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SC Court of Appeals

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

APPEAL FROM BEAUFORT COUNTY
Cort of Common Pleas

2016-CP-07-01466

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

Appeal Case No. 2023-001394

Deutsche Bank National Trust Company as Trustee for NovaStar
Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5 Respondent,

v.

Terry Lennette Grant Appellant.

APPELLANT'S INITIAL REPLY BRIEF

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APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF

INTRODUCTION

Pursuant to SCACR Rule 208, Appellant hereby prepares and submits her reply brief in response to Respondent's Initial Brief. Respondent, Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-backed Certificates, Series 2006-5 brought this foreclosure action against Terry Lennette Grant three (3) times December 1, 2009¹ (See **R.p.² 1&2**), April 12, 2010³ (See **R.p. 9 & 10**) and June 29, 2016⁴ (See **R.p. 86 & 87**), which was also amended dated November 9, 2017.

Respondent's initial brief alleges that on September 18, 2006, Appellant made, executed and delivered a note⁵ promising to pay NovaStar Mortgage, Inc., the sum of \$680,000 with an Interest rate of 7.75 per annum which is in quotes, entitled ("the Note"). Respondent statement of case facts failed to include, in this brief and Respondent's designation of matter, there exist a Mortgage Satisfaction dated April 21, 2004^{6,7} for a Mortgage in the amount of \$398,000 from GreenPoint Mortgage Funding, Inc., in which Respondent claims is a subject of "the Note" Appellant is being sued for.

Respondent's statement of fact fails to include that there exists written evidence that closing on the subject mortgage could not have taken place on September 18, 2006. Appellant

¹See Appellant's Record of Appeal R.p. 1 & 2 Complaint and Summons dated December 1, 2009 C/A No.:2009CP0705612

² R.p. refers to Records on Appeal and where documents can be found. (Appellant's Designation of Matter)

³ See Appellant's Record on Appeal R.p. 9 & 10 Complaint and Summons dated April 12, 2010 C/A No.:2010CP0701690

⁴ See Appellant's Record on Appeal R.p.86 & 87 Complaint and Summons dated June 29, 2016 C/A No.: 2016CP07001466

⁵ See Appellant's Record on Appeal R.p. 239-240 note, riders 9/18/2006

⁶ See Appellant's Record on Appeal R.p 236 & 237 GreenPoint Mortgage and Release/Satisfaction 2004

⁷ See Appellant's Record on Appeal R.p.249 unsigned HUD 1 Settlement Statement

submitted the written evidence to support her defense. This evidence is an email dated September 19, 2006. The September 19, 2006 emails⁸ clearly shows that the Respondent was not in possession of the appropriate signed documents to have a closing on September 18, 2006. The closing attorney office rep and the Mortgage company were still trying to ascertain which property was to be pledged as security 3.95 acres or .46 acres.

Respondent's designation of matter excluded "the Note" and "the Mortgage" that they claim to be in possession of the (September 18, 2006 Mortgage⁹ and Note). It was just mentioned. "Court note that the foreclosure rule as amended now specifically requires a Plaintiff to attach to the complaint "the original note and mortgage deed and proof of ownership thereof, including all original endorsements and assignments of the note and mortgage deed."

V.R.C.P80.1(b)(1) Cum. Supp.2010 see 2009 No.132 (Adj.Sess.) §1

Respondent's initial brief and designation of matter does not include the closing documents that were supposed to be signed by Appellant on September 18, 2006. This would have included the HUD 1 Settlement Statement¹⁰ which indicated that Respondent distributed \$387,910.25 to GreenPoint Mortgage Funding, Inc. on Appellant's behalf, and Closing Certification that must be signed by the borrower, lender and closing attorney. There is no assignment of mortgage¹¹ for the \$387,910.25 alleged Mortgage payoff to GreenPoint.

Respondent's initial brief statement of case and facts states thereafter, the Mortgage was assigned to Respondent by assignment recorded on December 10, 2009. Respondent statement of

⁸ See Appellant' Record on Appeal R.p. 247 Sept. 19, 2006 emails

⁹ See Appellant's Record on appeal R.p. 238 NovaStar Mortgage, Inc 9/18/2006 .46 acres

¹⁰ See Appellant's Record on Appeal R.p. 249 unsigned HUD -1 Settlement closing statement violates HUD 4155.2.6, 4155.2.6a.1.c Certification must be signed by borrower, lender and closing agent

¹¹ S.C. Section 29-3-10 (stating that when a holder of a record of a mortgage has received "full payment or satisfaction" or legal tender has been made to him "of his debts, damages, costs and charges secured by mortgage of real estate," it must enter satisfaction of the mortgage within three month after the mortgagor requests entry of satisfaction)

case and facts excluded the fact that the assignment was created on December 2, 2009¹², one day after Respondent filed a foreclosure lawsuit against Appellant on December 1, 2009, without “the Note and Allonge”, “the Mortgage” or “the Assignment”¹³.

