

No. 2024-001062

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

JANET L. NELUMS; CHRISOHER NELUMS,

Plaintiff-Appellant

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY., ET AL.

Defendants- Respondent,

ON APPEAL FROM RICHLAND COUNTY Court of Common Pleas
BEN N. MILLER III as Special Referee, Court of Common Pleas Judge
(Lower Court Case No. 2017CP4001687)

Submitted: June 13, 2024 Decided: May 13, 2024

APPELLANTS CORRECTED AMENDED OPENING BRIEF

ORAL ARGUMENT REQUESTED

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September 23, 2024

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PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

Pursuant to rule 29.6 Corporate Disclosure, the Respondent Deutsche Bank National Trust Company has no lawful parent company nor is it registered and operating lawfully. Respondent, Deutsche Bank National Trust Company is a fiction being used in a scheme or artifice to defraud Plaintiff-Appellants of the subject property of this Instant case by a conspiracy of attorneys.

The undersigned Plaintiff-Appellant pro se, certifies that All parties appear in the caption of the case on the cover page. persons and entities as described in the fourth sentence of Fourth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

LIST OF COUNSELS

Without acknowledgement as to any lawfully delegated authority having been granted the below referenced alleged counsel for the alleged Respondent/ Defendant by an officer of Deutsche Bank National Trust Company, and with full reservation of rights, it is only under threat duress and coercion, as well as without any certainty as to who is considered the alleged counsel of Deutsche Bank National Trust Company due to the Appellate Courts granting of an Unknown, and an unanswered conditional acceptance of NELSON MULLINS RILEY & SCARBOROUGH LLP, Matthew A. Abee, SC Bar No. 101100 Madison C. Guyton, SC Bar No.105205, 1320 Main Street / 17th Floor, Scott and Corley, P.A ATTN: Reginald P. Corley 2712 Middleburg Drive, Suite 200 Columbia, SC 29204, Attorney Mr. Ben N. Miller, III, Mckenzie Lybrand, LLP 1704 Main Street, Columbia, South Carolina 29201, Notice of Appearance, conditioned upon the presentment of specific proof of claim of right to represent, Plaintiff-Appellant cite the following purported counsel as the alleged representative of

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STATEMENT REGARDING ORAL ARGUMENT

Appellants request oral argument pursuant to Federal Rule of Appellate Procedure 34(a)(1) and Fifth Circuit Rule 28.2.3, only to the extent it would aid the Court in understanding the factual background of this case and clarify the legal issues presented. Plaintiff -Appellant suggests that the issues presented can be determined upon the record in Court,

STATEMENT OF JURISDICTION

This Appeal is from RICHLAND COUNTY Court of Common Pleas, Attorney Ben N. Miller III SC Bar # :3977 (“special referee.”), on May 13, 2024, (Lower Court Case No. 2017CP4001687) Attorney Ben N. Miller III SC Bar # :3977 SPECIAL REFEREE'S REPORT ON SALE, ORDER OF CONFIRMATION, AND ORDER FOR DEFICIENCY JUDGMENT- (Non-Jury Foreclosure), On May 13, 2024, Take Judicial Notice Supreme Court of South Carolina ADMINISTRATIVE ORDER June 3, 2021, Rule 53(b) provides no authority for the order of reference in this case. In matters brought to our attention, the special referee appointed by the circuit court is typically a lawyer. See 28 U.S.C. § 636(c)(3);

FED. R. CIV. P. 73(c), also See 28 U.S.C. §§ 636(c)(1) & (c)(3). in June May 13, 2024. A timely Notice of Appeal (Case No: 2017CP4001687), The Court of Appeals Court is asked to exercise jurisdiction under 28 U.S.C. § 1291, This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STATUTES INVOLVED

Fifth Amendment to the Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment to the Constitution

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STANDARD OF REVIEW

Because the (“Special Referee”), concerns a “dispositive” matter, this Court’s review 28 U.S.C. § 1291 vests federal courts of appeal with jurisdiction over “All final decisions of the Circuit courts See. Fed. R. Civ. P. 72(b)(3). See also 28 U.S.C. § 636(b)(1), CPC Patent Tech. Pty Ltd. v. Apple, Inc., 34 F.4th 801, 805 (9th Cir. 2022) Id at U.S.C. §636(c)(1)

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court have the authority under section 28 U.S.C. § 636(b)(1)(A)—i.e., authority to rule on); Fed. R. Civ. P. 72(b)(1) those that a magistrate judge may not decide without the parties' consent— “are dispositive a that the magistrate judge here lacked consent from the parties to rule on dispositive matters neither the Ben N. Miller, III SC Bar # :3977 (“special referee.”) lack subject-matter jurisdiction. See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize nor the district court otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections?
2. Did the circuit court Judge err Under 28 U.S.C. § 636(c)(4); by not vacating the transfer “for good cause shown on its own motion, or under extraordinary circumstances shown by any party.” 28 U.S.C. § 636(c)(4); see also Fed. R. Civ. P. 73(b)(3). But § 636(c)(4)?
3. Did the circuit court clerk of court err Under U.S.C. § 636(c)(2), and Rule 73(c).: by not sending the form AO 85A Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge This notice provided that to consent to the jurisdiction of a special referee judge, a party must sign for the order of reference form and return it to the clerk's office See Id at Appendix-D?
4. Appellants is not the object of the statute charged violated and when jurisdiction is challenged it must be proven. There is no evidence of jurisdiction established in the record
5. Did DBNTC, SCOTT and CORLEY, NELSON MULLINS, Intentionally conceal, with deception, the menacing the Appellants with a screwdriver?

