THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

THE HONORABLE KRISTI F. CURTIS, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2023-001844

CASE NO. 2019-CP-10-4503

Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans Inc., Pass-Through Certificates 2007 QH2...Respondent,

v.

Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally dated the 3rd day of March 2010; Shoreline Farms Community Association, Inc.; Wells Fargo Bank, N.A.; Cadle Rock Joint Venture, L. P. an Ohio Limited Partnership, Curtis Rogers and Julie Rogers

Of Whom Curtis Rogers, Julie Rogers and Ashley Johnson Beshara Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally dated 3rd day of March 2020 .... Appellants,

v.

Nationstar Mortgage LLC,..Respondent.

RESPONDENT DEUTSCHE BANK TRUST COMPANY AMERICAS' REPLY TO APPELLANTS CURTIS AND JULIE ROGERS' AND ASHLEY BESHARA'S INITIAL BRIEFS

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STATEMENT OF THE CASE

Tim Burton once wrote that "Every story has a beginning, a middle, and an end." This is not a story. It has no beginning. It has no end. Everything that transpires in one act becomes fodder for a dispute in the next. It all is all middle.

In the trial court, after the conclusion of the discovery period, Curt and Julie Rogers, who were allowed to intervene in this action as defendants, filed a Motion for Summary Judgment and a Motion to Compel and for Sanctions. Respondent filed a Motion for Summary Judgment as to all claims asserted against it by the Rogers. Pursuant to an Order entered by the trial court on July 10, 2023, the Rogers' Motion for Summary Judgment was denied, Respondent's Motion for Summary Judgment as to Appellants' counterclaims was granted. Additionally, the Rogers' Motion to Compel and for Sanctions was granted in part and denied in part. On July 20, 2023, Appellants filed Motions requesting reconsideration of the trial court's July 10, 2023 Order. On November 1, 2023, the trial court issued an order denying Appellants' motions to reconsider. Beshara and the Rogers appeal.

STATEMENT OF FACTS

Loan Origination

This case is an attempt to foreclose a first-priority mortgage encumbering real property at 2235 Shoreline Drive, Johns Island, South Carolina 29455 ("Property"). The first-priority mortgage being foreclosed in this current action was originated when Curt Rogers executed and delivered a promissory note ("Note") in the amount of $1,500,000.00 in favor of Homecomings Financial, LLC—f/k/a Homecomings Financial Network, Inc.—("Lender") on January 12, 2007. (Compl. ¶ 6.) To secure payment on the note, the Borrower-Defendants signed a mortgage ("Mortgage" and together with the Note, the "Loan") that encumbers the Property. (*Id.* ¶ 7.) The Mortgage was recorded with the Charleston County Register of Deeds Office ("ROD Office") in Book B613 at Page 844 on January 24, 2007. (*Id.* ¶ 8.)

Rogers' Default and Transfer of the Mortgage Loan and Property

During the repayment term for the Mortgage Loan, the Rogers defaulted on the repayment obligations under the Loan by failing to remit timely payments coming due on May 1, 2009 and thereafter. (Resp.'s MSJ, Blunt Aff., ¶ 10.)

On September 8, 2009, Mortgage Electronic Registration Systems, Inc. as nominee for Lender assigned the Mortgage to Aurora Loan Servicing LLC ("Aurora") pursuant to an assignment of mortgage that was recorded with the ROD Office in Book 0081 at Page 058 on September 15, 2009. (Resp.'s MSJ, Blunt Aff., ¶ 8.)

To collect amounts due under the Mortgage Loan, Aurora filed a foreclosure action ("Foreclosure Action") against the Rogers with the Court of Common Pleas for Charleston, South Carolina under civil action no. 2009-CP-10-05840 on September 15, 2009 ("Action 1"). Ultimately, Action 1 was removed from the court's active trial roster for loss mitigation with leave for Aurora or the Rogers to restore pursuant to a Rule 40(j) Order entered on March 9, 2010. (Resp.'s MSJ, Exhibit D, Order March 9, 2010.)

The Foreclosure Action was reinstated to the court's active trial roster under case no. 2011-CP-10-01805 pursuant to an order entered on March 10, 2011 ("Action 2"). (Resp.'s MSJ, Exhibit E, Order March 10, 2011). The Rogers secured a court order to amend their answer an, on February 2, 2012, they served their amended answer and counterclaims to allege counterclaims against Aurora for the following:

- breach of contract and good faith and fair dealing for an alleged breach of a purported work-out agreement,
- declaratory judgment to address alleged unconscionable loan terms,
- unjust enrichment,
- negligent misrepresentation regarding loss mitigation negotiations and purported workout agreements,
- demand for accounting,
- promissory estoppel,

- violations of the South Carolina Unfair Trade Practices Act, and
- violation of the Truth in Lending Act.

(Resp.'s MSJ, Exhibit F, Amended Answer). Aurora served a timely reply to the counterclaims, and the court entered an order substituting Nationstar for Aurora as the plaintiff in the Foreclosure Action on June 14, 2013. (Resp.'s MSJ, Exhibit G, Order June 14, 2013.) Subsequently, for the second time, the action was removed from the court's active trial roster pursuant to a consent Rule 40(j) order entered by the trial court on June 24, 2014. (Resp.'s MSJ, Exhibit H, Order June 24, 2014.)

Pursuant to a reinstatement order entered on April 7, 2015, the trial court returned the Foreclosure Action to active trial roster under case no. 2015-CP-10-01971 ("Action 3"). By consent of the Rogers and Nationstar, Action 3 was also stricken from the docket pursuant to a Rule 40(j) order entered on May 16, 2016. (Resp.'s MSJ, Exhibit I, Order May 16, 2016.)