Respondent’s statement of case and facts conceded that the first foreclosure action was filed on December 1, 2009 (2009-CP-07-05612). However, Respondent statement of facts excluded that the action was filed without “the Mortgage” or “the Note¹⁴ attached¹⁵ to the Complaint or filed at the same time. Respondent’s statement of facts conceded that this action was voluntarily dismissed on February 12, 2010¹⁶. However, it excluded as to why it was voluntarily dismissed.

Respondent’s statement of case and facts conceded that the second foreclosure action was filed on April 12, 2010¹⁷. Respondent’s statement excluded that it was filed without (“the Mortgage”), “the Note and Allonge” or “the Assignment” attached to the Complaint.

Respondent statement of case and facts states, “Appellant appeared in the 2010 foreclosure pro se and no counterclaims were asserted”. Appellant is not quite clear on what the Respondent is trying to allege. Appellant’s defenses to Respondent’s foreclosure attempts was her counterclaim. Appellant, Grant countered Respondent’s claims via defenses and by

¹² See Appellant’s Record on Appeal R.p. 244 Assignment dated December 2, 2009: Hahn v. Smith, 157 S.C. 157, 167, 154 S.E 112, 115 (1930); see also Ballou v. Young, 42 S.C. 1710, 176, 20S.E. 84, 85 (1984) Transfer of a note carries with it a mortgage given to secure payment of such note.” the Assignment of the mortgage alone does not carry with it an assignment of the note.”

¹³ See Carpenter v. Longan(1872) 83 U.S. 271: The Supreme Court found the note and mortgage to be inseparable, holding that under Colorado law, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.

¹⁴ See CFR 7 §764.402 loan closing signatures are required of the borrower, lender and closing attorney or agent; Note should be signed by the borrower and lender

¹⁵ See V.R.C.P80.1(b)(1) Cum. Supp.2010 see 2009 No.132 (Adj.Sess.) §1

¹⁶ See Appellant’s Record on Appeal R.P. 6 Notice of Dismissal 2/12/2010

¹⁷ See Appellant’s Record on Appeal R.p. 10 4/12/2010 complaint and summons

providing evidence to support her defenses and asking the court to dismiss the foreclosure action.

Respondent's statement of case and facts states, does not address or disclose that on June 25, 2012 an Allonge^{18, 19} referencing "the Note" was created for the Respondent. This serves as evidence that 1) Respondent did not attach²⁰ or file "the Note and "the Mortgage" when the second foreclosure action was filed on April 12, 2010. See SC Civil Action Number 2010-CP-07-1690; 2) Respondent was not in possession of "the Note"; 3) the Allonge was not affixed to "the Note". 4) the allonge was created two and one-half (2 ½) years after first action was filed, two (2) years after second action was filed, and seven (7) years after this action was filed. Therefore, Respondent was not and is not real party of/in interest and is not entitled to foreclose on Appellant's house.

Respondent's statement of case and facts states, "Respondent sought to reform the Mortgage" and cited Respondent's second amended complaint date June 12, 2013²¹; however, Respondent does not address or disclose why they were seeking this reformation of the Mortgage. If the Mortgage needed to be reformed, what kind of Mortgage was in the possession of the Respondent to foreclose on? Therefore, Respondent was not and is not real party of/in interest and not entitled to foreclose of Appellant's house.

Respondent's statement of case and facts states, "On February 7, 2014, Judge Dukes entered an order²² establishing 1) Grant, entered into the subject Note and Mortgage"; 2) that "Deutsche Bank was the present lienholder at the time the ordered was entered"; and 3) that

¹⁸ See Appellant's Record on Appeal R.p. 242 Allonge dated 6/25/2012

¹⁹ The Uniform Commercial Code (UCC) accepts the use of such endorsements, explaining that "a [a]ffixed to the instrument is a part of the instrument." 9A V.S.A §3-204(a)

²⁰ See V.R.C.P80.1(b)(1) Cum. Supp.2010 see 2009 No.132 (Adj.Sess.) §1 Requires plaintiff to attach Original Note and Mortgage to the Complaint at the time of filing foreclosure action in court.

²¹ See Appellant's Record on Appeal R.p. 30 & 31 Order to Amend complaint 6/12/2013

²² See Appellant's Record on Appeal R.p.61 Order granting partial motion 2/7/2014

Deutsche Bank was entitled to judgment as to its causes of action for reformation of the mortgage based upon mutual mistake”; Appellant does not agree to with this statement, there was never any “MUTUAL MISTAKE”, because the closing never took place on September 18, 2006 as Respondent asserted, evidence by September 19, 2006 emails.