STATEMENT OF THE CASE

I. Factual and Procedural Background

Christopher Nelums and Janet Louise Nelums, to IndyMac Bank, F.S.B., in the amount of One Hundred Twelve Thousand And 00/100 (\$112,000.00), dated August 6, 2002, (“Mortgage”) as to the property known as 813 N. Highland Forest Drive, Columbia, South Carolina (“Residence”). A federally chartered savings bank, dated August 6, 2002, recorded August 20, 2002, in the office of the Register of Deeds for Richland County, in Book 695, at Page 1050; thereafter, said Mortgage was assigned to Deutsche Bank National Trust Company as Trustee under the Pooling and Servicing Agreement Series 2002-B by assignment instrument dated April 20, 2004, and recorded May 21, 2004, in Book 937 at Page 3357. Deutsche Bank National Trust Company as Trustee under the Pooling and Servicing Agreement Series 2002-B is one and the same as Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2002-B, Home Equity Mortgage Loan Asset-Backed Certificates, Series SPMD 2002-B under the Pooling and Servicing agreement dated Sept 1, 2002. Deutsche Bank, the holder of the Nelums’ deed of trust, sought a declaratory judgment authorizing a non-judicial foreclosure sale pursuant to South Carolina law. After briefing and a bench trial, that the Special Referee for Richland County, Attorney Ben N.

Miller, III SC Bar # :3977, On September 10, 2024 issue a Writ of Assistance by this Court to the Sheriff of Richland County, South Carolina, the Special Referee for Richland County, Attorney Ben N. Miller, III SC Bar # :3977, held that Deutsche Bank could foreclose on the Nelums property, finding that “At no time has Deutsche Bank possessed any right, title, or interest in the Nelums’ Mortgage and security interest.” Plaintiffs’ filed motion for temporary restraining order, preliminary injunction Against Deutsche Bank, the Plaintiffs timely appealed. The Mortgage was secured by a South Carolina Equity Security Instrument (deed of trust), signed by both Christopher Nelums and Janet Louise Nelums, placing a lien on their property. Mortgage Electronic Registration Systems, Inc. (MERS) is the beneficiary named in the deed of trust. In the summer of 2008, the Office of Thrift Supervision closed IndyMac Bank and transferred substantially all of IndyMac Bank’s assets to IndyMac Federal Bank, FSB. In the spring of 2009, the Federal Deposit Insurance Corporation placed IndyMac Federal in receivership, selling substantially all of its assets to One West Bank, FSB. During this period,

STATEMENT OF THE FACTS

On May 13, 2024, the Special Referee for Richland County, Attorney Ben N. Miller, III SC Bar # :3977, SPECIAL REFEREE'S REPORT ON SALE, ORDER OF CONFIRMATION, AND ORDER FOR DEFICIENCY JUDGMENT, Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, without the parties’ consent to the master reference. 28

U.S.C. § 636(b)(2), Ben N. Miller, III SC Bar # :3977 (“special referee.”) lack subject-matter jurisdiction. See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize in the above-entitled case to this foreclosure action for 813 N. Highland Forest Drive, Columbia, SC 29203 (Parcel 11916-2-16, See 28 U.S.C. § 636(b)(2) (1976) (magistrate special master appointment). Appointment of special Master’s to hear entire cases or evidence on key motions is tightly restricted. Also See FED. R. Civ. P. 53(b) (limiting nonjury master appointments to “exceptional” conditions); note 76 infra (construction of exceptional conditions). These restrictions apply to magistrates serving as special. Master’s except when the parties’ consent to the master reference. 28 U.S.C. § 636(b)(2) (1976); see note 43 infra. This subdivision implements the blind consent provision of 28 U.S.C. §636(c)(2) and is designed to ensure that neither the judge nor the magistrate attempts to induce a party to consent to reference of a civil matter under this rule to a magistrate with regard to the case-dispositive consent authority of magistrate judges, the Court added specifically that “[c]onsistent with Our precedents, the Courts of Appeals have unanimously upheld the constitutionality of 28 U.S.C. § 636(c).” Id. at 1948 n.12. Also See 28 U.S.C. § 636(c)(4); see also Fed. R. Civ. P. 73(b)(3). But § 636(c)(4) only applies once a case has been transferred, On January 9.2024 the Nelums Case: No: 2017CP4001687 has been Appointed to the Special Referee for Richland County, Attorney Ben N. Miller, III SC Bar # :3977, The Chief Admin Judge Daniel McLeod Coble failed to vacate the transfer “for good cause shown on its own motion. See House Rep. No. 96–444, 96th Cong. 1st Sess. 8 (1979).