Respondent Files Foreclosure Action

Neither the Rogers nor Nationstar restored the Action 3 to the trial court's active trial roster. Thus, because the Mortgage Loan was transferred to Respondent and Respondent became the holder of the Mortgage Loan, Respondent filed this foreclosure action against Beshara, as trustee for a revocable trust established by the Rogers ("Action 4."). (Compl. *passim.*) In its foreclosure complaint, Respondent pled that it "does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto" Respondent, "including costs and Attorney's fees." (Compl. ¶ 16.)

In response to the foreclosure complaint, Beshara filed a motion to dismiss arguing that the prior entry of three 40(j) Orders in the prior Actions precluded Respondent's current action under Rule 41 and the doctrine of collateral estoppel. (Beshara's Mot. to Dismiss. & Beshara's Reply to Mot. To Dismiss.) Beshara further argued that Respondent's action should also be dismissed because the Rogers were not joined as necessary parties to the action in Deutsche Bank's foreclosure complaint. (*Id.*) The trial court

considered these arguments and denied Beshara's motion to dismiss by a Form 4 Order entered on June 23, 2020. (Order of June 23, 2020.)

Counterclaims

After the Rogers were allowed to intervene, Beshara and the Rogers filed and served answers that included counterclaims against Respondent and cross-claims and third-party claims against Nationstar. (Beshera's Ans. *passim* & Borrower-Defendants' Ans. *passim.*) Beshara and the Rogers allege the following six claims against Respondent:

- Demand for Accounting;
- Negligent Misrepresentation;
- Abuse of Process;
- Malicious Prosecution;
- Violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"); and
- Declaratory Judgment.

(Appellants' Answers and Counterclaims.)

The demand for accounting claim, SCUTPA claim, negligent misrepresentation claim, and declaratory judgment claim alleged in this action mirror the counterclaims the Rogers raised in the amended answer that they served in Action 2 on February 2, 2012.[1]

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), which provides 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." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). "This court reviews questions of law de novo." *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012). "The admission of evidence is within the discretion of the trial court and will not

[1] Rogers' Ans. & Countercl. filed in Foreclosure Action (2011-CP-10-01805) on February 2, 2012.

be reversed absent an abuse of discretion." *State v. Hatcher,* 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011)(internal quotations and cites omitted). A trial judge's rulings on discovery matters will not be disturbed by an appellate court absent a clear abuse of discretion. *Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009).

SUMMARY OF THE ARGUMENT

This is a simple foreclosure with no deficiency judgment sought that has spawned an intervention and multiple responsive claims. The trial court's decision to deny the Rogers' Motion for Summary Judgment and to grant Respondent's Motion for Summary Judgment has now given rise to a sprawling appeal and over 80 pages of briefing. The central question presented is whether striking a case, by consent, under Rule 40(j) of the South Carolina Rules of Civil Procedure is subject to the two-dismissal rule set forth in Rule 41. The trial court correctly held Rule 40(j) strikes are not limited by Rule 41. This holding is fatal or nearly fatal to many of Appellants' other claims and theories.

There is more. The trial court also found that, on the main, Appellants' claims, which were alleged in prior litigation dating back to 2012, are time-barred. Appellants dispute this finding but there is no genuine basis to dispute that claims that accrued 7 or 8 years before they filed their pleadings in this action are actionable.

The trial court also examined every claim on the merits. It found that Appellants had no evidence supporting a claim for negligent misrepresentation. Appellants challenge this holding but without pointing to any evidence supporting any element of the claim. The trial court found that Appellant's claims for malicious prosecution and abuse of process are not cognizable for myriad reasons. For instance, this is the first action in which Beshara was named as a defendant, the Rogers were not even named as a defendant in this action and their construction of these claims misapprehends their true nature. Appellants cannot refute the trial court's reasoning.

Similarly, the trial court explained that Appellant's cannot create a genuine issue of fact as to any element of SCUTPA. Appellants dispute this conclusion but fail to show an actual basis for their claim or any pecuniary loss. Beshara also disputes the trial court's analysis of her demand for an accounting but fails to identify any basis for an accounting. And all Appellants take umbrage at the trial court's decision with respect to their claim for an 'anti-foreclosure' declaration. But Appellants do not show that the trial court's conclusion that their allegations are merely defenses to foreclosure and subsumed within Respondent's case-in-chief is erroneous.

Having failed to show a genuine issue with respect to any of the foregoing questions, Appellants retreat to generalities. They argue the trial court failed to exclude evidence. But the evidence they challenge is not necessary to support the trial court's judgment. They challenge the trial court's discovery ruling but fail to show an abuse of discretion.

Having exhausted every conceivable avenue, Appellants are left arguing that equity demands that they prevail. Equity is not a substitute for a valid theory and supporting evidence. The trial court must be affirmed.

ARGUMENT

I. The Trial Court Correctly Held that Striking or Dismissing an Action Pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure Is Not Subject to a 'Two-Dismissal' Rule and Second or Successive Strikes or Dismissals Are Not Decisions on the Merits.

The central premise of Appellants' appeals is that the trial court erred in holding that Respondent is not barred from prosecuting this foreclosure action as a result of the multiple prior orders striking Actions 1, 2 and 3 under Rule 40(j). There is no support for Appellants' argument. As a result, the trial court reached the only sensible conclusion available to it.

As the trial court noted, neither the text nor the purpose of Rule 40(j) are consistent with Appellants' contention. Rule 40(j) states in full:

> **(j) Case Stricken From Docket by Agreement.** A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule.