Respondent’s statement of case and facts states, “Deutsche Bank was granted judgment as to the remaining cause of action for foreclosure in an order²³ entered on May 28, 2014. This implies that portions of the foreclosure judgment were not granted. However, Respondent does not disclose that information in this brief. Respondent’s statement does not address or respond to Appellant’s initial brief as to why foreclosure sale of Appellant’s property was not executed, even though the May 28, 2014 Foreclosure Judgment was granted?

Respondent’s statement of case and facts conceded that the May 28, 2014 foreclosure judgment that was granted in Respondent’s favor was vacated and foreclosure judgment was dismissed on January 14, 2016. (Vacating Foreclosure judgment and dismissing Action); however, Respondent’s are stating that the February 7, 2014, Order remains as full force and effect claiming that it was not affected by the vacating of the May 28, 2014 Foreclosure Order. On the contrary, the Order of January 14, 2016 that vacated and dismissed the foreclosure judgment that was granted on May 28, 2014, (**See R.p.73**) by Judge Marvin H. Dukes, III was “dismissed and vacated along with all supplement judgments” in this case on January 14, 2016²⁴ (**See R.p. 85**) by and through the Order of Judge Marvin H. Dukes, III, case, which included

²³ See Appellant’s Record on Appeal R.p.73 Order granting foreclosure judgment 5/28/2014

²⁴ **See R.p. 85** Order by Judge Marvin H. Dukes, III dated January 14, 2016 Vacating and dismissing C/A No.: 2010CP0701690 foreclosure judgment granted on May 28, 2014 and any supplemental judgments. **See R.p.73**

Judgment Order dated February 7, 2014 (**See R.p 61**). Special Referee's Order of June 28, 2023²⁵ totally ignored that January 14, 2016 Order that Reversed, vacated and dismissed all judgments in this case.

Respondent's statement of case and facts conceded that Respondent filed a third foreclosure action on June 29, 2016. It stated that in was administratively referred to Judge Marvin H Dukes, III as Master-In-Equity for Beaufort County, on March 15, 2017; However, Judge Marvin H. Dukes, III has been presiding over these cases since well before March 2017. Earlier in this statement it was referred to Judge Dukes June 15, 2010 and Judge Dukes ruled in Respondent's favor February 7, 2014 and May 28, 2014; the vacated and dismissed the Foreclosure judgment January 14, 2016.

Respondent's statement of case and fact denotes that a hearing was held on May 13, 2018 and the order²⁶ was issued on May 22, 2018 relieving Willam Sloan as Appellant's counsel; However, Respondent excluded that the Order instructed Respondent and the Clerk of the Court that all correspondence should be mailed to Appellant, Grant's P O Box 21936, Hilton Head Island, SC 29926. The reason this is pertinent is because Respondent and Clerk of Court mailed correspondence to Appellant's physical address where there is no mail receptacle. This act caused Appellant not to be aware of several pertinent hearings as it related to the foreclosure. See Order May 22, 2018.

Respondent's statement of case and facts denotes that Appellant file bankruptcy and the in turned, Respondent filed Motion to Stay due to bankruptcy which was granted on September 20, 2018; however, Respondent's excluded that a Corrective Assignment of Mortgage²⁷ was

²⁵ See Appellant's Record on Appeal R.p.220 & 221 Order Judgment and foreclosure sale

²⁶ See Appellant's Record on Appeal R.p 135 Order to have correspondence sent to Appellant's P O Box

²⁷ See Appellant's Record on Appeal R.p 245 Corrective Assignment of Mortgage

created November 9, 2018 and filed with Beaufort County Recorder of deeds on November 16, 2018 while Appellant was under bankruptcy protection. Therefore, Respondent was not and is the real party of/in interest when the Respondent filed foreclosure action in 2009, 2010 and this one 2016. Respondent was not entitled to enforce or execute foreclosure action in court.

Respondent's statement of case and facts denotes that the case was restored by Order dated May 21, 2020²⁸ and over one (1) year later Respondent's filed another Motion For Summary Judgment on July 15, 2021 after filing an affidavit in support of earlier filed Motion for Summary Judgment on April 2, 2021. Here we have multiple Motions on record and not heard by the court, which includes Appellant's Motions and opposition to Respondent's Motions.