This subdivision implements the broad authority of the 1979 amendments to the Magistrates Act, 28 U.S.C. §636(c), which permit a magistrate to sit in lieu of a district judge and exercise civil jurisdiction over a case, when the parties Consent. **See McCabe**, *The Federal Magistrate Act of 1979*, 16 Harv. J. Legis. 343, 364–79 (1979). To exercise this jurisdiction, a magistrate must be specially designated under 28 U.S.C. §636(c)(1) by the district court or courts, he serves. The only exception to a magistrate's exercise of civil jurisdiction, which includes the power to conduct jury and nonjury trials and decide dispositive motions, is the contempt power. A hearing on contempt is to be conducted by the district judge upon certification of the facts and an order to show cause by the magistrate. See 28 U.S.C. §639(e). In view of 28 U.S.C. §636(c)(1) and this rule, it is unnecessary to amend Rule 58 to provide that the decision of a magistrate is a “decision by the court” for the purposes of that rule and a “final decision of the district court” for purposes of 28 U.S.C. §1291 Governing appeals. Fed. R. Civ. P. 53), the Supreme Court stated, “it has always been within the power of a court of chancery, with the consent of parties,” to refer proceedings to a special master. 6 **Kimberly v. Arms**, 129 U.S. 512, 524-25 (1889, “The Court Take Judicial Notice the Supreme Court of South Carolina AMINISTRATIVE ORDER The power of the circuit court to appoint a referee is governed by Rule 53 of the South Carolina Rules of Civil Procedure. Subsection (b) of the Rule provides only that "causes of action in a case" may be referred under the circumstances listed in the Rule. A discovery dispute is not a "cause of action." **Thus, Rule 53(b) provides no authority for the order of reference in this case.** In matters brought to our attention; the special referee appointed by the circuit court is typically a lawyer.

SUMMARY OF THE ARGUMENT

The Plaintiffs-Appellant for Review should be granted, and the case remanded. Because Section 636 prescribes the jurisdiction of (“special referee.”) judges. Subsection (b) relates to pretrial. See FED. R. Civ. P. 53(b) (limiting nonjury master appointments to “exceptional” conditions); note 76 *infra* (construction of exceptional conditions). These restrictions apply to magistrates serving as special Master’s except when the parties’ consent to the master reference. 28 U.S.C. § 636(b)(2) (1976); see note 43 *infra*. Under that provision, a district court may refer certain pretrial. *See* 28 U.S.C. § 636(b)(1)(A) (providing “a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court,” except in specified circumstances, including “a motion . . . for summary judgment”). These limited referrals do not require consent of the parties. matters to a magistrate judge.¹ *See* 28 U.S.C. § 636(b)(1)(A) (providing “Judge May designate a magistrate judge to hear and determine any pretrial matter pending before the court,” except in specified circumstances, including “a motion. . . for summary judgment”). These limited referrals do not require consent of the parties. Subsection 636(c) addresses referring the entire case to the magistrate judges. Under that provision, a district court may refer the entire case to a magistrate judge, but only if all parties consent.² *See* 28 U.S.C. § 636(c)(1) (empowering a magistrate judge to “conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case” upon “consent of the parties”); *see also* Fed. R. Civ.P. 73(a) (providing that “a magistrate judge may, if all parties consent, conduct a civil action or proceeding”). This case involves the referral of the entire case to the magistrate judge under § 636(c).

Section 636(c)(2) and Federal Rule of Civil Procedure 73 combine to provide the baseline procedure for obtaining consent to magistrate judge jurisdiction. Those procedures focus on the clerk of court—not the judges—to ensure consent is truly voluntary. *See* 28 U.S.C. §636(c)(2) (explaining the purpose to protect “the voluntariness of the party’s ‘consent’”); Fed. R. Civ P. 73(b)(1) advisory committee’s notes to the 1983 amendments.

¹ “[A] the Supreme Court of South Carolina ADMINISTRATIVE ORDER The power of the circuit court to appoint a referee is governed by Rule 53 of the South Carolina Rules of Civil Procedure. Subsection (b) of the Rule provides only that “causes of action in a case” may be referred under the circumstances listed in the Rule. A discovery dispute is not a “cause of action.” Thus, Rule 53(b) provides no authority for the order of reference in this case. In matters brought to our attention; the special referee appointed by the circuit court is typically a lawyer

² “The entitlement to an article III adjudicator is ‘a personal right’ and thus ordinarily ‘subject to waiver.’” *Wellness Intern. Network, Ltd. v. Sharif*, 575 U.S. 665, 678(2015). A party waives their right to adjudication by an article III judge by convention goer jurisdiction of a magistrate judge.

