

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

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

**BEN N. MILLER III as Special Referee
Circuit Court Judge**

**Appellant Case No. 2024-001062
Trial Court Case No. 2017CP4001687**

RECEIVED

DEC 02 2024

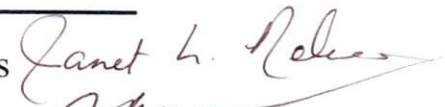

SC Court of Appeals

Janet L. Nelums: Chrisopher Nelums..... Appellants

v.

Deutsche Bank National Trust Company, ET AL..... Respondent

RECORD ON APPEAL

Janet L. Nelums 
Chris Nelums 
813 N. Highland Forest Dr,
Columbia, SC 29203-1929
(803) 730-6003
inelums@gmail.com
chrisnelums@yahoo.com
Appellants pro se litigants

November 27, 2024

INDEX

| | |
|---|--|
| Pleadings/Correspondence..... | ii |
| Contents of Document Provided..... | iii |
| Trial Court Order of May 13, 2024..... | 1,2,3,4,5,6,7,8 |
| Trial Court Order of Recusal November 16, 2022 | 9,10,11,12,13 |
| Trial Court Order of Reference October 31, 2023 | 14,15,16 |
| Trial Court Order of Judgment Roll February 20, 2024..... | 17,18 |
| Order On Cross-Motions for Summary Judgment March 17, 2020 | 19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39 |
| Notice, Consent, And Reference of a Civil Action to a Magistrate 2017,2024 | 40,41 |
| Trial Court Order Writ of Assistance September 10, 2024,..... | 42,43,44,45 |
| FORM 4 JUDGMENT IN A CIVIL CASE October 2, 2023, | 46,47,48,49 |
| Order on Plaintiff’s Motion for Sanctions and Gatekeeper Order Oct/31/2023... 51, 52, 53, 54, 55, 56,57, 58,59, 60,61,62 | 50, |

Pleadings/Correspondence

| | |
|--|--|
| Appellant’s Notice of Appeal to Circuit Court | 63,64,65,66,67 |
| Respondent’s Motion to Dismiss Appeal September 19, 2024 | 68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90 |
| Magistrate’s Return Rule 75, SCRCF | ,91 |
| Respondent’s No Return | 92 |
| Motion - To Amend Initial Brief of Appellant October 1, 2024..... | 93,94,95,96,97,98,99,100,101,102 |
| Appellant’s Reply to Respondent’s Motion to Dismiss | 68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90 |
| Transfer - To Court of Appeals June 27, 2024, | 105,106 |

Transcripts

| | |
|--|-----|
| Trial Transcript | 107 |
| Transcript Documents - No Transcript to be Ordered August 13, 2024,..... | 107 |
| Certificate of Appellants | 108 |

INDEX

Contents of Document Provided

Respondent's Trial Exhibit 1

Trial Court Order of May 13, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
) JUDGMENT NO. 2017CP4001687

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)
September 1, 2002,)

Plaintiff,)

vs.)

Janet L. Nelums a/k/a Janet Nelims; Christopher)
Nelums; Imperial Warehouse Finance, Inc.; and)
Best Distributing Company;)

Defendants.)

**SPECIAL REFEREE'S REPORT
ON SALE, ORDER OF
CONFIRMATION, AND ORDER
FOR DEFICIENCY JUDGMENT
(Non-Jury Foreclosure)**

1. On June 29, 2021, the Honorable Jeffrey M. Tzerman as Special Referee in the above-captioned foreclosure action issued his Special Referee's Order Granting Plaintiff's Motion for Summary Judgment and Order and Judgment of Foreclosure and Sale. On the same date, the Special Referee issued an Order Setting Appeal Bond. Both the Judgment and the Order were filed on July 1, 2021, with the Richland County Clerk of Court.

2. No appeal was filed to the Judgment.

3. By Order filed November 16, 2022, Judge Tzerman recused himself as Special Referee in the case.

4. On October 31, 2023, the Honorable Kristi F. Curtis as Circuit Court Judge issued her Order on Plaintiff's Motion for Sanctions and Gatekeeper Order for the reasons stated therein. In the Order, the Defendants Janet L. Nelums and Christopher Nelums were specifically

"...prohibited from filing, presenting, or serving additional documents, papers, or pleading related to the Property, Plaintiff, SLS, and/or this foreclosure until the Property can be sold, and the foreclosure proceedings completed unless (i) Defendants secure leave of the undersigned to present the document to the Clerk of Court, or (ii) the filing is signed by a member of the South Carolina Bar in good standing."

*Bruce
Page 1*

5. Pursuant to additional terms of Judge Curtis's Order, the Richland County Clerk of Court on January 9, 2024, issued her Order appointing the undersigned as Special Referee to conduct a foreclosure sale and to issue related post-sale documents.

6. On February 20, 2024, the undersigned issued his Notice of Special Referee's Sale scheduling the foreclosure sale for April 1, 2024.

7. On March 25, 2024, the Defendants Janet L. Nelums and Christopher Nelums filed with the Richland County Clerk of Court documents which were not signed by a licensed South Carolina attorney and were not authorized by Order of Judge Curtis. On the Motion Coversheet, the Defendants checked the box indicating "No Hearing Requested." The coversheet also has the following note: "Filer was aware of order dated 10-31-2023 and still requested his 3 motions be filed."

8. On April 28, 2024, the Nelums sent the undersigned an email with documents attached. Again, this submission was without the authority of Judge Curtis and without the signature of a licensed South Carolina attorney.

9. To the extent that the filing of March 25, 2024, and the email of April 28, 2024, constitute motions, the relief is denied as being a submission in violation of the October 31, 2023, Order of Judge Curtis.

10. Pursuant to the Judgment of Foreclosure and Sale by the Honorable Jeffrey M. Tzerman dated June 29, 2021, and filed with the Clerk of Court on July 1, 2021, and after due legal advertisement and publication according to law, on April 1, 2024, the undersigned as Special Referee conducted an auction of the property therein described and received from the Plaintiff 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 September 1, 2002, ("Plaintiff") a bid of \$201,388.37, that being the highest bid made on sales day.

*Bum
Page 2*

11. The bidding remained open for thirty (30) days as required by the Decree and by Section 15-39-720, Code of Laws of South Carolina, 1976, and on May 1, 2024, the Plaintiff was declared the successful bidder, no further bids having been made.

12. The Plaintiff has paid the costs of the action as required by the Judgment.

13. The undersigned executed and delivered to the Plaintiff a good and sufficient deed of conveyance to the property so sold.

14. The undersigned has paid out and disbursed all funds received in accordance with the Computation attached hereto.

15. Pursuant to the Judgment of Foreclosure and Sale previously issued by Judge Tzerman, I find that the Plaintiff is entitled to have a personal and deficiency judgment against the Defendants Janet L. Nelums, also known as Janet Nelums, and Christopher Nelums in the amount of \$125,237.31 as shown on the attached Computation, together with interest thereon at the rate of 5.875% per annum from May 1, 2024, until paid.

IT IS ORDERED that:

1. The sale of the subject property and the within Report are hereby confirmed.

2. The Plaintiff 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 September 1, 2002, have a personal and deficiency judgment against the Defendants Janet L. Nelums, also known as Janet Nelums, and Christopher Nelums in the amount of \$125,237.31 as shown on the attached Computation, together with interest thereon at the rate of 5.875% per annum from May 1, 2024, until paid.

3. Any relief sought by the Defendants Janet L. Nelums, also known as Janet Nelums, and Christopher Nelums in the documents filed with the Clerk of Court on March 25, 2024, and emailed to the undersigned on April 28, 2024, is hereby denied in that the filing and submission

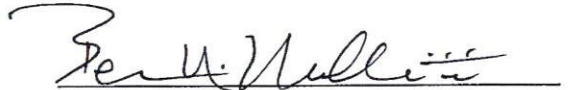
Done
Page 3

were in contravention of the Order of Kristi F. Curtis filed October 31, 2023.

AND IT IS SO ORDERED.

May 13, 2024

Columbia, South Carolina


BEN N. MILLER III as Special Referee

*Done
Page 4*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
 JUDGMENT NO. 2017CP4001687

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)
 September 1, 2002,)

Plaintiff,)

vs.)

Janet L. Nelums a/k/a Janet Nelims; Christopher)
 Nelums; Imperial Warehouse Finance, Inc.; and)
 Best Distributing Company;)

Defendants.)