Rule 40(j) does not state that, upon a second implementation of this procedure, the action is dismissed with prejudice and a decision on the merits has been entered. *Compare with* S.C. R. Civ. P. 41(a)(1)(B). Rather, it says something very different. It states that a "party may strike its complaint… from any docket one time as a matter of right" and directly implies that a party may implement this procedure more than once through a motion. Moreover, irrespective of whether a complaint is struck as a matter of right or by motion, the matter may be "restored." Appellants' reading of Rule 40(j) is in direct conflict with the text, which clearly allows multiple orders striking complaints from dockets and subsequent restoration of those complaints.[2]

Additionally, it cannot be credibly asserted that orders dismissing or striking cases from the active docket under Rule 40(j) are somehow subject to the two-dismissal rule under Rule 41, which is a completely separate Rule prescribing its own processes. As the trial court noted "[t]he language of Rule 41(a)(1) simply does not address multiple dismissals of a prior action with leave to reinstate under Rule 40(j)." (Order, p XX). Rule 41 is a rule for "Dismissal of Actions." Rule 40 is a rule pertaining to the "General Docket, Trial Rosters and Call of Cases for Trial." It makes no sense for a court to enter an

[2] The Rogers also did not appeal the April 7, 2015 Order restoring the case a second time.

order "striking" a case from the active docket with leave to restore that case if the effect is to dismiss the case forever.

Further, as the trial court correctly observed, "a *notice* of dismissal under Rule 41 that follows a prior dismissal by the Plaintiff can operate as a decision on the merits. *Id.* However, numerous cases interpreting Rule 41 of the Federal Rules of Civil Procedure and similar state court iterations of Rule 41, SCRCP have recognized that subsequent dismissal of a previously dismissed action by anything other than a *notice* of dismissal does not constitute a merits determination." (Order of July 10, 2023, pp XX). Cases supporting this conclusion are legion. *See Manning v. S.C. Dept. of Highway and Public Transp.,* 914 F.2d 44, 47 n.3 (4th Cir. 1990) (recognizing that two dismissals of an action involving the same claims stated in a previously dismissed action only happens when the second dismissal is by notice, but not when the defendant is dismissed by motion or by stipulation); 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure § 2368*, (4th Ed. Oct. 2020 Update) ("By its own clear terms, the 'two dismissal' rule applies only when the second dismissal is by notice under Rule 41(a)(1)(A)(i). It does not apply to a dismissal by stipulation, nor to an involuntary dismissal, nor to a dismissal by a court order under Rule 41(a)(2). The rule does not apply if the second dismissal is in some way irregular."); *see also Estate of Livesay ex rel., Morley v. Livesay,* 723 S.E.2d 772, 776-77 (N.C. App. 2012) (holding that the two dismissal rule did not apply because the two prior dismissals of action were involuntary and by our order); *Crawford v. Kingston,* 728 S.E.2d 904, 906 (Ga. Ct. App. 2012) (recognizing that under Georgia law, only voluntary dismissals filed by a plaintiff are to be counted for purposes of Georgia's version of Rule 41).

Thus, even if the drafters of Rule 40(j) intended and hoped that Rule 41(a) would somehow apply to Rule 40(j) dismissals, it could not because Rule 40(j) dismissals require consent and successive Rule 40(j) dismissals require a court action, as occurred here.

Unsurprisingly, Appellants are unable to mount any serious challenge to the trial court's decision.[3] Appellants make no textual argument whatsoever under the Rules. Rather, Appellants argue that this court has noted that the operation of Rule 40(j) is equivalent to a "dismissal." Appellants then bootstrap onto this unremarkable conclusion the atextual argument that a Rule 40(j) dismissal must also be subject to the two-dismissal rule. This argument is not well-taken.

As a preliminary matter, whether a matter stricken under Rule 40(j) is "equivalent to a dismissal" is of no moment. It is unsurprising that courts would consider a case that has been stricken, and which must be restored before it can progress, to be dismissed. Neither of the cases Appellants cite for their equivalency argument offer any support for the application of a two-dismissal rule to Rule 40(j) strikes. In *Goodwin v. Landquest Development, LLC*, 414 S.C.623, 779 S.E.2d 826 (Ct. App. 2015), the court found that the trial court had erred in relying on Rule 40(j) in denying a party's motion to restore a case stricken due to a bankruptcy filing. The decision gives no indication at any point that a party is limited to one Rule 40(j) strike. Similarly, in *Personal Care, Inv. v. Theos*, 426 S.C. 78, 825 S.E.2d 281 (Ct. App. 2019), this Court merely concluded that the statute of limitations could be raised in opposition to a motion to restore.

Consequently, there is no basis for Appellants' contention that the foreclosure is barred by the prior litigation. This holding redounds throughout this action and supports affirming the trial court's grant of summary judgment in favor of Respondent as to all of Appellants' claims and the denial of the Rogers' Motion for Summary Judgment, as explained by the trial court.

II. The Trial Court Correctly Found that Appellants' Claims Are Time-Barred.

[3] Among other arguments, the Rogers now contend that the second and third Rule 40(j) strikes of this foreclosure reflect an "abusive" practice that should receive some kind of recognition in this appeal. In response, Respondent would note that the Rogers consented to these strikes and did not appeal them. The Rogers have, therefore, waived any complaint they had to this ancient history. And, moreover, Respondent states that its requests for a Rule 40(j) strike, which are plainly contemplated in and allowed by the Rules of Civil Procedure, cannot be fairly criticized as "abusive."

Appellants all challenge the trial court's conclusion that their claims are time-barred. Appellants' arguments are, however, not well-taken and the trial court's conclusions should be affirmed. Generally, a counterclaim must be asserted before the limitations period for that claim has expired. *See Whitfield Const. Co. v. Bank of Tokyo Tr. Co.*, 338 S.C. 207, 225, 525 S.E.2d 888, 898 (Ct. App. 1999).[4]

The trial court reached the unremarkable conclusion that Appellants' claims, which were previously alleged by the Rogers in the prior litigation and allegedly accrued during the course of the prior litigation, arose more than four years before they were refiled in the instant case and are, therefore, untimely. (Order of July 10, 2023, pp 8-9.) Appellants do not dispute this conclusion. Indeed, with the exception of their claims for declaratory judgment, Appellants do not identify any claim[5] that accrued within the time allowed and/or could not have been discovered until some later point in time. Rather, Appellants criticize the method the trial court used and contend they are protected by the discovery rule, equitable estoppel, and/or equitable tolling. These arguments are inadequate.