Both require the clerk of court to notify the parties of the magistrate judge’s availability to exercise jurisdiction under §636(c). The parties may then communicate their consent to the clerk of court by “jointly or separately fil[ing] a statement consenting to the referral. Fed. R. Civ P. 73(b)(1). Only “if all parties have consented to the referral” may the clerks inform a district court judge or magistrate judge of a party’s response. And both §636(c) and Rule 73 permit the district court to remind the parties of the magistrate judge’s availability.³

Even after a case is referred entirely to a magistrate judge, the district court retains the ability to vacate the referral. Section 636(c)(4) provides that a district court

may vacate the transfer “for good cause shown on its own motion, or under extraordinary circumstances shown by any party.” *Id.* §636(c)(4); *see also* Fed. R. Civ. P. 73(b)(3). With that background in mind, STATE OF SOUTH CAROLINA, IN THE COURT OF COMMON PLEAS, COUNTY OF RICHLAND, at Richland County The Clerk of Court, Thus, Rule 53(b) provides no authority for the **Order of Reference** in this case. In matters brought to our attention, the special referee appointed by the circuit court is typically a lawyer Violated the procedural history of this case.

ARGUMENT

Supreme Court of the United States **Kimberly v. Arms**: 129 U.S. 512 (1889, Holding a court may not, through appointment of a master or otherwise, "abdicate its duty to determine by its own judgment the controversy presented **See McCabe**, *The Federal Magistrate Act of 1979*, 16 Harv. J. Legis. 343, 364–79 (1979). In order to exercise this jurisdiction, a magistrate must be specially designated under 28 U.S.C. §636(c)(1) by the district court or courts, he serves 28 U.S.C. §636(c)(2) and is designed to ensure that neither the judge nor the magistrate attempts to induce a party to consent to reference of a civil matter under this rule to a magistrate. **See House Rep. No. 96–444**, 96th Cong. 1st Sess. 8 (1979). The rule opts for a uniform approach in implementing the consent provision by directing the clerk to notify the parties of their opportunity to elect to proceed before a magistrate and by requiring the execution and filing of a consent form or forms setting forth the election. However, flexibility at the

local level is preserved in that local rules will determine how notice shall be communicated to the parties, and local rules will specify the time period within which an election must be made See: U.S. Supreme Court decision in **Murphy Bros. v. Michetti Pipe Stringing, Inc.** that the due process clause entitles a named defendant to procedural protections. Such protection includes choosing between an Article I and an Article III judge, **See In re Prudential Ins. Co. America Sales Practice Litig. Agent**, 278 F.3d 175, 181 (3d Cir. 2002). Were Bad faith being a necessary predicate for a court to use its inherent authority, an untrue Statement is made in bad faith if the statement was made for a harassing or frivolous purpose. **Byrne v. Nezhat**, 261 F.3d 1075, 1125 (11th Cir. 2001). Bad faith can be inferred where an Attorney knowingly and deliberately makes blatantly incorrect statements. **See Crowe v. Smith**, 151 F.3d 217, 239 (5th Cir. 1998) (Finding adequate support in the record for the conclusion that an attorney acted in bad faith in providing “Blatantly incorrect discovery response” counsel Knew to be untrue at that the time it was offered). **See State v. Jeroid J. Price, 28177 (S.C. 2023), Smith v. Ocean Lakes Family Campground**, 315 S.C. 379, 381, 433 S.E.2d 909, 910 (Ct.App.1993) After The master has Exercised that authority, the order of reference terminates, and the power to Dispose Of the case returns to the circuit courts. Id **see also Cox v. Fleetwood Homes of Ga., Inc.**, 329 S.C. 157, 161, 494 S.E.2d 462, 464 (Ct.App.1997) (“[O]nce the Judge issues a ruling disposing of the case, ‘his jurisdiction of the Matter, except for the correction of merely clerical Errors,

end[s] **Barnett v. Piedmont Shirt Corp.**, 230 S.C. 34, 38,94 S.E.2d 1, 3 (1956), cert. Pending. A master who acts after the reference Terminates does so without subject Matter jurisdiction, and the resulting Orders are void. **Bunkum v. Manor Properties**, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (Ct.App.1996) (After the master Had entered final judgment, He Had no subject matter jurisdiction to hear the Motion for assessment of costs, Fees, expenses and damages against an appeal Bond.). 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, **See Johnson v. State**, 319 S.C. 62, 64, 459 S.E.2d 840, 841(1995) 18. **See: Scheuer v. Rhodes**, 416 U.S. 232, 94 Sc.D. 1683, 1687 (1974) Note: By law, A judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person). When a judge acts as a trespasser of the law, when a judge does not follow the law, the Judge loses subject-matter jurisdiction and the judges' orders are not voidable, but VOID, and of no legal force or effect. The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. **See Janove v. Bacon**, 6 Ill. 2d 245, 249, 218 N.E.2d 706, 708 (1955). Where service of