**COMPUTATION OF
 DEFICIENCY JUDGMENT
 (Non-Jury Foreclosure)**

A. Amount due Plaintiff per Special Referee's Order and Judgment of Foreclosure and Sale dated June 29, 2021:

| | | |
|-----|--|------------------|
| (a) | Judgment amount with interest on principal amounts to June 4, 2021. | \$276,447.30 |
| (b) | Interest on judgment amount from June 4, 2021, to May 1, 2024, at 5.875% per annum (1061 days) | <u>47,214.50</u> |

TOTAL DEBT PER JUDGMENT \$323,661.80

| | | |
|-----|--|---------------|
| (c) | Special Referee's fees and commission paid by the Plaintiff. | \$ 2,138.88 |
| (d) | Publication costs paid by the Plaintiff. | <u>825.00</u> |

TOTAL DEBT PER JUDGMENT \$326,625.68

B. Amount bid the Plaintiff \$201,388.37

C. Amount of Deficiency against the Defendants Janet L. Nelums, also known as Janet Nelums, and Christopher Nelums (A-B). \$125,237.31

BALANCE OF FEES PAYABLE TO SPECIAL REFEREE:

| | |
|---------------|-----------------|
| Reference fee | \$ 125.00 |
| Commission | <u>2,013.88</u> |
| Balance due | \$ 2,138.88 |

Bruce

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-40-01687

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
PLAINTIFF(S)

Janet L. Nelums a/k/a Janet Nelums; Christopher Nelums; Imperial Warehouse Finance, Inc.; and Best Distributing Company
DEFENDANT(S)

Submitted by: Scott and Corley, P.A.

Attorney for: Plaintiff Defendant
or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED FOR BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk:

The property which is the subject of this action sold at public sale pursuant to the Special Referee's Report and Judgment of Foreclosure and Sale.

INFORMATION FOR THE PUBLIC INDEX

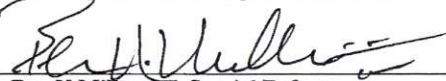
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|---|--|--|
| 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 | Janet L. Nelums a/k/a Janet Nelums | \$125,237.31 |

If applicable, describe the property, including tax map information and address, referenced in the order:
TMS No. 11916-2-16
Property address: 813 N Highland Forest Drive, Columbia, SC 29203

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Ben N Miller, III, Special Referee
SCRPC Form 4C (02/2017)

Judge Code

5-13-2024
Date

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Scott and Corley, P.A.
P.O. Box 2065
Columbia, SC 29204

Adrienne L. Turner, Esq. (Attorney for Janet L. Nelums)
P.O. Box 210638
Columbia, SC 29221
Adrienne L. Turner, Esq. (Attorney for Christopher Nelums)
P.O. Box 210638
Columbia, SC 29221
Janet L. Nelums
813 N. Highland Forest Drive
Columbia, SC 29203
Christopher Nelums
813 N. Highland Forest Drive
Columbia, SC 29203
Robert A. Bernstein, Esq. (Attorney for Best Distributing Company)
PO Box 20519
Charleston, SC 29413
Imperial Warehouse Finance, Inc.
1910 Pacific Ave., Ste. 13050
Suite 525
Dallas, TX 75201
Defendants / Attorney for Defendant(s)

Attorney for Plaintiff

Clerk of Court

Court Reporter: _____

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

INDEX
Contents of Document Provided

Respondent's Trial Exhibit 2

Order of Recusal November 16, 2022,

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO. 2017-CP-40-01687

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,

ORDER OF RECUSAL

PLAINTIFF,

VS.

Janet L. Nelums a/k/a Janet Nelums; Christopher Nelums; Imperial Warehouse Finance, Inc.; and Best Distributing Company,

DEFENDANT(S).

(151091.00064RCO)

The above referenced case is a foreclosure action that was scheduled for sale on Tuesday, September 6, 2022, but this Court canceled the sale when the Defendants filed their Motion and Memorandum in Support of Temporary Injunction and Appointment of Receiver and Rule to Show Cause to allow the Plaintiff to respond to the Motion and for the Motion to be adjudicated.

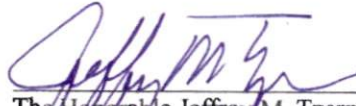
This Order is issued *sua sponte* in response to Defendants' Motion and Memorandum in Support of Temporary Injunction and Appointment of Receiver and Rule to Show Cause. I have carefully reviewed the Defendants' motion and note that it includes unsubstantiated allegations of wrongdoing by the Plaintiff, Plaintiff's counsel, prior holders of the loan in question, prior servicers of the loan, and this Court itself.

Since Defendants have accused this Court of wrongdoing, my hearing arguments and ruling upon this motion could raise the "appearance of impropriety" pursuant to Canon 2 of the of the Code of Judicial Conduct, contained within Rule 501 of the SC Rules of Professional

#1 Qmte

Responsibility. Having concluded that I am unable to hear this motion, I am recusing myself and returning jurisdiction to the Circuit Court.

IT IS SO ORDERED



The Honorable Jeffrey M. Tzerman
Special Referee for Richland County

#2

FILED IN CIRCUIT COURT OF THE STATE OF SOUTH CAROLINA IN AND FOR RICHLAND COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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,

PLAINTIFF,

VS.

Janet L. Nelums a/k/a Janet Nelums; Christopher Nelums; Imperial Warehouse Finance, Inc.; and Best Distributing Company,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-40-01687

CERTIFICATE OF SERVICE BY MAIL

(151091.00064RCO)

The undersigned hereby certifies that s/he is an employee of Scott and Corley, P.A. and is a person of such age and discretion as to be competent to serve papers and that on November ___ 2022, s/he mailed a copy of the Order of Recusal by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at the Scott and Corley, P.A. office, 2712 Middleburg Drive, Suite 200, Columbia, SC 29204.


Addressee:

Adrienne L. Turner, Esq. (Attorney for Janet L. Nelums)
P.O. Box 210638
Columbia, SC 29221

Adrienne L. Turner, Esq. (Attorney for Christopher Nelums)
P.O. Box 210638
Columbia, SC 29221

Robert A. Bernstein, Esq. (Attorney for Best Distributing Company)
PO Box 20519
Charleston, SC 29413

Imperial Warehouse Finance, Inc.
1910 Pacific Ave., Ste. 13050
Suite 525
Dallas, TX 75201



Rene Bell-Welch, Paralegal
SCOTT AND CORLEY, P.A.
2712 Middleburg Dr., St 200 (29204)
P.O. Box 2065 (29202)
Columbia, South Carolina

INDEX
Contents of Document Provided

Respondent's Trial Exhibit 3

Trial Court Order of Reference October 31, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

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.

Civil Action No. 2017-CP-40-01687

Motion to Refer
(Foreclosure)

Plaintiff.

vs.

Janet L. Nelums a/k/a Janet Nelums;
Christopher Nelums; Imperial
Warehouse Finance, Inc.; and Best
Distributing Company.

Defendants.

This is a foreclosure action involving 813 N. Highland Forest Drive, Columbia, SC 29203 (Parcel 11916-2-16) (the "Property"). Under Rule 53(b), SCRPC, and pursuant to the October 31, 2023 Order entered by this Court in this action, Plaintiff moves the Court for an order of reference to Ben Miller of McKenzie Lybrand, LLP as special referee special referee to oversee the foreclosure sale of the Property and enforce the October 31, 2023 Order.

Because this is a foreclosure action and the Richland County Master in Equity has previously recused himself, this is an appropriate action to be referred to a special referee.

This motion is based on the above-referenced authorities, the applicable Rules of Civil Procedure, South Carolina law, and any memorandum of law filed in support of the motion. Plaintiff does not request a hearing on the motion as this is the type that may be appropriately granted by the Clerk under Rule 53(b), SCRPC.

[Signature on following page.]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

Matthew A. Abee, SC Bar No. 101100

Email: matt.abee@nelsonmullins.com

Madison C. Guyton, SC Bar No. 105205

Email: madison.guyton@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Plaintiff 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

Columbia, South Carolina
January 5, 2024

INDEX
Contents of Document Provided

Respondent's Trial Exhibit 4

Trial Court Order of Judgment Roll February 20, 2024

McKENZIE LYBRAND, L.L.P.
ATTORNEYS AT LAW
2006 Sumter Street, Second Floor (29201-2120)
Post Office Box 58
Columbia, South Carolina 29202 -0058

June 13, 2023

Ben N. Miller III
Direct Line (803) 223-6155
Main Line (803) 384-3230
bmiller@mckenzielybrand.com

The Honorable Jeanette McBride
Richland County Clerk of Court
P.O. Box 2766
Columbia, South Carolina 29202

Re: Deutsche Bank National Trust Company, *etc.*
vs. Janet L. Nelums, *et al.*
Judgment Roll No. 2017CP4001687

Dear Mrs. McBride:

The referenced foreclosure action was referred to me as Special Referee by Order dated January 9, 2024. Please find enclosed for filing my Notice of Special Referee's Sale.