Respondent's statement of case and facts denotes that a hearing was held on August 3, 2021. However, Respondent excluded the August 3, 2021 transcript²⁹ from their designation of Matter. Why? The August 3, 2021 hearing is the foreclosure hearing that everyone failed to serve the Appellant, by sending it to Appellant's physical location. The Respondent sent it to another address in violation of Judge Dukes May 22, 2018 order to send All correspondence to Appellant's P O Box. The Clerk of the Court also sent a hearing notice to the physical address in violation of Judge Duke's May 22, 2018 order. This ensured that Appellant was not at this hearing that ruled in favor of Respondent's Foreclosure action, and denied Appellant her right to defend herself.

Respondent's statement of case and facts excluded that the August 3, 2021 hearing transcript shows that Judge Marvin H Dukes, III did not look at, see, or examine that "the Note"

²⁸ See Appellant's Record on Appeal R.p. 151 & 154 Case Restored after bankruptcy

²⁹ See Appellant's Record on Appeal R.p. 169 Record of Hearing prepared by Respondent's Counsel compare it to R.p. 261 & 262 actual transcript of August 3, 2021 hearing transcript pg 2 & 6

or “the Mortgage” at this hearing, by his own admission, “ I will take your word for it³⁰”. After not examining the key pieces of evidence, Judge Dukes granted the foreclosure action on August 6, 2021. Court reporter’s transcript cover sheet reflects no exhibits were entered into the record.

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 150-51, 607 S.E.2d 63, 65 (2004); see also *Schmidt v. Coutney*, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003) (stating all ambiguities, conclusions, and inferences arising from the evidence must be construed strongly against the moving party)

APPELLANT’S REPLY TO RESPONDENT’S ARGUMENTS

REPLY TO FIRST ARGUMENT

Respondent’s first argument states that Appellant Res Judicata action was not pled properly and not preserved for Appellate review. On the contrary, Appellant pled her Res Judicata defense in her pleading to the Special Referee directly. The Special Referee was not just reviewing this case, his duty was to hear all Appellant’s defenses, especially the one set forth before his court via her Motions For Summary Judgment. Appellant Motion for Summary Judgment³¹ filed in the court before Special Referee Sapp, clearly plead Doctrine of Res Judicata as a defense and requested that the Respondent’s case against her be dismissed. Therefore, the issue has been properly pleaded and is preserved for appellate review.

Respondent’s statement of case and fact as well as designation excluded Special

³⁰ See Appellant’s Record on Appeal R.p. 261 & 262 actual transcript of August 3, 2021 pg 2 & 6

³¹ See Appellant’s Record on Appeal R.p. 199 Appellant’s Motion for Summary Judgment 10/21/22, 200 Memo in Support MSJ, 215 Supplement to Memo in Support of Appellant’s MSJ 3/3/2023

Referee's Order for Appellant to submit her proposed order via email³². The May 4, 2023 transcript will support Appellant's Res Judicata³³ plea when the Special Referee stated he would examine everything, which will include her Motions for Summary which plead Res Judicata. Under these circumstances, Respondent's actions are barred by doctrine of res judicata. Appellant's defense clearly meets all three required elements 1) the identity if the parties are the same; 2) the subject matter are the same; and there was adjudication of the issue in prior foreclosure action. Therefore, the issue has been properly pleaded and is preserved for appellate review.

Enlight of the fact, that Appellant pleaded res judicata in her Motions for Summary Judgment and her proposed Order to Special Referee that presided over the foreclosure hearing. The Special Referee should have considered Appellant defenses and ruled on that basis. "When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation." *Rule 8 - General Rules of Pleading*, S.C. R. Civ. P. 8. Here, we don't have a mistake; however, the court shall treat the pleading as if there had been a proper designation of that issue.

Respondent's argument is very contradicting as to whether the Special Referee ruled on Appellant's defense of res judicata³⁴. On page 11 second paragraph he states, "it was never ruled upon by the Special Referee" and on page 12 first sentence it states, "The Special Referee

³² See Appellant's Record on Appeal R.p. 267 Proposed Order to Special Referee 6/5/2023

³³ See *Riedman Corp v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992) (Stating res judicata requires three elements:" (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit").

³⁴ See *Hilton Head Ctr. of South Carolina, Inc. v. Oub. Ser. Comm Of South Carolina*, 294 S.C. 9,11 362 S.E. 2d 176, 177 (1987)

addressed res judicata...”. Res Judicata³⁵ prevents a litigant from raising any issues which were adjudicated in the former suit and any issues which were raised in the former suit³⁶.

The Respondent's argument conceded that “the Special Referee noted the law that stated Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, “a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” Plum Creek Dec. Co v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). With this in mind the Special Referee has all the previous cases that were filed against Appellant and the ones that were adjudicated prior to this last case filed which mimics the former case. Therefore, the Special Referee erred by failing to rule in Appellant’s favor. Appellant’s appeal should be granted and the Special Referee decisions should be reversed and case dismissed with prejudice.