process was not made pursuant to statute and Supreme Court Rules, See City of Columbia v. S.C. Pub. Serv. Comm'n, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963) ("A writ of certiorari is used to keep an inferior tribunal within the scope of its powers." (Citing *Ex parte Schmidt*, 24 S.C. 363, 364 (1886); *State ex rel. Martin v. Moore*, 54 S.C. 556, 560, 32 S.E. 700, 701 (1899))); State v. Ansel, 76 S.C. 395, 412, 57 S.E. 185, 191 (1907) ("The writ of certiorari is issued by a superior Court to an inferior judicial or quasi-judicial tribunal or officer to certify the record of trial to the superior Court for its review to ascertain whether the inferior tribunal . . . exceeded its powers, or committed substantial errors of law, but not to review the facts." (Citing *Ex parte Riggs*, 52 S.C. 298, 302, 29 S.E. 645 646 (1898). *See State ex rel. McLeod v. Cnty. Ct. of Richland Cnty.*, 261 S.C. 478, 481, 200 S.E.2d 843, 844 (1973) ("The matters involved in this opinion is before the Court as A result of writs of *certiorari*, issued by the Chief Justice, ordering the Richland County Court to certify and return to this Court true copies of all Records- also See in Deutsche Bank Natl. Trust Co. v Castellanos, 01/14/2008, 158 Misc3d 1115A, 2008 Slipup 50033(U), Judge Arthur M Schack, on January 14, 2008, denied a renewed application for a judgment of foreclosure and sale due to the plaintiff's lack of standing because Deutsche Bank had sold the note and mortgage to MTGLQ Investors, L.P., after filing a foreclosure action and had failed to notify the Court. Judge Schack noted the presence of an affidavit of merit executed by a Mr. Jeff Rivas, who was identified as Deutsche Bank's "Vice President

Default Timeline Management." He then noted the presence of a mortgage assignment within the files executed the same date which identifies Mr. Jeff Rivas as the "Vice President Default Timeline Management" for Argent Mortgage Company, LLC, the assignor of the mortgage to Deutsche Bank. Judge Schack pointed out that if Mr. Rivas was acting as an officer of both the grantor and the grantee of the assignment that this would create a conflict, rendering the conveyance void. Judge Schack also directed that Mr. Rivas' employment history be clarified in any future application for a foreclosure order. Judge Schack then referenced an earlier decision, issued in December, 17, 2007 where he noted at 3: "with HSBC, OCWEN and MERS, joining with Deutsche Bank and Goldman Sachs at Suite 100, the Court is now concerned as to why so many financial goliaths are in the same space. The Court ponders if Suite 100 is the size of Madison Square Garden to house all of these financial behemoths or if there is a more Nefarious reason for this corporate togetherness." **In the Castellanos** case, Judge Schack stated: "Therefore, if Deutsche Bank's seeks to renew its motion for a judgment of foreclosure and sale, it must provide an affidavit explaining why Suite 100 is such a popular venue for all of these corporations. Should Deutsche Bank fail to provide an adequate explanation in its affidavit, I will conclude that this corporate togetherness is evidence of corporate collusion, **See HSBC Bank, N.A. v Cherry**, 18 Misc. 3d 1102 (A), that the application of plaintiff, HSBC BANK N.A., AS INDENTURE TRUSTEE FOR

THE REGISTERED NOTEHOLDERS OF RENAISSANCE HOME EQUITY LOAN TRUST 2005-4, RENAISSANCE HOME EQUITY LOAN ASSET-BACKED NOTES, SERIES 2005-4, for an order of reference for the premises located at 3570 Canal Avenue, Brooklyn, New York (Block 6978, Lot 20, County of Kings), is denied without prejudice, and it is further also See in Deutsche Bank Natl. Trust Co. v Maraj, 1/31/2008, 18 Misc. 3d 1123(A), 2008 Slipup 50176(U), another foreclosure case decided by Judge Arthur Schack, the Judge noted many problems with the Assignment. As in the instant case before this Court, the Assignment was signed by an individual whose name and signature appear regularly on mortgage-related documents, but she is "employed" by many different banks and mortgage companies. Judge Schack observed and ruled: "The Assignment by MERS, on behalf of INDYMAC, was executed by Erica Johnson-Seck, Vice President of MERS. The notary public, Mai La Thao, stated in the jurat that the assignment was executed in the State of Texas, County of Williamson (Williamson County is in the Austin metropolitan area, and its The county seat is Georgetown, Texas). The Court is perplexed as to why the assignment was not executed in Kansas City, the alleged "Principal place of business" for both the assignor and the assignee. Twenty-eight days later, on July 31, 2007, the same Erica Johnson-Seck executed. plaintiff's affidavit submitted in support of the instant application for a default judgment. Ms. Johnson-Seck, in her affidavit, states that she is "An officer of Deutsche Bank National Trust Company as Trustee under the Pooling and Servicing Agreement