I appreciate your assistance with this matter.

Very truly yours,

McKENZIE LYBRAND, L.L.P.


BY: BEN N. MILLER III

Enclosure

cc: Matthew A. Abee, Esquire
Madison C. Guyton, Esquire
Henry Guyton Murrell, Esquire
Mr. Christopher Nelums
Ms. Janet L. Nelums

Order On Cross-Motions for Summary Judgment March 17, 2020

INDEX
Contents of Document Provided

Respondent's Trial Exhibit 5

Case 19-80032-jw Doc 52 Filed 03/17/20 Entered 03/17/20 16:17:40 Desc Main Document Page 1 of 20

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re,

Janet Louise Nelums,

Debtor(s).

Janet Louise Nelums,

Plaintiff(s).

v.

Specialized Loan Servicing, LLC; 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;

Defendant(s).

C/A No. 18-05885-JW

Adv. Pro. No. 19-80032-JW

Chapter 13

**ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

This matter comes before the Court on cross-motions for summary judgment filed by Janet Louise Nelums ("Plaintiff") and Specialized Loan Servicing LLC, as servicing agent for Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2002-B ("SLS").¹ A hearing was held on the cross-motions for summary judgment. The Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.²

¹ For the purposes of this Order, the Court will refer to Specialized Loan Servicing, LLC as "SLS" and Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2002-B as "Deutsche Bank as Trustee." Unless indicated otherwise, all references to SLS shall be in its capacity as servicing agent for Deutsche Bank as Trustee.

² To the extent the following findings of fact are considered conclusions of law, they are adopted as such, and vice versa.

UNDISPUTED FACTS

The present matter centers on whether SLS is a creditor of Plaintiff and a lienholder on Plaintiff's residence. At the hearing on the cross-motions for summary judgment, all parties agreed that there was no dispute of material fact and that the Court could dispose of all the issues raised in the adversary proceeding at the summary judgment stage. The Court finds the following undisputed facts are relevant and material to this matter:

1. On August 6, 2002, Plaintiff executed and gave a note in the amount of \$112,000 to IndyMac Bank, F.S.B. ("Note").

2. Also on August 6, 2002, to secure the Note, Plaintiff and her husband, Christopher Nelums, executed and delivered a mortgage to IndyMac Bank, F.S.B. ("Mortgage") as to the property known as 813 N. Highland Forest Drive, Columbia, South Carolina ("Residence").

3. On May 21, 2004, an assignment of the Mortgage ("Assignment") was recorded in the public records for Richland County, South Carolina, which stated that IndyMac Bank, F.S.B. assigned "all our rights, title and interest in and to" the Mortgage and related Note to Deutsche Bank National Trust Company as Trustee under the Pooling and Servicing Agreement Series 2002-B.

4. On November 19, 2018, Plaintiff filed a petition for relief under chapter 13 of the Bankruptcy Code, which was designated as C/A No. 18-05885-jw ("Main Bankruptcy Case").

5. On December 17, 2018, in the Main Bankruptcy Case, Plaintiff proposed a chapter 13 plan that asserted that neither SLS nor Deutsche Bank as Trustee are the holder of the Mortgage. The plan provided that Plaintiff would pay a post-petition monthly amount (in

the amount that SLS asserts is the monthly mortgage payment) to the Chapter 13 Trustee and that, the Trustee is to pay those payments upon confirmation if the Court determines that SLS or Deutsche Bank as Trustee is the proper lienholder and has an allowed secured claim. The proposed plan does not provide for treatment of any pre-petition arrearage that may be owed under the loan.

6. On January 14, 2019, SLS filed in the Main Bankruptcy Case an objection to confirmation of Plaintiff's proposed chapter 13 plan, alleging that it does not comply with 11 U.S.C. § 1322(a)(5) and does not provide a cure of Plaintiff's pre-petition arrearage.

7. On January 25, 2019, Deutsche Bank as Trustee through SLS filed a proof of claim stating a total debt amount of \$218,479.21 with an amount necessary to cure the pre-petition default of \$121,753.45.³ The proof of claim included a copy of the original indorsed Note, the Mortgage, and the Assignment.

8. On January 30, 2019, Plaintiff filed in the Main Bankruptcy Case an objection to the claim filed by Deutsche Bank as Trustee through SLS. Plaintiff's objection to claim asserts that the Note and Mortgage were split upon the securitization of the loan, which causes neither Deutsche Bank as Trustee nor SLS to be the holder of the Note and Mortgage. However, Plaintiff did not dispute that the claim was filed in compliance with Fed. R. Bankr. P. 3001 or dispute the amounts stated as being due in the claim.

9. At the hearing on Plaintiff's objection to claim, the Court determined, and the parties agreed, that the relief sought by Plaintiff regarding the Note and Mortgage must be brought as an adversary proceeding pursuant to Fed. R. Bankr. P. 3007(b) and provided

³ The proof of claim indicates that Plaintiff is contractually due for the August 1, 2010 payment. Plaintiff did not dispute that she has not made a payment on the loan in nearly ten years.

Plaintiff with thirty days to commence an adversary proceeding. All parties agreed that the objection to confirmation filed by SLS and Plaintiff's objection to claim would be fully determined by the findings and conclusions reached in this adversary proceeding. As the outcome of the adversary proceeding would control the determination of the parties' objections, both objections remain pending in Plaintiff's Main Bankruptcy Case while the Court considers the present adversary proceeding.

10. On May 3, 2019, Plaintiff commenced the present adversary proceeding.

11. After SLS filed an answer to Plaintiff's complaint, the parties were provided 155 days to conduct discovery.

12. On November 12, 2019, Plaintiff filed a Motion for Summary Judgment.

13. On November 26, 2019, the parties entered a consent Pre-Trial Order, which extended the time for the parties to complete discovery and to file motions for summary judgment.

14. On January 31, 2020, SLS filed its Motion for Summary Judgment and Plaintiff filed an Amended Motion for Summary Judgment.

15. At the hearing on the cross motions for summary judgment, counsel for SLS demonstrated her possession of the original Note, which contained a blank indorsement from IndyMac Bank, F.S.B.⁴

⁴ On the eve of the hearing on the cross-motions for summary judgment, SLS filed an affidavit of Shane Ellis, an Assistant Vice President of SLS, to authenticate the Note and Mortgage. Plaintiff filed a motion to exclude the affidavit on the grounds that it was untimely and prejudicial. The Court's second amended scheduling order entered on November 26, 2019, which was consented to by counsel for both parties, provides that "[a]n opposing affidavit [pursuant to Fed.R. Civ. P. 56(c)] may be filed at any time prior to the day of the hearing." Therefore, based on the deadline set forth in the Court's order, the affidavit was timely filed.

Regardless of this affidavit and motion to exclude, Plaintiff agreed at the hearing that the signature on the Note appeared to be hers but that she has no personal knowledge of the indorsement included on the Note. SLS has asserted that it is the holder of the Note, indorsed in blank, since prior to the filing of this adversary proceeding. Plaintiff has not raised any allegations regarding the authenticity of the indorsement and, after

16. Also at the hearing, SLS withdrew the counterclaims asserted against Plaintiff.

CONCLUSIONS OF LAW

Summary Judgment Standard

Federal Rule of Civil Procedure 56(a), which is made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, provides that “[t]he Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). At the summary judgment phase, “[t]he pertinent inquiry is whether ‘there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.’” *Reyazuddin v. Montgomery Cty., Md.*, 789 F.3d 407, 413 (4th Cir. 2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

Once the moving party makes a summary judgment motion, the burden is on the nonmoving party to demonstrate there is a genuine issue of material fact for trial. *Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 216 (4th Cir. 2016). The evidence presented must be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The Supreme Court has explained that “[o]nly disputes over facts that might affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248.

completing discovery, has presented no facts to dispute that SLS is the holder of the original Note, indorsed in blank.

Important to this ruling, the parties in this matter stipulated on the record at the hearing and agreed that no genuine issue of material fact exists, and therefore, the Court should grant one of the motions for summary judgment as a matter of law.⁵

“Creditor” under the Bankruptcy Code

Plaintiff seeks a declaratory judgment that neither SLS nor Deutsche Bank as Trustee are creditors of Plaintiff and do not hold a lien interest in Plaintiff’s Residence.

A “creditor” is defined for purposes of the Bankruptcy Code as an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor” 11 U.S.C. § 101(10)(A) (2020). The Bankruptcy Code defines a “claim” as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured” 11 U.S.C. § 101(5)(A) (2020). Therefore, the critical issue in this matter is whether SLS has a “right to payment” against Plaintiff.