Significantly, the Rogers point to no evidence that their claims were "discovered" at a point that would make their pleading timely.[6] As this court has held, "whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." *Young v. S.C. Dep't of Corr.,* 333 S.C. 714, 719,

[4] Beshara appears to take issue with this conclusion, despite the fact that it is a bedrock principle of litigation. Notably, Beshara does not articulate a different rule or cite to any authority for the proposition that a counterclaim can be within the limitations period even if it is not timely filed.

[5] Although unclear, it may be the case that Appellants contend the filing of the instant case serves as the basis for their malicious prosecution and abuse of process actions. In that case, those actions would not be time-barred but would fail for the myriad other reasons referenced by the trial court.

[6] As the trial court noted, Beshara was a stranger to the entire chain of events upon which her claims are allegedly based. For instance, the undisputed evidence showed she had no communication or interaction with either Plaintiff or Nationstar. Moreover, her negligent misrepresentation claim is premised on representations made not to her but to the Rogers. Therefore, while she may now assert she was unaware of any of the prior history until 2019, this is also an admission that she was not injured in any way by the allegations she raises.

511 S.E.2d 413, 416 (Ct. App. 1999). The suggestion of a delayed discovery is difficult to even fathom here. The Rogers undeniably alleged the same claims in 2012. The only new claims are those for abuse of process and malicious prosecution, which Appellants own allegations make plain were discovered or discoverable as they occurred. And, as the trial court noted, there are no allegations of any kind regarding conduct or injury transpiring between the 40(j) strike on May 16, 2016 and the filing of Appellants' claims in this action. Importantly, it is Appellants obligation to prove "specific facts" establishing a genuine issue for trial. *Dawkins v. Fields*, 354 S.C. 58, 70, 580 S.E.2d 433, 439 (2003). Specific facts are in very short supply throughout Appellants' briefing.

Similarly, any contention that Respondents are estopped from asserting the limitations period or that the period was tolled is frivolous. "The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. It has been observed that equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115–16, 687 S.E.2d 29, 32 (2009)

Beshara takes that position that she has no obligation to pursue her claims until someone else brings an action against her and/or that her obligations are tolled while she waits to see what happens. That is not the law of South Carolina or any other jurisdiction. *See Whitfield, supra.*

Appellants have identified no reversible error with respect to the trial court's Orders on summary judgment.

III. The Trial Court Correctly Found that Appellants Could not Show a Genuine Issue of Material Fact as to Any of Their Claims.

In addition to its analysis of the limitations periods, the trial court performed an exhaustive review of the merits of the Appellants' claims and identified myriad failures in both concept and

evidentiary support. Appellants remain unable to overcome the clear deficiencies in their claims and evidence. Thus, to the extent any claim is not time-barred, there remains no reversible error.

a. Appellants Cannot Show a Genuine Issue of Fact as to Negligent Misrepresentation.

"[T]he plaintiff must allege and prove the following essential elements to establish liability for negligent misrepresentation: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." *Wells Fargo Bank, N.A. v. Pappas,* No. 2016-UP-263, 2016 WL 3200188, at *1 (Ct. App. June 8, 2016).

With respect to Beshara, the trial court correctly noted she had alleged her claim was based on unspecified misrepresentations allegedly made to the Rogers or the Court and noted this would not satisfy the elements of negligent misrepresentation because Beshara does not contend she was deceived. (Order of July 10, 2023, p 10.) The trial court further noted the evidence presented showing that Beshara denied any direct communication with Respondents. (Order of July 10, 2023, p 10.) For reasons that are not clear, Beshara argues on appeal that monthly statements sent to Curt Rogers, which Beshara does not allege and did not testify she ever saw, reflect a negligent misrepresentation made to her. Her brief does not even attempt to show how this could create a genuine issue of fact related to negligent misrepresentation.

Similarly, the Rogers contend that monthly statements Mr. Rogers received were false or inaccurate for unspecified reasons. For no obvious reason, they also raise the unalleged and unsupported contention that Respondents mailed monthly statements to Beshara. And they contend that the mortgage, which they executed, recorded in 2007 is a negligent misrepresentation Although their argument is

difficult to apprehend, it appears the Rogers are contending these representation are "false" because of their misguided arguments under Rule 40(j). As already discussed, those arguments are legally invalid.

Neither Beshara nor the Rogers can identify anywhere in the record evidence of a misrepresentation made to them, on which they justifiably relied and were thereby injured within three years prior to the commencement of their claims.[7] Consequently, there is no basis for a finding of reversible error in their arguments.

b. Appellants Cannot Show a Genuine Issue of Material Fact as to Their Claims for Abuse of Process.

The essential elements of abuse of process are: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding." *Johnson v. Painter*, 279 S.C. 390, 391, 307 S.E.2d 860, 860 (1983). Significantly, "the tort of abuse of process, as distinguished from that of malicious prosecution, involves the malicious misuse or perversion of the process, *after its issuance*, for an end not lawfully warranted by it. *Id.* (emphasis added). "Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required. There

[7] As an additional justification for its decision with respect to Beshara's claim for negligent misrepresentation, and other causes of action, the trial court correctly observed that Beshara lacks contractual privity or standing to dispute Respondent's contractual relationship with other non-parties. *See Goode v.St. Stephens United Methodist Church*, 329 S.C. 433, 445, 494 S.E. 2d 827, 833 (Ct. App. 1997) ("Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract. However, when the contract is made for the benefit of the third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person"); *see, e.g., Doherty v. PNC Mortg.*, C/A No. 0:14-cv-4013-TLW-SVH, 2015 WL 5012781, at *3 (D.S.C. July 16, 2015) *adopted in-partby* 2015 WL 5012823, at *1 (D.S.C. August 21, 2015) (holding that devisee of real property lacked standing to challenge assignment of note and mortgage because she was not party to the agreement transferring the note and mortgage or a party to either the note or mortgage); *Reese v. U.S. Bank Ass'n*, C/A No. 3:11-cv-2990-CMC-SVH, 2012 WL 1952819, at *3 (D.S.C. Apr. 30, 2012) ("Plaintiff lacks standing to contest the Assignment of Mortgage. Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity.").