Appellant never failed to uphold any obligation to the Respondent. Respondent was not and is not entitled to enforce “the Note or the Mortgage”.

REPLY TO SECOND ARGUMENT

Respondent’s second argument states, “Fraud was not properly pled or preserved for appellate review and appellate last-ditch arguments regarding fraud do not create a genuine issue of material fact. On the contrary, Appellant pleaded fraud throughout each case filed. For example: 1) Respondent filed lawsuit on December 1, 2009, without the Note, Mortgage or Assignment of mortgage or Allonge to Note. Fraud entered when Respondent filed its case

³⁵ Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues. James F. Flanagan SCCP 642 (2d ed. 1996)

³⁶ Hilton Head Ctr. of South Carolina, Inc. v. Oub. Ser. Comm Of South Carolina, 294 S.C. 9,11 362 S.E. 2d 176, 177 (1987)

claiming to be in possession of Note and Mortgage and claims to be entitled to enforce the foreclosure. 2) Respondent's or someone on behalf of the Respondent's created an assignment of mortgage on December 2, 2009³⁷. 3) Respondent or someone on behalf of Respondent recorded the assignment of mortgage on December 10, 2009 in the recorder of deeds office in Beaufort County in South Carolina. 4) Respondent or someone on behalf of Respondent had an Allonge of Note created on June 25, 2012 over two (2) years after Respondent filed the second lawsuit on April 12, 2010, without the "Allonge³⁸ of Note, the Mortgage or Assignment". 5) Respondent or someone on behalf of Respondent had the second Allonge to Note created which was introduced into the January 13, 2023 deposition³⁹ of William Sloan. The Allonge⁴⁰ that was created is totally different from the one created on June 25, 2012. 6) Respondent's submitted HUD -1⁴¹ Statements without signatures of the Appellant, the lender and the closing attorney to the courts in violation of law. 7) Respondent stated that Judge Marvin H. Dukes III saw the Original Note and the Original Mortgage at August 3, 2021 hearing. On the Contrary the August 3, 2021 transcript⁴² revealed that not only did Judge Dukes not look at these documents, Judge Dukes stated he would take counsel's word for it. The cover sheet of the transcript, denoted by the court reporter, no documents were entered as exhibits. There are more examples that were submitted. This is just a few to give the Court an idea of the kinds of fraud and fraud misrepresentation that was pleaded to the Special Referee, supported and shown by clear, concise and convincing evidence.

³⁷ See Appellant's R.p 244 Assignment of Mortgage dated 12/2/2009

³⁸ See Appellant's R.p. 242 Allonge dated June 25, 2012

³⁹ See Appellant's R.p. 255 William Sloan's transcript pg 65 & 87 plus dated 1/13/2023

⁴⁰ See Appellant's R.p. 243 Allonge enter 1/13/2023 deposition compare to 6/25/2012 Allonge

⁴¹ See R.p. 249 Unsigned HUD 1- Settlement Statement

⁴² See R.p 261-262 Aug. 3, 2021 hearing transcript pg. 2 & 6 cover sheet reflect no exhibits was entered for the record

Ardis v. Cox, 314 S.C. 512, 515, 431 S.E. 2d 267, 269 (Ct. App. 1993) It also created a genuine issue of material fact. Rule 9(b), SCRPC.

Judge Marvin H Dukes, III ruled in favor of Respondent on August 6, 2021⁴³. This is the same time frame that the Clerk of Court violated Order of May 22, 2018 by sending hearing notice the Appellant's physical location. Foreclosure scheduled for September 7, 2021.

On September 3, 2021⁴⁴ Appellant filed Notice of Appeal with SC Court of Appeal and filed copy in Circuit Court.

On September 7, 2021 Appellant went to the auction and delivered a copy of Notice Of Appeal to Judge Dukes. He immediately halted the sale of Appellant property that same day.

On October 13, 2021 Court of Appeals granted remand to Judge Dukes for consideration of a motion for relief from judgment⁴⁵. Not filed until November 19, 2021.

On January 18, 2022 Appellant did filed Motion for Relief⁴⁶ by and through her retained counsel Charles Houston. Both parties signed a consent order⁴⁷ to vacate foreclosure judgment May 6, 2022. Respondent have yet to address or disclose as to why consent to vacate the foreclosure judgment that was granted multiple times, in which they were seeking?