Right to Payment under Article 3 of the South Carolina Commercial Code

The claim filed by SLS is based upon the Note and Mortgage Plaintiff executed in 2002. Under South Carolina law, a mortgage note is considered a negotiable instrument under Article 3 of the South Carolina Commercial Code (S.C. Code Ann. § 36-3-101, *et al.*).⁶ *See*

⁵ This stipulation waived any right to assert a remaining genuine issue of material fact as a defense to either summary judgment motion.

⁶ The parties did not address the choice of law in this matter. Based on the record and the language of the Mortgage, it appears to the Court that South Carolina law applies to this matter.

Further, the parties did not address which version of the South Carolina Commercial Code applies—the version in effect when the note was executed in 2002 or the present version of the Code. In 2008, the South Carolina Legislature significantly revised the S.C. Commercial Code, which provided that the controlling version of the Commercial Code is dependent on when the relevant “transaction” occurred. In the present matter, the Court would reach the same conclusion (that SLS as the holder of the note, indorsed in blank has a right to payment from Plaintiff) under both the present version of the S.C. Commercial Code or the version in effect in 2002. The Court has observed that, in recent opinions, the Court of Appeals for South Carolina has applied the revised version of the Commercial Code to loans which were executed prior to the revision. *See, e.g., Bank of Am., N.A. v. Draper*, 746 S.E.2d 478, 479 (S.C. Ct. App. 2013) (applying the revised commercial code to a note

Swindler v. Swindler, 584 S.E.2d 438, 440–41 (S.C. Ct. App. 2003) (finding that Article 3 governs a note secured by a mortgage on real property). Under the South Carolina Commercial Code, payment under a negotiable instrument is to be made to a “person entitled to enforce the instrument” under § 36-3-301. *See* S.C. Code Ann. § 36-3-602(a) (2020) (“[A]n instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.”). Section 36-3-301 of the South Carolina Code provides that “person entitled to enforce” a negotiable instrument includes “the holder of the instrument A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.” *Id.* at § 36-3-301. The South Carolina Commercial Code defines a holder as “a person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession” *Id.* at § 36-1-201(21). Therefore, under South Carolina law, a party in possession of an original note that either is bearer paper or specifically indorsed to that party has a right to payment under the note.

In the present matter, the undisputed facts indicate that SLS is in possession of the original Note. Counsel for SLS displayed that document, along with the original Mortgage and mortgage Assignment, at the hearing on the cross-motions for summary judgment, and

executed in 2005); *Wilmington Savings Fund Society v. Furmanchik*, C/A No. 2015-UP-353, slip op., 2015 WL 4275455 (S.C. Ct. App. July 15, 2015) (applying the revised Commercial Code to a loan executed in 2006).

Therefore, for the purposes of this Order, the Court will address the matter under the present version of the S.C. Commercial Code with the understanding that the result would be the same under the prior version of the Code in effect in 2002. *See* S.C. Code Ann. § 36-1-201(20) (2002) (“‘Holder’ means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank.”); § 36-3-204(b) (2002) (“An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by deliver alone until specially indorsed.”); and § 36-3-301 (2002) (“The holder of an instrument whether or not he is the owner may transfer or negotiate it and . . . enforce payment in his own name.”).

copies were attached to the proof of claim filed in this case as well as motion for summary judgment filed by SLS. The Note, which was originally given to IndyMac Bank, F.S.B. contains an original indorsement in blank, executed by IndyMac Bank, F.S.B. Plaintiff's pleadings do not dispute the authenticity of the indorsement included on the Note. Under S.C. Code Ann. § 36-3-205, "[w]hen indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specifically indorsed."

While Plaintiff has raised arguments that SLS failed to provide the documentation demonstrating its purchase of the mortgage loan or its inclusion in a Mortgage Loan Purchase Agreement, such documentation is not required to transfer and negotiate the right to payment of a bearer instrument under the South Carolina Code.⁷ Possession alone is sufficient to demonstrate the negotiation of such an instrument. *See* S.C. Code Ann. § 36-3-205 (2020).

Further, under South Carolina law, it is well-established that a servicer, which is a party that collects a debt on behalf of another party, has standing and is a real party in interest to commence a foreclosure action and file a proof of claim in a bankruptcy case. *See In re Woodberry*, 383 B.R. 373 (Bankr. D.S.C. 2008); *In re Neals*, 459 B.R. 612 (Bankr. D.S.C. 2011); *Bank of America, N.A. v. Draper*, 746 S.E.2d 478 (S.C. Ct. App. 2013).

For these reasons, the Court finds based on the undisputed facts that SLS is the party in possession of the original Note that is indorsed in blank, and therefore the Note's holder. Further, SLS acts in this case as the servicer for Deutsche Bank as Trustee. As the Note's holder, SLS is a party entitled to enforce it under the South Carolina Commercial Code and

⁷ Plaintiff asserts that a party must be the holder in due course to be able to enforce a negotiable instrument; however, section 36-3-301 of the South Carolina Code does not contain this requirement. Under S.C. Code Ann. 36-3-305, a holder in due course is subject to fewer defenses as result of its status, but that status is not a requirement to the enforceability of an instrument. Therefore, the Court finds Plaintiff's arguments to be unpersuasive.

has the current right to payment from Plaintiff under the Note. Therefore, SLS is a “creditor” of Plaintiff as defined by the Bankruptcy Code.

Mortgage Follows the Note in South Carolina

As a matter of South Carolina law, the transfer of a note also carries with it the transfer of the related mortgage, regardless of whether an assignment of mortgage has been executed and filed in the public records. The Fourth Circuit Court of Appeals has held:

South Carolina has long upheld “the familiar and uncontroverted proposition ... that the assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but that the assignment of the mortgage alone does not carry with it an assignment of the note.” *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112, 115 (1930); *see also Ballou v. Young*, 42 S.C. 170, 20 S.E. 84, 85 (1894) (“The transfer of a note carries with it a mortgage given to secure payment of such note.”). Thus, because [defendant] is the holder of the note, it is also the holder of the mortgage.

Scheider v. Deutsche Bank Nat. Tr. Co., 572 F. App'x 185, 190 (4th Cir. 2014). Also in *Scheider*, the Fourth Circuit rejected the arguments of the plaintiff in that matter that this “longstanding rule is unsuited to the complex securitization of mortgage so prevalent today[.]” finding that “South Carolina has [not] revisited its law on negotiable instruments—especially as its higher courts continue to apply [the rule that a mortgage follows the note].” *Id.* at 190-91.

While Plaintiff in this action has alleged that the securitization of the mortgage loan has “split” the Note from its related Mortgage, courts applying South Carolina law have routinely rejected that the mortgage may be split from its note. *See id.* at 190 (“If we permitted the split-the-note theory that [plaintiffs] propose, ‘there would be little reason for notes to exist in the first place,’ as ‘[o]ne of the defining features of notes is their transferability.’ The idea that ‘transferring a note would strip it from the security that gives it value and render the note largely worthless . . . cannot be—and is not—the law.”) (quoting *Horvath v. Bank of*

New York N.A., 641 F.3d 617, 624 (4th Cir 2011)); *Bruce v. Wilmington Savings Fund Society, FSB, Trustee of Stanwich Mortgage Loan Trust*, C/A No. 2:18-2555:BHH-BM, 2019 WL 1293718 (D.S.C. Jan. 15, 2019) (rejecting plaintiff's attempts "to assert a 'split the note' argument, [which claimed] that in order to have standing in a foreclosure case a plaintiff in a state court action must have acquired the mortgage"); *Cooper v. Van Slambrook*, C/A No. 2:19-649-DCN-BM, 2019 WL 3777153 (D.S.C. June 4, 2019) (same); *Wyman v. Chellis*, C/A No. 2:17-2946-RMG-BM, 2018 WL 1801644 (D.S.C. Jan. 30, 2018) (same).

Further, in the present matter, Plaintiff's arguments are also defeated because the record also contains a 2004 assignment of the mortgage, which assigns the Mortgage from Indymac Bank, F.S.B., the original mortgagee, to Deutsche Bank as Trustee, the entity for which SLS is servicing the debt.

Because South Carolina law provides that holder of the note is also the holder of the mortgage, SLS, as the holder of the Note, is also entitled to enforce the Mortgage on behalf of Deutsche Bank as Trustee.

While these findings and conclusions are dispositive of the motions for summary judgment before the Court and therefore, may conclude this adversary proceeding,⁸ the Court will nevertheless address Plaintiff's assertions in her motion for summary judgment.