Series INDX 2006-AR6, the plaintiff herein." At the end of the affidavit, she states that she is a Vice President of DEUTSCHE BANK. Again, MaiLa Thao is the notary public, and the affidavit is executed in the State of Texas, County of Williamson. The Erica Johnson-Sack signatures on both the July 3, 2007, assignment and the July 31, 2007, affidavit is identical. Did Ms. Johnson-Sack change employers from July 3, 2007, to July 31, 2007, or does she engage in self-dealing by wearing two corporate hats? the Court is concerned that there may be fraud on the part of plaintiff DEUTSCHE BANK, or at least malfeasance. Before granting an application for an order of reference, the Court requires an affidavit from Ms. Johnson-Sack, describing her employment history for the past three years." Further, the Court requires an explanation from an officer of plaintiff DEUTSCHE BANK as to why, in the middle of our national subprime mortgage financial crisis, DEUTSCHE BANK would purchase a non-performing loan from INDYMAC, and why DEUTSCHE BANK, INDYMAC and MERS all share office space in Suite 400/500. With the assignor MERS and assignee DEUTSCHE BANK appearing to be engaged in possible fraudulent activity by having the same Person executes the assignment and then the affidavit of facts in support of the instant application; DEUTSCHE BANK's purchase of a non-performing loan from INDYMAC; and the sharing of office space in Suite 400/500 in Kansas City, the Court wonders if the instant foreclosure action is a corporate "Kansas City Shuffle..." also See **In Deutsche Bank v HARRIS**, Judge Arthur M.

Schack, Kings, Index No. 39192/2007 (05 Feb 2008), decided the following. month Judge Schack again raised the issue of “troubling questions” he had about the representations in the Deutsche Bank application and denied Deutsche Bank’s application for a Default Judgment. Judge Schack Ordered that Deutsche Bank could renew its application upon presentation to the Court, within forty-five (45) days of his decision and order, only if it produced the following: “an affidavit from Erica Johnson-Seck describing her employment history for the past three years; and an affidavit from an officer of plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY, explaining why: (1) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY purchased a non-performing loan from INDYMAC BANK, F.S.B.; (2) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY shares office space at 460 Sierra Madre Villa, Pasadena, CA 91107 with MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and INDYMAC BANK, F.S.B.; (3) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY claims 460 Sierra Madre Villa, Pasadena, CA 91107 as its principal place of business in the October 23, 2007, Assignment of the instant mortgage, but executed the Assignment in Dakota County, Minnesota; and (4) Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY claims 460 Sierra Madre Villa, Pasadena, CA 91107 as its principal place of business in the affidavit in support of the instant application, but the affidavit was executed in Williamson County, Texas.” (Note: DEUTSCHE BANK claims a different

principal place of business in the instant case. It should also be noted that the issue of the true employer of Erica Johnson-Sack has also arisen in other Palm Beach County foreclosure cases, most recently, **See in IndyMac Federal Bank, FSB v. Israel Machado**, et al., Case No. 50 2008 CA 037322XXXX MB, and were Johnson-Sack claimed to be an officer of IndyMac, not of Deutsche Bank.), **See In Deutsche Bank v. Ezagui**, Judge Arthur M. Schack, Kings, Index No. 03724/2007 (21 Dec 2007) Judge Schack noted that in an affidavit in support of a Deutsche Bank application for default, a Ms. Tamara Price identified herself as the "Vice President" of Deutsche Bank while also showing herself to be the Vice President of AMC Mortgage Services, Inc. Judge Schack ordered Deutsche Bank to provide an affidavit within thirty days clarifying Ms. Tamara Price's employment history for the previous three years, as well as explaining why Deutsche Bank seemed to have purchased a non-performing loan from Ameriques and why Deutsche Bank and Ameriquest seemed to be sharing office space with Ameriques at 505 City Parkway West, Orange, CA 92868. **See in Deutsche Bank National Trust Company v. Williams, et al.**, Case No. 1:2007cv03029, N.D. Ohio, Judge Christopher H. Boyko gave DEUTSCHE BANK NATIONAL TRUST COMPANY seven days to file a copy of an executed assignment showing that DEUTSCHE BANK was the holder and owner of the Note and Mortgage as of the date the Complaint was filed or face dismissal; the same action was taken in two other Deutsche Bank cases decided by Judge Boyko: **See Deutsche Bank National Trust**