September 7, 2022 Respondent filed a third Motion for Summary Judgment⁴⁸. Appellant filed a Response in Opposition to Respondent's Motion for Summary Judgment on October 6, 2022⁴⁹. Judge Dukes relieves Appellant's counsel even though Respondent prepared the paperwork on October 13, 2022⁵⁰. Appellant filed Motion for Summary Judgment and to

⁴³ See R.p. 170-171 Order 8/6/2021 granting foreclosure judgment

⁴⁴ See R.p. 177-180 Notice of Appeal 9/3/2021

⁴⁵ See R.p. 184 Court of Appeal Order remand

⁴⁶ See R.p. 185 & 186 Motion and Exhibits 1/18/2022

⁴⁷ See Appellant's R.p 189 Consent order 5/9/2022

⁴⁸ See Appellant's R.p 191 & 192 ® Motion for Summary Judgment 9/7/2022 and Memo In support of MSJ

⁴⁹ See Appellant's R.p. 194 Appellant's Response in Opposition to (R) MSJ 10/06/2022

⁵⁰ See Appellant's R.p.198 Order relieving A's counsel

Dismiss on October 21, 2022⁵¹. Respondent filed opposition to Appellant's Motion for Summary Judgment on October 26, 2022⁵².

Respondent's statement of case and facts mention that Appellant's POA Vivian M Woods signed a document on her behalf. Respondent noted that she is not a South Carolina licensed attorney with authority to appear on Appellant behalf in any court. On the contrary, according to the South Carolina Uniform Power of Attorney Act section 62-8-101 (1)(6)(7) and 62-8-203 (1), (3), (4), (7), (8); 62-8-204 (5)b; 62-8-212 Claims and Litigation (1), (2), (6) if the Appellant has given that authority, that person is allowed to act in accordance to the powers that was granted by the Appellant.

On November 30, 2022, a hearing was held to hear Appellant's motions and Respondent's motions; however, Respondent by and through his counsel Chad Burgess came and told the Appellant that the court reporter was stuck in traffic because of the rain. Appellant responded, "I'll wait". Almost an hour passed and Judge Dukes came into the hallway of the court building. He said, we can proceed without a court reporter or get started until one shows up. I will let you all deal with that. Chad Burgess went back in the courtroom with Judge Dukes. When he returned he stated, I don't think the court reporter is going to show. We forgot to put one on the schedule. Dr. Grant replied, wait a minute, you just told me that the reporter was running late because of the rain. Which one is it? The rain or you did not schedule one? Mr. Burgess stated, We forgot to schedule a court reporter and walked back into the courtroom with

⁵¹ See Appellant's Record on Appeal R.p. 199 Appellant's Motion for Summary Judgment 10/21/2022

⁵² See Appellant's Record on Appeal R.p. 202, 203 Respondent's Memo in Opposition to (A)'s MSJ 10/26/2022 and Exhibits 10/27/2022

Judge Dukes.

Appellant then decided to take care of this by serving Respondent's counsel and Judge Dukes, with a case she filed in USDC⁵³ on November 28, 2022, against all parties involved in this thirteen years of battle. Once this was handed to both of them, they found a solution to this problem. This hearing was supposed to be rescheduled; however, to Appellant's surprise, on December 1, 2022, Judge Dukes issued an order⁵⁴ recusing himself, stating there was a conflict of interest.

Respondent's argument is misrepresenting the facts, when it states, "Appellant's failure to plead fraud in her filings with the Court or to raise the issue at hearing on Appellant's Motion for Summary Judgment..." Fraud was pleaded within Appellant's Motion for Summary Judgment filed while Special Referee Sapp presided over this case; however, he decided to sign off on the Order Respondent prepared instead of examining the facts and evidence.

Respondent conceded that Appellant did plead fraud and/or fraudulent misrepresentation. On page 14 line 9, Respondent admits, "Appellant's pleading of fraud/or fraud misrepresentation pertaining to these documents and...". Respondent's quoted statement here supports Appellant's position that she did plead fraud. This is exactly why this issue clearly was plead and is preserved for appeal. Appellant agrees that SCRPC Rule 9(b) requires fraud to be stated with particularity; and must be shown by clear, cogent, and convincing evidence. *Ardis v- Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (ct. App 1993).

Appellant upon information and belief states that the nine elements of fraud were established throughout this entire process with facts and evidence to support her defense.