Beshara contends this conclusion is erroneous citing inapplicable constitutional standing principles and cases from other jurisdictions that have reached differing conclusions as to a borrower's ability to challenge contractual exchanges. Importantly, this issue is largely irrelevant. Beshara has no claim for negligent misrepresentation because, among many other reasons, she does not contend that any misrepresentations about any of these events were made to her, or that she was deceived and acted in reliance. Thus, she cannot show reversible error irrespective of whether she can assert these challenges as a non-party.

is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). "The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club." *Pallares v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 134 (2014).

Among many reasons, the trial court found that Respondents were entitled to judgment as a matter of law because Appellants had adduced no evidence of an act done with ulterior purpose. In fact, Appellants expressly alleged that the purpose of these Actions was to obtain an order of foreclosure. (Rogers Am. Answer, ¶ 95; Beshara Am. Answer, ¶ 91.) As the trial court correctly found, foreclosure is not an ulterior motive for an action seeking foreclosure.[8]

Appellants remain defiant about these conclusions but are also unable to point to any evidence of an attempt to coerce them through the use of process to obtain a collateral advantage.[9] Appellants continue to assert that the filing of one or more of these Actions satisfies the tort. As a practical matter, Respondent was not even a party to the prior Actions and cannot be sued as if it had been a party. Further,

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[8] Appellants' construction of abuse of process duplicates the tort of malicious prosecution. The Rogers also argue and cite to authorities purportedly demonstrating that the tort is satisfied by the filing of a variety of pleadings but review of those cases discloses this is not the case. For instance, in *Cisson v. Pickens Sav. & Loan Ass'n*, 258 S.C. 37, 42, 186 S.E.2d 822, 824 (1972), the court was confronted with a claim confusingly denominated "malicious abuse of process" and concluded that "by whatever name it is designated," the gravamen of the action was that it was done "without probable cause and with malicious intent to damage plaintiff's business and reputation." In *LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 68, 370 S.E.2d 711, 712 (1988), overruled by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021), the court held that an appeal of a board of adjustments decision was <u>not</u> sufficient to establish an abuse of process. Similarly, in *Mercury Marine Div., of Brunswick Corp. v. Costas*, 288 S.C. 383, 387, 342 S.E.2d 632, 634 (Ct. App. 1986), the summary judgment against the abuse of process claim was affirmed because "there was no evidence that Mercury Marine had any purpose in suing Mr. Costas other than to collect the debt which he owed." Thus, these authorities stand for the opposite proposition for which they are cited.

[9] Curiously, even though she had no involvement with the prior litigation, Beshara now contends that she has an abuse of process claim arising from the prior Rule 40(j) strikes that were done with the Rogers' consent and which they, themselves, did not appeal. Moreover, Beshara asserts that dismissing the prior actions in order to cure a defect with them is somehow "collateral" to the objective of obtaining a foreclosure judgment. These arguments are meritless.

even as an abstract matter, Appellant's theory does not set forth a valid claim. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133 ("An allegation that a party had a 'bad motive' or an 'ulterior purpose' in bringing an action, standing alone, is insufficient to sustain an abuse of process claim."). And, again, it makes no sense to argue that the filing of a foreclosure action in order to foreclose on a Property is an abuse of process because the litigant is merely using the process as it is designed to be used.

Therefore, the trial court must be affirmed.

c. Appellants Have Shown No Genuine Issue of Material Fact as to Their Claims for Malicious Prosecution.

"[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiffs favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Law v. S.C. Dep't of Corr.,* 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006) (first alteration in original) (citations omitted). "An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause." *Id.*

The trial court found that its decision that Rule 40(j) strikes are not subject to the two-dismissal rule was alone sufficient to dispose of any malicious prosecution claim as those claims are premised on the assertion that Respondent precluded from seeking foreclosure and, therefore, lacked probable cause to file Actions 3 and 4. The trial court further noted that Beshara was not even a party to the prior Actions and the Rogers were not named in the instant case. (Order, July 10, 2023, pp 15-16.) Respondent was also not a party to Action 3 and Action 4 has not even terminated, let alone in Appellants' favor.

Appellants argue only that they believe the prior Rule 40(j) strikes were favorable terminations on the merits for the reasons already discussed. Because Appellant's two-dismissal theory is wrong, the trial court must be affirmed.[10]

d. Appellants Have Shown No Genuine Issue of Material Fact as to Their Claims Under SCUTPA.

After setting forth a clear recitation of the law concerning the South Carolina Unfair and Deceptive Trade Practices Act, the trial court analyzed each Appellant's claim based their standing in the case. With respect to Beshara, the trial court found that Beshara cannot raise conduct directed at the Rogers in her claim, had shown no pecuniary loss, and, in any case, was barred from raising any SCUTPA claim in a representative capacity under S.C. Code Ann. § 39-5-140(a). (Order of July 10, 2023, pp 19-20.

Beshara's rebuttal to the trial court's decision is extremely difficult to apprehend. Beshara contends that she filed her claims in her personal capacity. She also appears to contend that the "unfair and deceptive" act directed at her is the fact that she was named as a defendant in this action, even though she is the owner of the Property. She further contends she had to "incur" legal fees defending the foreclosure, which satisfy her burden for pecuniary loss.