⁸ SLS also argued that Plaintiff was barred from challenging its status as a note holder based on a prior order of the state court. However, while a copy of certain portions of this order was included with its motion for summary judgment, it appears counsel for SLS inadvertently omitted the page including the alleged relevant findings of the state court. At the hearing, counsel for SLS asked the Court to take judicial notice of the state court's order as a result of her error. As the Court finds the actions of counsel for SLS were not intentional and because the state court's order is not subject to a reasonable dispute since it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned, the Court takes judicial notice of the state court order pursuant to Fed. R. Evid. 201. Ultimately, the Court reaches its determination of summary judgment without the need to consider the state court's order at this time.

Plaintiff's Arguments

Plaintiff asserts a number of arguments regarding the status of SLS as a creditor and lienholder. Plaintiff's only evidence submitted in support of her summary judgment motion is the affidavit and declaration of her purported expert, Cyndee Rae Estrada.⁹ At the summary judgment stage, the information contained in an affidavit or declaration must be admissible into evidence at trial. See Fed. R. Civ. P. 56(c)(4). The admissibility of expert testimony is governed by Fed. R. Evid. 702.¹⁰ The Fourth Circuit Court of Appeals has provided the following guidance regarding the admission of expert testimony:

Ultimately, an expert's testimony is admissible under Rule 702 if it "rests on a reliable foundation and is relevant." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999) (internal quotation marks omitted). The district court's role in considering the admissibility of expert testimony is that of a "gate-keeper," whose prime task is to assess the reliability and relevancy of the proffered evidence. *See id.* at 1174. . . .

As the gate-keeper, the district court must remember that due to the difficulty of evaluating their testimony, expert witnesses have the potential to "be both powerful and quite misleading." *Daubert*, 509 at 595 (internal quotation marks omitted).

⁹ Ms. Estrada's affidavit and declaration included multiple attachments:

- A Form 8-k filed with the S.E.C. on November 18, 2002 by Deutsche Bank as Trustee
- A Form T-1 filed with the S.E.C. on July 25, 2018 by Deutsche Bank National Trust Company
- An internal memorandum from Deutsche Bank as Trustee to holders of mortgage-backed securities dated October 25, 2010
- An internal memorandum from Deutsche Bank as Trustee to loan servicers dated October 8, 2010
- An internal memorandum from Deutsche Bank as Trustee to loan servicers dated July 28, 2008
- An internal memorandum from Deutsche Bank as Trustee to loan servicers dated August 30, 2007

These documents were not authenticated, and a foundation was not created through the affidavit and declaration and some may be inadmissible at trial if Ms. Estrada is not qualified as an expert by the Court.

¹⁰ Fed. R. Evid. 702 provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify thereto in the form of an opinion or otherwise."

Higginbotham v. KCS Int'l, Inc., 85 F. App'x 911, 914 (4th Cir. 2004).

SLS moved to exclude Ms. Estrada's affidavit on several grounds. SLS asserted that Ms. Estrada is not qualified to serve as an expert in this matter and that the affidavit amounts to an improper statement of legal conclusions.

SLS first calls the Court's attention to the fact that Ms. Estrada asserts that she is a "forensic loan auditor" and that she should not be recognized as an expert. The legitimacy of expertise in such a field has been questioned by other courts. For example, the U.S. District Court for the Northern District of Georgia has stated the following regarding "forensic loan auditors:"

[The purported expert's] affidavit recasts the same arguments repeatedly made by owners in an attempt to forestall foreclosure. It is replete with erroneous statements of law and wholly unhelpful to a resolution of the case. It is not surprising, therefore, that numerous consumer protection agencies, as well as state Attorneys General and the Federal Trade Commission have issued consumer alerts warning homeowners not to fall prey to the scam of "forensic loan auditors."

Cummings v. Mortg. Elec. Registration Sys., Inc., No. 1:13-CV-3302-TWT, 2014 WL 3767797, at *5 (N.D. Ga. July 30, 2014); *see also Hakimi v. Bank of New York Mellon*, No. 2:14-CV-2215 JCM CWH, 2015 WL 2097872, at *4 (D. Nev. May 5, 2015) ("The Federal Trade Commission describes so-called "forensic loan audits" as a technique used by '[f]raudulent foreclosure 'rescue' professionals [who] use half-truths and outright lies to sell services that promise relief to homeowners in distress.' ") (quoting The Federal Trade Commission, *Forensic Loan Audits*, FTC Consumer information (Mar.2010), <https://www.consumer.ftc.gov/articles/0130-forensic-loan-audits>). While Plaintiff takes exception to SLS's accusation that Ms. Estrada is participating in a fraud, the Court nevertheless declines to qualify her as an expert in this matter and finds that her report is

wholly unhelpful to the resolution of the case and that it is not admissible expert testimony under Fed. R. Evid. 702 for the reasons stated herein.¹¹

First, the reliability of a similar report by Ms. Estrada herself has been significantly doubted by another court in a similar circumstance. Specifically, in a case where Ms. Estrada was retained to serve as an expert witness for plaintiffs who sought to invalidate their mortgage note, the U.S. District Court for the District of Arizona found that the report of Ms. Estrada was of questionable reliability, “belied by the overwhelming documentary evidence,” and “belied by simple common sense.” *Rich v. BAC Home Loans Servicing LP*, C/A No. 11-00511-PHX-DLR, slip op. 2014 WL 7671615 (D. Ariz. Oct. 9, 2014) aff’d 666 F. App’x 635 (9th Cir. 2016).

Second, in reviewing the declaration and affidavit, Ms. Estrada’s affidavit primarily amounts to legal arguments as to the correct interpretation of the applicable law, much of which has been repeated by Plaintiff in her pleadings. “[O]pinion testimony that states a legal standard or draws a legal conclusion by applying law to the facts is generally inadmissible.” *United States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006) (determining whether the opinion testimony of a physician-expert constituted an impermissible legal conclusions). Generally, the Fourth Circuit identifies “improper legal conclusions by determining whether ‘the terms used by the witness have a separate, distinct and specialized meaning in the law different from that present in the vernacular.’” *Id.* In the present matter, Ms. Estrada cites to numerous statutes, and regulations and uses legal terms of art to assert an ultimate conclusion that SLS or Deutsche Bank as Trustee cannot be a “holder” of the Note and could not be a “creditor”

¹¹ While the curriculum vitae that Ms. Estrada attached to her declaration included a listing of several cases in which she indicates she was “acknowledged” as an expert by the court, based upon a review of several of the federal cases listed, it does not appear that she was in fact qualified as an expert under Fed. R. Evid. 702 by those courts.

of Plaintiff. In short, Ms. Estrada's affidavit and declaration were more akin to a legal brief filed by counsel than a report by an expert. Even at the hearing, counsel for the Plaintiff referred the Court to Ms. Estrada's affidavit for a summary of the Plaintiff's positions. Such arguments of law by an alleged expert witness would not be admissible at trial and are not permitted in an affidavit submitted in support of summary judgment.

Third, as discussed more fully below, Ms. Estrada's declaration and affidavit contain incorrect legal conclusions under South Carolina law and focus on trivial and immaterial issues in the matter before the Court.¹² In short, the affidavit and declaration are unhelpful to the resolution of this adversary proceeding.

For these reasons, the Court grants SLS's motion to exclude the affidavit of Ms. Estrada on the basis that the Court finds that the Plaintiff has not satisfied her burden of showing that Ms. Estrada is qualified to serve as an expert in this matter, that her opinions are reliable, and that her affidavit and declaration do not amount to impermissible legal conclusions.

Further, even if the Court were to consider Ms. Estrada's opinion, the Court finds the legal assertions contained her affidavit and declaration to be unfounded, unpersuasive and immaterial to the resolution of the matters before the Court.

¹² For example, in her Declaration, Ms. Estrada relies on a fact that Deutsche Bank as Trustee does not have a certificate of authority to transact business in South Carolina; however, the South Carolina Code provides a clear exception to this requirement to parties for "creating or acquiring any indebtedness, mortgages and securities interests in real or personal property" and "securing or collecting debts or enforcing mortgages, securities interests, or other rights in property securing debts" S.C. Code Ann. § 33-15-102(b)(7) & (8) (2020).

Also, in her affidavit, Ms. Estrada relies on a fact that SLS has been informed that it should not bring foreclosure actions naming Deutsche Bank National Trust Company, individually, as the plaintiff. However, in the present matter, SLS is acting as servicer for Deutsche Bank National Trust Company in a representative capacity as a trustee.