⁵³ See 9:22-CV-04262-DCN-MGB Grant v Peter Wolf & Associates, PC., et al

⁵⁴ See Appellant's Record on Appeal R.p. 206 Judge Dukes recusal Order 12/1/2022

- 1) A representation: Respondent represented and introduced documents that were presented to the courts, legal proceedings, the Appellant and other government agencies even though documents was fabricated or created to induce a favorable outcome of said foreclosure;
- 2) Its falsity: Respondent filed multiple complaints into the court claiming to have “Original Note” and “Original Mortgage” but never providing actual documents at the time of filing each case as required by law; other documents was created Assignment of Mortgage, Corrective Assignment of Mortgage, Two (2) different Allonges⁵⁵Three (3) different Loan numbers; alleged “Note” with No stamp entered into the court records filed June 22, 2017, which did not have May 28, 2014 date and Judge Dukes stamp⁵⁶; however, the same alleged document Respondent claims to have re-entered on August 3, 2021 hearing, allegedly. Now has a 2014 and 2021 Judge Dukes stamped on alleged “Note”⁵⁷.
- 3) its materiality: the effects of the false information presented and fraudulent documents introduced throughout this case undermine the decision made by the court and integrity of the Appellant factual evidence. Appellant’s evidence once examined carefully has a logical connection to the facts of her defense.
- 4) Either knowledge of its falsity or a reckless disregard of its truth of falsity: Respondent may have had first hand knowledge of its falsity; however, Respondent recklessly disregarded its truth of falsity as did the Special Referee.
- 5) Intent that the representation be acted upon: Respondent intent was that the representation of those documents that was introduced into the court, the record, and to the Appellant for them to act upon it. The court acted upon it several times by granting judgments acting upon the representation of those documents.
- 6) The hearer’s ignorance of its falsity: the courts and the government agencies could have been ignorant to whether the documents presented and oral presentations by Respondent via various counsels are false or fraudulent.
- 7) The hearer’s reliance on its truth: The Court’s or agencies reliance on its truth can be substantiated by the processing of the information and/or document that secured a favorable ruling for Respondent.

⁵⁵ See Appellant’s Record on Appeal R.p. 242 Allonge dated 6/25/2012 compared to R.p. 243 entered into deposition 1/13/2023

⁵⁶ See Appellant’s Record on Appeal R.p. 239 alleged Note 9/18/2006; R.p. 111 Respondent’s 6/22/2017 filing of the exhibits into court records no 2014 stamp reflected.

⁵⁷ See Appellant’s Record on Appeal R.p. 246 Note filed in deposition 1/13/2023 now reflects two stamps

- 8) The hearer's right to rely thereon: the Courts or agencies had the right to rely on what was presented by Respondent for them to discharge their duties.
- 9) The hearer's consequent and proximate injury: As a result of the representation of false information and fraudulent document, consequent to the hearer wreaks havoc on our system of justice, polluted or belief in the legal process and tant the Public Records (See Gary Kubic, Dale L Butts in their official capacity as County Administrator for Beaufort County, South Carolina and Register of Deeds vs MERSCORP Holdings, Inc, MERS, Inc, Deutsche Bank National Trust Company C/A Number 2013-CP-07-1340 pg 8, 16 paragraph 51 & 52.

REPLY TO THIRD ARGUMENT

Respondent's third argument, Respondent is the real party in interest with standing to bring this foreclosure. On the contrary, Appellant has stated earlier in her reply the many reasons and evidence to support why Respondent is not the real party in interest.

In South Carolina, the real party in interest to file a foreclosure action is the lender's attorney, who receives a request from the lender to file the action. Before a lawsuit is filed 1) The attorney performs a title search to identify all parties involved in the case, including property owners, mortgage holders, and lien holders. Respondent has not conducted a title search; however, the Appellant conducted a eighteen (18) year title search⁵⁸ December 27, 2016 which clearly shows that Appellant did not have a mortgage or lien against subject property. This clearly shows that Respondent could not be in possession of mortgage and note. Title search reflects Appellant did not have a mortgage on her house. 2) The Complaint includes a) the Note and the Mortgage⁵⁹ b) a description of the property being foreclosed c) a demand for foreclosure of the equity of redemption d) a judgment for the sale of the mortgage property. As for the requirement 2a) Respondent's complaints did not include the Note, the Mortgage, the assignment or the allonge when Respondent filed complaint on December 1, 2009, April 12, 2010 and June

⁵⁸ See Appellant's Record on Appeal R.p.104 pgs.1-6 12/27/2016 Appellant's 18 year Title Search

⁵⁹ See Appellant's Record on Appeal R.p. 2, 10, and 87 Complaints filed without note and without mortgage

29, 2016. This proves that Respondent was not and is not a real party of/in interest. As for the requirement 2b) a description of the property that was being foreclosed on was not the legal description of Appellant's property. It was the description of another person's property. As to the requirement 2d) Respondent was granted foreclosure judgment twice and vacated and dismissed granted foreclosures twice. Therefore, Responden was not and is not a real party of interest. If they were, why vacate and dismiss the foreclosure judgment they were seeking?