The trial court did err with respect to Beshara. Contrary to her assertion, Ashley Beshara, the individual, is not a party to this case. Beshara was named exclusively in her capacity as trustee for the revocable trust created for the Property and, as trustee, she is a representative and barred from bringing any claim under SCUTPA. (Summons and Complaint.) Conversely, Ashley Beshara, the individual, did not and cannot bring any cause of action in this case. Moreover, even if litigation costs for unwanted

[10] Additionally, insofar as no case has ever held that Rule 40(j) strikes are subject to the two-dismissal rule, even were the Court to find in Appellant's favor, there would still be no basis for a malicious prosecution action because that rule was previously unstated and unknown to the public.

lawsuits were a proper basis for a SCUTPA claim, which they are not, Ashley Beshara, the individual, was not required to defend this action because she is a stranger to this action.[11] Therefore, Ashley Beshara, in her individual capacity, has no pecuniary loss.

The Rogers challenge various rationales expressed in the trial court's Order of July 10, 2023. However, the Rogers do not even attempt to identify and describe actual evidence creating a genuine issue of fact as to any actual conduct by Respondent that meets all of the elements required for a claim under SCUTPA. This is telling and fatal to the Rogers' appeal. As a general matter, this Court could agree with the Rogers' various arguments but affirm the trial court due to their inability to articulate what facts their evidence purportedly shows.

In any event, the Rogers' criticisms are, themselves, misguided. They appear to contend that Respondent is liable for torts committed at the origination of the Loan. However, the Rogers cite no authority for this implied assertion, and it is wrong. "As a general rule, the law holds a person liable only for his own acts and omissions." *S.C. Ins. Co. v. James C. Greene & Co.,* 290 S.C. 171, 178, 348 S.E.2d 617, 621 (Ct. App. 1986). There is no evidence or allegation that Respondent originated the Loan. And, in any case, the Rogers offer no reason why a SCUTPA claim arising from the 2007 origination of their loan would not be time-barred 13 years later.

The Rogers also dispute the trial court's conclusion that the allegations here do not affect the public interest. Insofar as the Rogers do not even attempt to articulate the supposed acts that are at issue, it is impossible to judge whether they are unfair or deceptive and have enough of an effect on the public to satisfy the standard. Moreover, as evidence, the Rogers refer only to their pleadings. This is insufficient to demonstrate reversible error. *See Coker v. Cummings*, 381 S.C. 45, 54, 671 S.E.2d 383, 388 (Ct. App. 2008) (party may not rely on pleadings at summary judgment phase).

[11] Beshara is also free to resign as trustee and/or not to defend this action in the first place.

Finally, with respect to pecuniary loss, the Rogers make a vague reference to "debt collection," for which they make no citation to the record, and also raise their legal fees over the last 15 years as a pecuniary loss. Respondent is unable to respond to the Rogers' unsupported "debt collection" assertion. With respect to legal fees, the Rogers cite no authority for the proposition that legal fees are a pecuniary loss under SCUTPA. There is no dispute that attorney's fees are recoverable for a violation under S.C. Code Ann. § 39-5-140. However, there is no logical reason for this Court to find that costs incurred in litigation are pecuniary losses under SCUTPA. Courts in other jurisdictions have not been favorable to such allegations. *See, e.g., United Poultry Concerns v. Chabad of Irvine*, 2016 U.S. Dist. LEXIS 139375, at *1-2 (C.D. Cal. 2016) (Attorneys' fees and costs cannot confer standing, "because [i]f court costs and attorney's fees could satisfy the UCL standing requirement, then the standing requirement would be meaningless because any plaintiff filing suit would be allowed to show injury." (Internal quotations and citations omitted); *Hernandez v. Specialized Loan Servicing, LLC*, 2015 U.S. Dist. LEXIS 43576, at *18 n.7 (C.D. Cal. 2015); *RAS Grp., Inc. v. Rent-A-Ctr. E., Inc.*, 335 S.W.3d 630, 641 (Tex. App. 2010) ("Attorney's fees are not normally recoverable as actual damages…"). In any case, as noted many times throughout this argument, the Rogers consented to everything they now contest, Respondents did not enter the fray until this action was filed and it is illogical for the Rogers to recharacterize the results of their own actions as a loss caused by Respondent.

Further, as the trial court noted, the application of SCUTPA to judicial proceedings is improper as the accused acts are not acts in commerce – they are judicial proceedings governed by the Rules of Civil Procedure. Additionally, Appellants' theory again duplicates the tort of malicious prosecution, which was specifically designed to address litigation-based events. In any event, even if the Rogers could claim litigation costs as a pecuniary loss under SCUTPA, they have not identified any actionable conduct by Respondent or any injury occurring within the period allowed for bringing any claim. As

noted, Respondent is not precluded from seeking foreclosure and the Rogers were not even named in this action.

For these reasons, the trial court should be affirmed.

e. Appellants Have Not Identified Reversible Error Concerning the Trial Court's Decision on Their Claims for Declaratory Judgment.

The trial court wisely concluded that Appellants' claims for declaratory judgment were improper because, in essence, it sought a decision on Appellants' defenses to Respondent's request for a judgment of foreclosure. (Order of July 10, 2023, pp 21-22). The trial court correctly found that defenses should not be elevated to their own cause of action. Appellants do not dispute that they seek a declaratory judgment on their defenses. In fact, they freely acknowledge, for instance, that they seek a declaration that Respondents lack standing to foreclose and/or are precluded from foreclosing under Rules 40 and 41. Moreover, Appellants have adduced no authority for the recognition of the 'anti-foreclosure' declaration they seek. Foreclosures in South Carolina have been conducted for decades without such claims.