Securitization of the Mortgage Loan

Plaintiff, through Ms. Estrada, asserts that because the Note and Mortgage were securitized,¹³ they are no longer collectable and that the Note is no longer subject to Article 3 of the South Carolina Commercial Code. Instead, Plaintiff asserts that the Note is subject to Article 8 of the Code.

The Court first observes that Plaintiff has cited no case law or statute in support of this position that, upon the securitization of the Mortgage loan, the Note and Mortgage were effectively nullified/paid or that Article 3 is not applicable to this matter.

On the other hand, courts, including those applying South Carolina law, have routinely rejected the argument that a loan is no longer collectable or otherwise “paid” upon being securitized. *See, e.g., Wright v. Bank of America, N.A.*, 2014 WL 3565822 (D.S.C. July 18, 2014) (“Federal courts have also consistently rejected [Plaintiff’s] argument that securitization nullified his loan.”); *Porterfield v. JP Morgan Chase Bank, Nat’l Ass’n*, 2013 WL 5755499 (E.D.N.C. Oct. 23, 2013) (rejecting the plaintiff’s argument that upon securitization, the note “became stock which means it is no longer a loan and is thus extinguished”); *Batchelor v. Wells Fargo Bank, N.A.*, 2013 WL 1499583 at *3 (E.D. Mich. Mar. 15, 2013) (“Plaintiff’s argument—that Defendant’s securitization of his loan relieved him of his obligation to pay on the note—has been consistently rejected . . . nationwide.”).

“Securitization merely creates a separate contract, distinct from [p]laintiffs['] debt obligations” under the note and does not change the relationship of the parties in any way” *Reyes v. GMAC Mortg. LLC*, 2011 WL 1322775 (D. Nev. April 5, 2011) (internal quotations

¹³ The Fourth Circuit has described mortgage securitizations as “numerous mortgages [that] are grouped together into a special purpose vehicle, such as a trust. The vehicle then issues mortgage-backed securities to investors.” *Scheider*, 572 F. App’x at 188 n. 2.

omitted); *see also Bhatti v. Guild Mortg. Co.*, 2011 WL 6300229 at *5 (W.D. Wash. Dec. 16, 2011) (same); *Commonwealth Prop. Advocates, LLC v. First Horizon Home Loan Corp.*, No. 2:10-CV-375, 2010 WL 4788209, at *2 (D. Utah Nov. 16, 2010), *aff'd sub nom. Commonwealth Prop. Advocates, LLC v. Mortg. Elec. Registration Sys., Inc.*, 680 F.3d 1194 (10th Cir. 2011) (“Any new contract that is the result of securitization does not free [Plaintiffs’] from the express terms of [the] Deed of Trust”); *Larota-Florez v. Goldman Sachs Mortg. Co.*, 719 F.Supp. 2d 636, 641 (E.D. Va. 2010) (finding “federal law explicitly allows for the creation of mortgage-related securities” and that “[f]oreclosures are routinely and justifiably conducted by trustees of securitized mortgages”).

Further, South Carolina state courts have routinely applied Article 3 of the South Carolina Commercial Code to foreclosure actions brought by the trustee of a securitized mortgage loan. *See, e.g., HSBC Bank of USA, Nat’l Ass’n, as Trustee for the Holders of the Deutsche Alt-A Secs., Inc. Mortg. Loan Trust, Mortg. Pass-Through Certificates Series 2007-A4 v. Ryba*, 2019 WL 1551671 (S.C. Ct. App. Apr. 10, 2019) (applying Article 3 in the context of the foreclosure of a securitized mortgage); *Bank of N.Y. Mellon as Trustee for the Benefit of Certificateholders of Popular ABS, Inc. Mortg. Pass-Through Certificates Series 2006-E v. Taylor*, 2018 WL 21295-8 (S.C. Ct. App. May 9, 2018) (same); *U.S. Bank Nat’l Ass’n as Trustee under the Pooling and Service Agreement with Pooling ID# 0040323 and Distribution Series 2006-EMX3 v. Johnson*, 2012 WL 10864163 (S.C. Ct. App. Nov. 14, 2012) (same). In addition, the Fourth Circuit Court of Appeals, applying South Carolina law, upheld a U.S. District Court’s finding that, under Article 3, the trustee of a securitized mortgage was the holder of the note and mortgage and entitled to enforce the loan. *Scheider*, 572 F. App’x at 189–90.

For these reasons, the Court overrules the arguments of Plaintiff, as expressed in Ms. Estrada's affidavit, that under South Carolina law, the securitization of the mortgage loan nullifies a party's obligation under a note and removes the note from the requirements of Article 3 of the South Carolina Commercial Code.

Ownership of the Note and Mortgage

Plaintiff also makes a number of arguments regarding the ownership of the Note and Mortgage, including that Deutsche Bank has not proven its ownership of the loan. Further, Ms. Estrada asserts in her affidavit that IndyMac ABS, Inc. is the owner of the Note.

This Court has recently held that "a debtor has the right to challenge whether the creditor filing a proof of claim is the holder of the note," but that a debtor does not have standing to challenge the ownership of the note because ownership does not control who may enforce the note under the South Carolina Commercial Code or who may file the proof of claim in a bankruptcy case. *In re Fields*, C/A No. 18-06502-JW at p. 16 (Bankr. D.S.C. Aug. 8, 2019) (quoting *In re Simmerman*, 463 B.R. 47, 60 (Bankr. S.D. Ohio 2011)). As previously discussed, under the South Carolina Commercial Code, the holder of a bearer instrument, such as the Note in this matter, does not need to be the owner of the instrument in order to enforce it and be entitled to a right to payment. Further, under South Carolina law, the mortgage follows the note. Arguments and opinions regarding ownership are not material to the present matter. For these reasons, Plaintiff's arguments regarding the ownership of the Note and Mortgage are not relevant to the determination of whether SLS is entitled to a right of payment under South Carolina law and are overruled.

Alleged Issues of Authority

Plaintiff, through Ms. Estrada's affidavit, has also made several allegations regarding the authority of Deutsche Bank as Trustee and SLS to commence collection actions, including a foreclosure action. Such allegations include that Deutsche Bank as Trustee does not have authority under "Trust Fund regulations" to execute a power of attorney to SLS to collect on its behalf and that Deutsche Bank as Trustee has no control over SLS's collection efforts.¹⁴ However, these arguments related to authority do not dispute the fact that SLS is the holder of the Note and acting as the servicer for Deutsche Bank as Trustee, the key facts to determine who has a right to payment under South Carolina law.

¹⁴ On this subject, Ms. Estrada relies upon communication with Reynaldo Reyes, a Vice President of Deutsche Bank National Trust Company. Ms. Estrada's affidavit states: "As written the [sic] previous memos (see attached) [sic] [Mr. Reyes] said that Deutsche Bank National Trust Company (in any capacity) is not really suing the Defendants [sic], which has been apparently brought and prosecuted purely at the direction of SLS without authorization from Deutsche Bank National Trust Company." However, Mr. Reyes' purported statements appear to be clarified by the internal memoranda of Deutsche Bank as Trustee that Ms. Estrada included with her affidavit. These memoranda clearly indicate an expectation of Deutsche Bank as Trustee that servicers are to commence foreclosure and collections actions for the subject loans. For example, the memoranda state:

- "The pooling and servicing agreements or other governing documents for the Trusts (collectively, the 'Governing Documents') provide that the Servicer is solely responsible for the performance of all loan-level remedial collection activity on behalf of the beneficiaries of the Trusts, including without limitation, all foreclosure activity and all maintenance and sales of resulting REO properties. The Governing Documents typically require the Trustee to furnish the Servicer with powers of attorney that allow the Servicer to sign documents and institute legal actions, including foreclosure proceedings, in the name of the Trustee on behalf of the Trusts in connection with these servicing activities. The Governing Documents also provide that the Trustee shall not be responsible for the acts or omissions of the Servicer, including acts or omissions relating to the use or misuse of such powers of attorney."
- "Servicers act for the benefit of the Trusts, and in the name of the Trustee, but are not themselves the Trustee."
- "In no event should servicer-retained foreclosure professionals, including counsel, mislead third parties, including courts, into believing that the Trustee directly controls the foreclosure process or any related litigation process."

Further, these alleged statements of Mr. Reyes do not dispute the material facts that SLS is the servicer for Plaintiff's loan or that SLS is the holder of the Note and Mortgage, and therefore, is a creditor of Plaintiff and lienholder on Plaintiff's Residence.