Company v. Tonia Benitez, et al., Case No. 1:2007cv03000, N.D. Ohio, and **Deutsche Bank National Trust Company v. Dorphine Desouza, et al.**, Case No. 1:2007cv01474, N. D. Ohio. These cases and 14 others were dismissed when the lenders did not produce the Assignments as ordered. Amended General Order, No. 2006-16 (N.D. Ohio). On November 14, 2007, U.S. District Judge Kathleen M. 'Malley dismissed 32 foreclosure cases, including 24 cases filed by Deutsche Bank, in a mass dismissal because documentation that the plaintiff was the owner and holder of the Mortgage and Note being inadequate. According to Judge O'Malley's Order, "Appropriate documentation" includes, but is not limited to, trust and/or assignment documents executed before the action was commenced, or both as circumstances may require." As in the instant case, many of the cases O'Malley dismissed involved Documentation that an assignment occurred, but occurred after the filing of the complaint, **See In Deutsche Bank National Trust Co., trustee for Goldman Sachs v. Pope**, Case No. 16-2007-CA-008285 (Duval Co., Fla., Cir. Ct.) Circuit Judge Lance Day dismissed a foreclosure brought by Deutsche Bank, ruling there were "inconsistencies" in the plaintiff's documents. **See In Deutsche Bank Trust Company Americas v. Peabody**, 2008 NY Slip Op 51286(U), decided on June 26, 2008, Saratoga County Supreme Court Judge Thomas Nolan denied Deutsche Bank's motion for summary judgment, noting: "Again, here, plaintiff offers no evidence that it took physical delivery of the note and mortgage before

commencing this action, and again, the written assignment was signed after defendant was served. The assignment's language purporting to give it retroactive effect, absent a prior or contemporary delivery of the note and mortgage, is insufficient to grant it standing." See **In Re Robin Hayes**, Debtor, Case No. 07-13967-JNF, U.S. Bankruptcy Court, District of Massachusetts, United States Bankruptcy Judge Joan N. Feeney, also criticized Deutsche Bank National Trust Company and its documentation of a loan, stating (on pages 15-16): "Although courts have been addressing the issues raised by Bankruptcy Judge Rosenthal in the Nosek case for some time, **see in re Foreclosure Cases**, No. 1:07CV2282, 2007 WL 3232430 (N.D. Ohio Oct. 31, 2007), problems associated with the practices are amplified in the instant case. The mortgage lender, its affiliates, assignees, and agents involved in this case, through the convoluted process of securitization, the submission of a 191-page, incomplete PSA, and reliance upon back-dated, unrecorded assignments, have confounded the identity of the current holder of the mortgage for the purpose of filing the Motion for Relief from Stay, as well as the proof of claim. The Court and the Debtor are entitled to insist that the moving party establish its standing in a motion for relief from stay through the submission of an accurate history of the chain of ownership of the mortgage. Absent such proof, relief from stay is unwarranted and a proof of claim filed by the wrong party, to which an objection is filed, must be disallowed." See **In Deutsche Bank Trust Company Americas v. Domin Codio**, et al. (Kings County Supreme Court,

Index No. 6839/2010), the law firm of Knuckles, Komosinski & Elliott LLP representing foreclosure plaintiff Deutsche Bank National Trust Company, brought to our office a document that their attorney Fincey John, Esq. claimed was an original promissory note that our client Dominic Codio, the homeowner, had signed when he received a mortgage loan. Mr. Codio, who was present for the inspection of the document, immediately recognized that his signature and initials at the bottom of each page had been forged and the document was a fake. See **Cpc Patent Technologies Pty Ltd v. Apple**, Inc., No. 21-16212 (9th Cir. 2022), But when a magistrate judge issues a report and recommendation on a dispositive matter, a district judge must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1)(C); *see also*. Fed. R. Civ. P. 72(b)(3), also See **SEC v. CMKM Diamonds, Inc.**, 729 F.3d 1248, 1260 (9th Cir. 2013) A decision that effectively denies "the ultimate relief sought" by a party or disposes of "any claims or defence's" is dispositive. **Flam v. Flam**, 788 F.3d 1043, 1046 (9th Cir. 2015) (quoting **United States v. Reyna-Tapia** , 328 F.3d 1114, 1118 (9th Cir. 2003) (en banc)). When a magistrate judge rules on a non-dispositive matter, a district judge may "reconsider" that ruling only if it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); accord Fed. R. Civ. P. 72(a). But when a magistrate judge issues a report and recommendation on a dispositive matter, a district judge must "make a de novo determination of those portions of the report or specified proposed findings or recommendations

to which objection is made." Id. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(3). See **Flam v. Flam**, 788 F.3d 1043, 1046 (9th Cir. 2015) (quoting **United States v. Reyna-Tapia**, 328 F.3d 1114, 1118 (9th Cir. 2003) (en banc)). When a magistrate judge rules on a non-dispositive matter, a district judge may "reconsider" that ruling only if it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); accord Fed. R. Civ. P. 72(a). But when a magistrate judge issues a report and recommendation on a dispositive matter, a district judge must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Id. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(3). Also **See Wellness Intern. Network, Ltd. v. Sharif**, 575 U.S. 665, 678 (2015). A party waives their right to adjudication by an article III judge by consenting to the jurisdiction of a magistrate judge. Both require the clerk of court to notify the parties of the magistrate judge's availability to exercise jurisdiction under § 636(c). The parties may then communicate their consent to the clerk of court by "jointly or separately fil[ing] a statement consenting to the referral." Fed. R. Civ. P. 73(b)(1). Only "if all parties have consented to the referral" may the clerks inform a district court judge or magistrate judge of a party's response. And both § 636(c) and Rule 73 permit the district court to remind the parties of the magistrate judge's availability even after a case is referred entirely to a magistrate judge, the district court retains the ability to vacate the referral. Section 636(c)(4) provides that a district court may vacate the transfer "for