"The decision to grant a declaratory judgment is a matter which rests in the sound discretion of the trial court and will not be disturbed absent a clear showing of abuse. Declaratory relief will ordinarily be refused where another remedy will be more effective or appropriate under the circumstances. *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 820–21 (1995) (internal citations and quotes omitted). Here, an order granting or denying Respondent's request for foreclosure will already accomplish everything sought in Appellant's purported claim for declaratory judgment. The trial court did not abuse its discretion in denying Appellants a separate claim to obtain this remedy.[12]

[12] The trial court also addressed the Rogers' allegation that their Loan was unconscionable because it allowed for multiple repayment options. Although this theory is difficult to pin down, it appears Mr. Rogers alleges it was unconscionable for the Loan to allow him to pay less than the total interest accrued. The trial court dispatched this allegation by concluding

f. <u>The Trial Court Did Not Err in Finding Appellants Are Not Entitled to an Accounting Remedy.</u>

An accounting is "designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty." *Rogers v. Salisbury Brick Corp.,* 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989). The trial court correctly found that an accounting is an equitable remedy resolving issues not presented here. (Order of July 10, 2023, pp 20-1.) The trial court further noted that Beshara is not even a party to the loan and has no relationship with or claim against Respondent from which this remedy could arise. (*Id.*) Beshara acknowledges that an accounting is a remedy but maintains that she is entitled to this remedy simply because she has demanded it. Beshara fails to set forth any factual or legal basis, and fail to cite any legal authority, demonstrating that the trial court's conclusion must be reversed.

IV. Appellants Have Not Shown Reversible Error with Respect to Respondent's Evidence.

Appellants contend that the trial court erred in admitting or refusing to exclude portions of the Affidavit of Alan Blunt. However, that affidavit comports with South Carolina law in every respect as it is based on records produced and/or Mr. Blunt's review of business records. For instance, Beshara contends that Blunt cannot authenticate the Note and Mortgage, but Blunt testified that he is familiar with Nationstar's records and that the copies attached are true and accurate. Nothing more can be required. *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) ("The authentication requirement is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims...the burden to authenticate ... is not high and requires

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repayment options could not be considered oppressive. As has been the case with several arguments, the Rogers do not actually contest that the trial court's conclusion that the loan was not unconscionable. Rather, they argue the trial court was wrong to even consider the issue. Respondents do not understand this argument and it was not raised below. Therefore, it has been waived.

only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.") (internal cites and quotes omitted).

Moreover, "[t]o warrant a reversal based on the admission of evidence, the appellant must show both error and resulting prejudice." *Conway v. Charleston Lincoln Mercury Inc.*, 363 S.C. 301, 307, 609 S.E.2d 838, 842 (Ct. App. 2005). Appellants do not argue that the trial court relied on any evidence that should not have been admitted to reach any conclusion that must now be reversed. Appellants argue Mr. Blunt cannot authenticate the revocable trust agreement between Appellants. However, Appellants acknowledge in their Opening Briefs that Beshara was trustee for the Property and the specifics of their trust agreement are not material to the trial court's decisions. (Resp.'s MSJ, Tr. Dep. of Beshara, pp 9-12.)[13] Additionally, Mr. Blunt's testimony that the Rogers were in breach of the loan is not critical to the trial court's decisions. Similarly, the trial court did not reference or rely on the Pooling and Servicing Agreement.[14] Consequently, Appellants have shown no prejudice or basis for reversal.

V. Trial Court Did Not Err in Concluding Respondent Met Its Initial Burden For Summary Judgment.

Beshara also contends the trial court erred in finding that Respondent met its initial burden with respect to summary judgment. This argument is presumably directed at the trial court's grant of summary judgment as to her affirmative claims. Beshara fails to support this assertion and, more specifically, fails to identify a single, particular point on which Respondent's evidence was insufficient to shift the burden.

The reasons for this are obvious. Beshara's arguments under Rule 40(j) and/or Rule 41 involve erroneous legal contentions. To the extent any factual record was necessary for Respondent to meet its burden, that record was satisfied by Beshara's own pleadings and the pleadings in the prior Actions.

[13] Indeed, if Beshara were not the trustee, her claims against Respondent would be non-sensical.

[14] Moreover, if Appellants believe or believed that the Pooling and Servicing Agreement was or is critical to this action, they were within their rights to file a motion to compel its production under Rule 37(a) of the South Carolina Rules of Civil.

Similarly, Respondent was also entitled to summary judgment on Beshara's claims for malicious prosecution, abuse of process, SCUTPA, accounting and declaratory judgment from information self-evident in the pleadings.

What is more, Respondent attached Beshara's own deposition testimony to its motion, which showed conclusively that they had no knowledge of any ulterior purpose supporting an abuse of process claim. (Resp. MSJ, Tr. of Beshara Dep..) Her testimony also revealed that she could not identify any false statements made to her and that she suffered no injury as a result of the conduct alleged in her claims. (Resp. MSJ, Exh. C, Tr. of Beshara Dep..) Similarly, the Rogers were unable to articulate any basis for their claims in response to very basic questions. (Resp. MSJ, Exhs. A-B, Trs. of Rogers' Deps.). This evidence and information was more than sufficient to support the trial court's decision.

VI. Appellants Can Not Show Reversible Error From Their Generalized Arguments Sounding in "Equity," a Lack of "Vigilance or "Totality of the Circumstances."

Appellants also appear to suggest that Respondent is culpable for a failure to prosecute, despite the fact that no motion to dismiss for failure to prosecute is pending or part of this appeal. Appellants further conclude that the "totality of the circumstances" militate for reversal of the trial court.

This contention is precatory, at best. They were not raised in the trial court and, therefore, were not preserved. *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp.,* 347 S.C. 333, 343, 554 S.E.2d 870, 875 (Ct. App. 2001) ("An issue must be raised to and ruled on by the trial court for an appellate court to review the issue."). The trial court's decision is grounded in the law and evidence presented. Appellants' theory of Rule 40(j) is erroneous. Appellants' claims are stale and, in most cases, illogical. The trial court committed no reversible error.