Further, these theories are again bare legal conclusions without any case law or statutory support and appear to relate to agreements between SLS and Deutsch Bank as Trustee. In that regard, it has been held that a non-party cannot collaterally attack the validity or alleged deficiencies regarding these types of agreements. *See, e.g., Scheider v. Deutsche Bank National Trust Company*, C/A No. 9:11-395-SB, slip op. 2013 WL 12106925 D.S.C. Apr. 11, 2013) *aff'd* 572 F. App'x 185 (4th Cir. 2014) (“[T]he Court agrees with the Defendants that the Plaintiffs lack standing to question the validity of the assignment of the note based on alleged violations of the [pooling and servicing agreement] PSA”); *Kain v. Bank of New York Mellon, f/k/a Bank of New York as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates Series 2005-16 (In re Kain)*, C/A No. 08-08404-HB, Adv. Pro. No. 10-80047-HB, slip op. 2012 WL 1098465 (Bankr. D.S.C. Mar. 30, 2012) *aff'd* C/A No. 7:12-cv-02031-JMC, slip op. 2013 WL 1115597 (D.S.C. Mar. 18, 2013) ([T]his Court is swayed by the recent authority finding that debtor, who are not parties to or third party beneficiaries of a PSA, lack standing to challenge the validity of or noncompliance with terms of a PSA.”).

Therefore, for the foregoing reasons, the Court finds Plaintiff’s arguments do not support summary judgment for Plaintiff and that, as a matter of law, summary judgment should be granted in favor of SLS in this matter.¹⁵

¹⁵ By stipulation of the parties, the resolution of this adversary proceeding will control the determination of the objection to claim and objection to confirmation which are pending in the Main Bankruptcy Case. In regard to Plaintiff’s objection to the claim of Deutsche Bank as Trustee filed by SLS, she does not dispute that the proof of claim was filed in compliance with Fed. R. Bankr. P. 3001, and therefore, pursuant to Fed. R. Bankr. P. 3001(f), the claim has *prima facie* evidence of validity and amount. For the same reasons stated herein, the Court further finds that Plaintiff has not overcome its burden to rebut the *prima facie* evidence of the claim. Separate orders on the objection to claim and objection to confirmation will be entered in relation to the continued hearing on those matters, scheduled for March 26, 2020 at 9:00 AM in Columbia, South Carolina.

CONCLUSION

For the foregoing reasons, the Court finds, based on the undisputed facts that Specialized Loan Servicing LLC, as servicing agent for Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2002-B is a creditor of Janet Louise Nelums and the holder of the Note and the Mortgage that secures her Residence, and therefore, Specialized Loan Servicing LLC, as servicing agent for Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2002-B is entitled to summary judgment in this declaratory judgment proceeding as a matter of law. Based thereon, the Court denies Janet Louise Nelums' motion for summary judgment and grants the motion for summary judgment filed by Specialized Loan Servicing LLC, as servicing agent for Deutsche Bank National Trust Company, as Trustee for Home Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2002-B.

AND IT IS SO ORDERED.

Columbia, South Carolina
March 17, 2020

**FILED BY THE COURT
03/17/2020**



Entered: 03/17/2020


US Bankruptcy Judge
District of South Carolina

Notice, Consent, And Reference of a Civil Action to a Magistrate 2017,2024

UNITED STATES DISTRICT COURT
for the

_____)
Plaintiff))
v.) Civil Action No.
_____)
Defendant)

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**

Trial Court Order Writ of Assistance September 10, 2024

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO. 2017-CP-40-01687

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,

WRIT OF ASSISTANCE

PLAINTIFF,

VS.

Janet L. Nelums a/k/a Janet Nelums; Christopher Nelums; Imperial Warehouse Finance, Inc.; and Best Distributing Company,

DEFENDANT(S).

(241136.00207)

THIS WRIT OF ASSISTANCE APPLIES TO ALL OCCUPANTS AND OTHERS (including their possessions) WITH RESPECT TO THE PROPERTY DESCRIBED BELOW.

This matter came before me regarding the above named Defendant(s) Janet L. Nelums and Christopher Nelums **or any occupant of the property located at 813 N Highland Forest Drive, Columbia, SC 29203**, to issue a Writ of Assistance by this Court to the Sheriff of Richland County, South Carolina, ordering and directing him to remove, peaceably or forcibly, the Defendant(s) Janet L. Nelums and Christopher Nelums, together with any and all persons claiming under and through said Defendants, and this Writ of Assistance specifically and further authorizing the removal of all of their personal property, no matter the type, kind, or value, which is located within or on the subject premises described herein; and said judicial authorization herein shall be accomplished with the removal of said personal property to the curb.

It appears that the subject premises were sold by judicial sale held on April 1, 2024. As a result of said sale, the Plaintiff became the owner of the subject property by virtue of a Master's Deed filed in Book R2924, page 2697 in the Office of the Register of Deeds for Richland County. Therefore, Plaintiff is entitled to possession of the subject premises.

By virtue of the completion of the April 1, 2024 judicial foreclosure sale and the deficiency judgment foreclosure sale held on May 1, 2024 and issuance by the Court the judicial Foreclosure Deed, the mortgage that is the subject of this foreclosure action was, at that time, released by operation of law, as well as in bidding compliance with the prior Order of Judgment of Foreclosure and Sale heretofore entered by this Court as to the subject property.

Plaintiff is the "Immediate Successor in Interest" as defined under the Protecting Tenants at Foreclosure Act ("PTFA"). Protecting Tenants at Foreclosure Act of 2009 §§ 701-703, Pub. L. 111-22, Div. A, Title VII §§ 701-703, as restored by Public Law 115-174, Section 304 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.

*BNA
Page 1*

In accordance with the PTFA, and as evidenced by the Affidavit filed herein, Plaintiff provided sufficient, requisite notice to Defendant(s) and any occupant(s) of potential rights that may be afforded any such Defendant(s) or occupant(s) of the subject property under the PTFA; and

No Defendant nor occupant has replied or otherwise asserted any interest in the real property (including any improvements thereon) described in the Special Referee's Deed dated May 13, 2024, and recorded in the Office of the RMC/ROD for Richland County in Book R2924, page 2697 on May 20, 2024.

NOW, THEREFORE,

UPON MOTION OF Scott and Corley, P.A., attorney for Plaintiff,

IT IS HEREBY ORDERED that the Plaintiff is entitled to recover possession of the below described property.

All that certain piece, parcel or lot of land, with any improvements thereon, situate, lying and being about seven (7) miles North of the City of Columbia, County of Richland, State of South Carolina, being shown and delineated as Lots 16 and 17, Block G, Section II, Highland Forest Subdivision, as more fully shown and delineated on a plat of Highland Forest Subdivision (Section II) by McMillan Engineering Company dated July 17, 1972, last revised on September 24, 1973, and recorded in the Office of the Clerk of Court for Richland County in Plat Book X at Page 2809.

Lot 16:

This being the same property conveyed unto Christopher Nelums and Janet L. Nelums by virtue of a Deed from Marshalene Mae Frady, James Randolph Swindler, Marguerite Rebecca Spears, Nancy W. Swindler and Jane Gill, (Personal Representatives of the Estate of Timothy M. Swindler Estate) and Jane Gill and Ray P. Turner, individually, dated May 18, 1999 and recorded May 21, 1999 in Book 308 at Page 2191 in the Office of the Register of Deeds of Richland County, South Carolina.

Lot 17:

This being the same property conveyed unto Christopher Nelums and Janet L. Nelums by virtue of a Deed from Marshalene Mae Frady, James Randolph Swindler, Marguerite Rebecca Spears, Nancy W. Swindler and Jane Gill, (Personal Representatives of the Estate of Timothy M. Swindler Estate), and Jane Gill and Ray P. Turner, individually, dated December 9, 2000 and recorded December 11, 2000 in Book 465 at Page 1703 in the Office of the Register of Deeds of Richland County, South Carolina.

TMS No. 11916-2-16

Property address: 813 N Highland Forest Drive, Columbia, SC 29203


IT IS FURTHER ORDERED that, upon service of a copy of this Order, the Sheriff of Richland County, South Carolina or his authorized deputies be, and they hereby are, directed and authorized to post a copy of this Order, and/or serve a copy of this Order upon the occupant(s) of the referenced property.

ORDERED, ADJUDGED AND DECREED that the Sheriff of Richland County is herein and hereby ordered and directed to, with whatever force necessary, eject and remove from the premises the occupants and their personal possessions from the real property located at **813 N Highland Forest**

*Bmm
Page 2*

Drive, Columbia, SC 29203 with the individuals occupying the property to be removed not before October 7, 2024.

