Johnson D. Koola, *pro se*

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Appellant, *pro se*.

March 26, 2024