VII. Appellants Have Not Shown Reversible Error from the Trial Court's Discovery Ruling.

In its Order, the trial court granted the Rogers' motion to compel with respect to certain objections interposed, which are not at issue here. The trial court denied the motion to the extent it sought an order compelling the identity of a specific representative who would testify at trial on Plaintiff's behalf. The trial court noted, correctly, that the Rogers were free to conduct the deposition of Respondent pursuant to Rule 26, and that testimony would bind Respondent irrespective of whether the same or a different witness testified at trial. (Order of July 10, 2023, p 23.) The Rogers describe this aspect of the decision as "prejudicial." However, they do not support this conclusion and it is, on its face, surprising insofar as there has been no trial.

Beshara asserts that it was error to grant Respondent's Motion for Summary Judgment because "discovery had not been completed as a result of [Respondent's] intentional delays." Her basis for this assertion is that the Rogers had commenced a discovery dispute with Respondent requesting the identify of a specific *individual* who would testify for Respondent at trial.

These arguments are not well-taken. As a starting point, Respondent correctly identified itself as a witness. Respondent will testify as necessary. A corporation is a legal entity that testifies through its officers. *See U. S. Tire Co. v. Keystone Tire Sales Co.,* 153 S.C. 56, 150 S.E. 347, 349 (1929). The precise identity of Respondent's representative is of no moment. Appellants have, unsurprisingly, not identified a single authority suggesting that Respondent's Interrogatory response is inadequate or improper. Nor have Appellant's identified any reason why the identity of Respondent's representative(s) required or even important.

Additionally, it is unclear what standing Beshara has to raise a discovery dispute between Respondent and the Rogers. In any event, she did not preserve the issue and cannot raise it now. *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp.,* 347 S.C. 333, 343, 554 S.E.2d 870, 875 (Ct. App. 2001) ("An issue must be raised to and ruled on by the trial court for an

appellate court to review the issue."); *Repko v. Cnty. of Georgetown*, 424 S.C. 494, 502, 818 S.E.2d 743, 748 (2018) (party cannot raise issue for first time in motion for reconsideration).

Moreover, on the merits, her position is profoundly weak and in no way sufficient to demonstrate an abuse of discretion. First, as discussed above and as noted by the trial court, nothing prevented Beshara from conducting a deposition of Respondent under Rule 30(b)(6). Second, the parties were subject to a Consent Discovery Scheduling Order terminating discovery on September 9, 2022. (Order of April 13, 2022.) Further, Beshara had over three years before Respondent's Motion for Summary Judgment was filed to conduct whatever discovery she believed was necessary. She engaged in no discovery prior to expiration of the discovery deadline. She cannot credibly assert she did not have a full and fair opportunity to conduct discovery or that Respondent's motion came as a surprise when it was actually filed after discovery had closed. *See Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479–80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment and rejecting unsupported assertion that four months was insufficient for discovery).

She also did not submit an affidavit under Rule 56(f) showing that she was unable to marshal facts necessary to oppose the motion in time for the hearing. *See* S.C. R. Civ. P. 56(f). And, even now, Beshara does not and cannot proffer a specific reason additional discovery would cast doubt on trial court's Orders. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991) (nonmoving party must demonstrate that further discovery will likely uncover additional relevant evidence); *Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E.2d 433, 440 (2003) (citing *Baughman*).

No reversible error has been shown from any aspect of the trial court's discovery ruling.

CONCLUSION

For the reasons and authorities stated above, this Court should affirm the Trial Court's Orders

This the 24th day of April 2024.

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

THE HONORABLE KRISTI F. CURTIS, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2023-001844

CASE NO. 2019-CP-10-4503

Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans Inc., Pass-Through Certificates 2007 QH2..Respondent,

v.

Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally dated the 3rd day of March 2010; Shoreline Farms Community Association, Inc.; Wells Fargo Bank, N.A.; Cadle Rock Joint Venture, L. P. an Ohio Limited Partnership, Curtis Rogers and Julie Rogers

Of Whom Curtis Rogers, Julie Rogers and Ashley Johnson Beshara Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally dated 3rd day of March 2020 are .... Appellants,

v.

Nationstar Mortgage LLC,...Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the ***Respondents Deutsche Bank Trust Company Americas' Reply to Appellants Curtis and Julie Rogers' and Ashley Beshara's Initial Briefs*** upon all counsel of record in this action via electronic mail, on April 24, 2024 as follows:

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/s T. Richmond McPherson, III
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Apr 24 2024
SC Court of Appeals

April 24, 2024

VIA US MAIL AND EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Re: *Deutsche Bank Trust Company Americas v. Ashley Johnson Beshara, et. al.*
Court of Appeals No. 2023-001844

Dear Mrs. Kitchings:

Please find attached for filing the following with regard to the above case.

1. Form 14 Designation of Matter to be included in the Record on Appeal

2. Respondent's Reply to Appellant's Initial Briefs

3. Proof of Service of the Reply Brief;

By copy of this letter all counsel of record are being served with the same. Should you have any questions or need any further information, please do not hesitate to contact my office.

Sincerely,

McGuireWoods LLP

T. Richmond McPherson, III
Attorney

Enclosures

cc: All parties of record

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April 25, 2024

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APR 29 2024
SC Court of Appeals

<u>Via US MAIL</u>

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Deutsche Bank Trust Company Americas v. Ashley Johnson Beshara et al.
Civil Action No.: 2019-CP-10-4503

Dear Mrs. Kitchings:

Please find attached the following with regard to the above case.

1. One bound copy of Respondent Deutsche Bank Trust Company Americas' Reply to Appellants Curtis and Julie Rogers" and Ashley Beshara's Initial Briefs.

By copy of this letter all counsel of record have been served with the same. Should you have any questions, please do not hesitate to contact our office.

Sincerely,

McGuireWoods LLP

T. Richmond McPherson, III
Attorney

TRM/csc

Enclosures:

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From: RICHMOND MCPHERSON

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