Respondent filed an assignment of mortgage dated December 2, 2009 on December 10, 2009 in the Beaufort County Recorder of Deeds after filing a December 1, 2009 lawsuit and the assignment of the mortgage was not attached or included with the complaint when filed. This show that the Respondent was not a real party of interest.

Respondent filed a second lawsuit on April 12, 2010 without the Mortgage, the Note, an assignment of Mortgage or an Allonge being attached or included when filing the complaint. This shows that the Respondent was not and is not a real party of/in interest.

Respondent introduced an allonge to note into the record, which was dated June 25, 2012, three (3) years after the second foreclosure action was filed and was not affixed to the Note. This the show's Respondent was not a real party of interest.

The May 28, 2014 Order that vacated and dismissed the 2010 lawsuit against Appellant also included the February 7, 2014 Order for reformation of Mortgage, when it included all supplement foreclosure judgments. Respondent still was not real party of interest because not only was it vacated and dismissed, Respondent never included the Note or the Mortgage when it filed the complaint.

South Carolina is a Judicial Foreclosure jurisdiction. State law requires mortgage lenders operating in South Carolina to take the borrower to court and- through a lawsuit- prove that they have the right to foreclosure on a property. Respondent is doing business in South Carolina, even though Respondent is not authorized to do so, and is not entitled to prosecute or file this foreclosure action.

Appellant is informed and believes that at no time did MERS⁶⁰ own and hold the Promissory Note. With MERS not owning or holding the Promissory Note, any purported assignment of the Mortgage securing the same is ineffective and not legally binding. Therefore the Respondent did not and does not have standing to bring this foreclosure action. MERS never legally registered with the South Carolina Secretary of State as required by South Carolina law in order to do business in this state. MERS just reserved⁶¹ the name on 12/1/2009, the same day Respondent's filed the initial foreclosure action against Appellant. This would also make the assignment of mortgage is ineffective. Therefore, Respondent was not and is not real party of/in interest.

Respondent, Deutsche Bank National Trust Company, as Trustee for NovaStar Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 claims to be representing NovaStar Mortgage Funding, Inc, which is not registered business to do business in South Carolina. Furthermore, the "Mortgage" states that the lender is NovaStar Mortgage, Inc. not NovaStar Mortgage Funding Trust, Inc. This company dissolved August 3, 2009 according to the SC Secretary of State.⁶² This makes Respondent not authorized to file a

⁶⁰ See Case Number 2013-CP-07-1340 Gary Kubic v MERS, Deutsche Bank National Trust Company

⁶¹ See Appellant Record on Appeal R.p. 253 SC Secretary of State Business Search MERS reserved name 12/1/2009

⁶² See Appellant Record on Appeal R.p 252 SC Secretary of State Business Search NovaStar Mortgage Funding Trust, Inc/LLC dissolved in SC on August 3 2009

foreclosure action against Appellant. Respondent was not and is not a real party of/in interest.

In addition to this evidence to support Respondent lack of standing to file a foreclosure action without filing Note and Mortgage, is when Respondent had a Corrective Assignment of Mortgage created on November 9, 2018 and filed it with the Beaufort County Recorders of Deeds office, while Appellant was under bankruptcy protection. If the Respondent had to make a correction to an assignment, this means that Respondent was not the holder of the Mortgage each time they filed a lawsuit against Appellant, even this one that was filed on June 29, 2016. Respondent again shows this court that they did not and do not have standing to bring this foreclosure action. Respondent are not a real party of interest.

CONCLUSION

WHEREFORE, having fully replied to Respondent's Initial Brief, Appellant prays that this Court would consider all relevant facts, evidence Appellant submitted to support her appeal and dismiss with prejudice Respondent's unlawful foreclosure action and deny the Respondent's Foreclosure judgment, Sale and Order and begs this Court to have reversed all documents prepared in relation to said foreclosure auction/sale.

Respectfully Submitted



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October 21, 2024

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Oct 21 2024

SC Court of Appeals

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

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

2016-CP-07-01466

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

Appeal Case No. 2023-001394

Deutsche Bank National Trust Company as Trustee for NovaStar
Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5 Respondent,

v.

Terry Lennette Grant Appellant.

APPELLANT’S INITIAL REPLY BRIEF

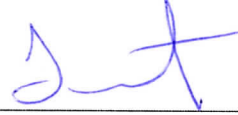
PROOF OF SERVICE

This is to certify that I, Terry Lennette Grant sent true copies of Appellant’s Initial Reply Brief to the attorney of record named below. A true copy was sent via email of records and/or U.S.Postal Service, with adequate postage prepaid for the following:

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APPELLANT’S SIGNATURE PAGE TO FOLLOW

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October 21, 2024