good cause shown on its own motion, or under extraordinary circumstances shown by any party.” Id. § 636(c)(4); see also Fed. R. Civ. P. 73(b)(3). With that background in mind, Plaintiff-Appellant Janet Louise Nelums and Chris Nelums requested the procedural history of this case. That this matter be Followed by the Court in order to ensure that all statutory rights and procedures are followed correctly, See: **SC Code Ann. § 14-3-310 (2012)**, the Supreme Court shall have power to issue writs or orders of injunction, Mandamus, quo warranto, prohibition, certiorari, habeas corpus and other remedial and original writs. See: **S.C. Code Ann. § 22-3-20 (2023)**, Civil actions in which magistrate has no jurisdiction. Also See: **S.C. Const. art. I, § 9** All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.),.

CONCLUSION

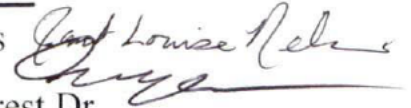
under section 28 U.S.C. § 636(b)(1)(A)”—i.e., authority to rule on); Fed. R. Civ. P. 72(b)(1) those that a magistrate judge may not decide without the parties’ consent— “Are dispositive Ben N. Miller, III SC Bar # :3977 (“special referee.”) judge here lacked consent from the parties to rule on dispositive matters neither the Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, without the parties’ consent to the master reference. 28 U.S.C. § 636(b)(2), Ben N. Miller, III SC Bar # :3977 (“special referee.”) lack subject-matter jurisdiction. See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize in the above-entitled case to this foreclosure action

for 813 N. Highland Forest Drive, Columbia, SC 29203 (Parcel 11916-2-16. [**See: EXHIBIT-A**, See 28 U.S.C. § 636(b)(2) (1976) (magistrate special master appointment). Appointment of special masters to hear entire cases or evidence on key motions is tightly restricted. See FED. R. Civ. P. 53(b) (limiting nonjury master appointments to "exceptional" conditions); note 76 *infra* (construction of exceptional conditions). These restrictions apply to magistrates serving as special. Master's except when the parties' consent to the master reference. 28 U.S.C. § 636(b)(2) (1976); see note 43 *infra*. [**See: EXHIBIT-A**, otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections and Under 28U.S.C. § 636(c)(4); by not vacating the transfer "for good cause shown on its own motion, or under extraordinary circumstances shown by any party." 28 U.S.C. § 636(c)(4); see also Fed. R. Civ. P. 73(b)(3). But § 636(c)(4) error. Under U.S.C. § 636(c)(2), and Rule 73: by not sending the form AO 85A Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge This notice provided that to consent to the jurisdiction of a magistrate judge, a party must sign the form and return it to the clerk's office, A record must be made in accordance with 28 U.S.C. §636(c)(5). error. Appellants ask this court to enter findings of fact, and conclusions of law based upon the record, consistent with the holding in **No. 2024-001062**, and to reverse and remand to the District Court with guidance and instructions for further proceedings.

September 22, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed into Action No. 2024-001062 and served on this 22nd day of September 2024, as indicated on Monday September 23rd, was served by Certified Registered which constitutes service on all parties.

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Local Rule 32.1(a)(4)(A) because, excluding the portions exempted by Fed. R. App. R. 32(f), this brief contains 8,257 words.

This brief also complies with the typeface requirements of Fed. R. App. P. 32 (a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

September 18, 2024 NOTICE OF AMENDED APPEAL FILED

September 22, 2024

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SEP 23 2024

SC Court of Appeals

EXHIBIT-A

UNITED STATES DISTRICT COURT
for the

Plaintiff
v.

Defendant

)
)
) Civil Action No.
)
)

NOTICE, CONSENT, AND REFERENCE OF A DISPOSITIVE MOTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings and enter a final order dispositive of each motion. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have motions referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's consideration of a dispositive motion. The following parties consent to have a United States magistrate judge conduct any and all proceedings and enter a final order as to each motion identified below (identify each motion by document number and title).

Motions: _____

<i>Printed names of parties and attorneys</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Reference Order

IT IS ORDERED: The motions are referred to a United States magistrate judge to conduct all proceedings and enter a final order on the motions identified above in accordance with 28 U.S.C. § 636(c).

Date: _____

_____ *District Judge's signature*

_____ *Printed name and title*

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

Print **Save As...** **Reset**