IT IS SO ORDERED


Ben N. Miller, III
Special Referee for Richland County

Columbia, South Carolina
Sept. 10, 2024

BNM
Page 3 -

FORM 4 JUDGMENT IN A CIVIL CASE October 2, 2023

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4001687

Deutsche Bank National Trust Company et al
PLAINTIFF(S)

Christopher Nelums et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

I heard Defendants' Motion to Disqualify during the August 21st term of court in Richland County and took the matter under advisement. After reviewing the Motion, relevant case law, and the record, I find that Defendants have failed to establish sufficient grounds for disqualification under Rule 501, Canon 3(E)(1). The Motion to Disqualify is therefore denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/29/2023 .

Ntc/Non Party
 Janet L Nelums for Janet L Nelums
 Christopher Nelums for Christopher Nelums
 Robert A Bernstein for Best Distributing Company
 Imperial Warehouse Finance Inc
 Janet L Nelums for Janet L Nelums
 Christopher Nelums for Christopher Nelums
 Janet Nelums

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2023 Oct 02 9:20 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4001687



Richland Common Pleas

Case Caption: Deutsche Bank National Trust Company , plaintiff, et al vs Christopher Nelums , defendant, et al
Case Number: 2017CP4001687
Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-09-29 16:07:45 page 3 of 3

ELECTRONICALLY FILED - 2023 Oct 02 9:20 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4001687

Order on Plaintiff's Motion for Sanctions and Gatekeeper Order Oct/31/2023

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

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,

Civil Action No. 2017-CP-40-01687

**Order on Plaintiff's Motion for Sanctions
 and
 Gatekeeper Order**

Plaintiff.

vs.

Janet L. Nelums a/k/a Janet Nelums;
 Christopher Nelums; Imperial
 Warehouse Finance, Inc.; and Best
 Distributing Company,

Defendants.

This is a foreclosure action involving 813 N. Highland Forest Drive, Columbia, SC 29203 (Parcel 11916-2-16) (the "Property"). On August 21, 2023, the Court heard the Motion for Sanctions Against Janet and Christopher Nelums and Entry of a Gatekeeper Order ("the Motion") filed by Plaintiff 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 by WebEx. Present for the hearing was Matthew A. Abee of Nelson Mullins Riley & Scarborough LLP for Plaintiff, and Defendants Janet L. Nelums a/k/a Janet Nelums and Christopher Nelums, both appearing *pro se*. All parties were appropriately notified of the hearing.

After reviewing the Motion, relevant case law, and the record, I find it proper to enter a vexatious-litigant gatekeeper order barring Janet and Christopher Nelums ("Defendants") from filing new documents related to the Property without leave of the Court or the signature of a licensed attorney. The Court also makes the following findings of fact and conclusions of law.

Findings of Fact

A. 2013 Foreclosure Proceedings

As set forth in the Special Referee's Foreclosure Order, in August 2002, Janet L. Nelums signed a \$112,000 note to Plaintiff predecessor-in-interest. (Foreclosure Order and J. ¶ 11, July 1, 2021).¹ Defendants also signed a first-priority mortgage on the Property, which was recorded in the County Register of Deeds. (*Id.* ¶ 12.) Defendants defaulted on the mortgage. (*id.* ¶ 10), and Plaintiff sued them and others for foreclosure. (*Id.* ¶ 4.) Defendants answered and counterclaimed for (1) accounting; (2) failure to provide default notice; (3) breach of contract/rescission; (4) violation of the Truth in Lending Act; (5) violation of the Real Estate Settlement and Procedures Act; (6) predatory lending; (7) predatory servicing; (8) violation of the Fair Debt Collection Practices Act; and (9) malicious prosecution. (*Id.* ¶ 5.) The Clerk of Court referred the case to the Master in Equity in February 2014, but in November 2014, the Master recused himself. (*Id.* ¶ 4.) The Circuit Court then granted Plaintiff's motion for judgment on the counterclaims. (Order Granting Mot. for J. on the Pleadings, July 16, 2015; Foreclosure Order ¶ 5.) Then in November 2015, the case was stricken from the active roster under Rule 40(j), SCRCP. (*Id.* ¶ 4.)

B. 2017 Foreclosure Proceedings and Ms. Nelums's Bankruptcy

Plaintiff restored the case to the roster in March 2017 (Case No. 2017-CP-40-01687) and the Clerk of Court referred the case to the Honorable Jeffrey M. Tzerman, Special Referee. (*Id.*)

¹ This matter was previously referred to the Richland County Master in Equity Joseph M. Strickland. After he recused, the Clerk referred the matter to Special Referee Jeffrey M. Tzerman. Thereafter, the Special Referee also recused himself, vesting jurisdiction of the matter in the Circuit Court once again. Although Defendants sought to have the undersigned judge and Plaintiff's counsel also disqualified, the Court denies Defendants' motion and concludes it may properly consider the pending motions in this action. The Court rejects Defendants' claim that Plaintiff's current and former counsel is also disqualified from representing Plaintiff.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

Ms. Nelums petitioned for relief under Chapter 13 of the Bankruptcy Code (Case No. 18-05885-jw) in November 2018, and the Court stayed the foreclosure, (Foreclosure Order ¶ 9.). Then Ms. Nelums filed an adversary proceeding against Plaintiff and its servicing agent, Specialized Loan Servicing LLC (“SLS”) (Case No. 19-80032-jw), in May 2019. (*See* Pl.s’ Mot. Exhibit 4, Bankr. Order on Summ. J., March 17, 2020.)²

After discovery and a hearing, the Bankruptcy Court granted summary judgment against Ms. Nelums. (*Id.* at 1.) Among other arguments, the Bankruptcy Court rejected Ms. Nelums’ claims that Plaintiff and SLS (1) were not creditors under the Bankruptcy Code; (2) lacked rights of payment under Article 3 of the South Carolina Commercial Code; (3) lacked standing to foreclose on the note and mortgage; (4) could not enforce the note and mortgage because of securitization; and (5) had no valid note and mortgage because servicing/pooling agreements between Plaintiff and SLS rendered them void. (*Id.* at 6–19.) Ms. Nelums’ bankruptcy counsel withdrew shortly after the order. Ms. Nelums then filed a 112-page motion with 353 pages of attachment *pro se* titled “Motion Fraud Upon the Court Bogus Adversary Proceeding We Demand for a Mistrial,” which the Court denied in a detailed 17-page order. (Pl.s’ Mot. Exhibit 5, Order Denying Motion, May 22, 2020.) The Court rejected Ms. Nelums’ claims that counsel for Plaintiff and SLS—the same firm previously representing Plaintiff in this foreclosure—committed fraud upon the court. (*Id.*)

In the month after granting summary judgment in the adversary proceeding, that court also dismissed Ms. Nelums’ bankruptcy case. (Pl.s’ Mot. Exhibit 6, Order Dismissing Bankr., April

² Defendants raised no objection to the Court’s consideration of the court filings in the collateral proceedings. These filings are appropriate subjects for taking judicial notice, and the Court does so here.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

21, 2020; *see also* Foreclosure Order ¶9.) This dismissal caused the Special Referee to restore this foreclosure to the active docket, and then issue his Foreclosure Order and Judgment in July 2021. (*Id.*)³ In so doing, he rejected Defendants' claim—renewed in their pending Temporary Injunction Motion—that Plaintiff does “not have the right to foreclose on the property because said defendant, and each of them, did not properly comply with the terms of plaintiff's own scrutinization requirement[.]” (Def.s' Mot. Temp. Inj. at 29, ¶ 59.) In rejecting this claim, the Court noted that the bankruptcy court had already resolved Ms. Nelums' claim that Plaintiff lacked standing to foreclose. (Foreclosure Order at 8.)⁴ The Special Referee then issued a \$150,000 appellate-bond order. (Order Setting Appeal Bond, July 1, 2021.)

C. Defendants' Frivolous RICO Lawsuit and Appeal

While the case was proceeding towards a foreclosure sale, Defendants again turned to the federal courts by filing a *pro se* complaint in alleging RICO claims against Bankruptcy Judge John E. Waites, Special Referee Jeffrey Tzerman, foreclosure counsel, Defendants' prior retained counsel, Plaintiff, and SLS (Case No. 3:21-cv-2161). (Pl.s' Mot. Exhibit 7, Report and Recommendation, Aug. 31, 2021; Pl.s' Mot. Exhibit 8, Order Adopting R&R, Feb. 2, 2022.) Defendants commenced the lawsuit by filing a “Motion for an *Ex-Parte* Temporary Restraining

³ When the case was restored to the active roster in 2017, Attorney Adrienne L. Turner was listed as counsel of record for Defendants. She originally appeared as counsel for Defendants in 2014, about a year after they had filed their counterclaims *pro se*. (Not. Appearance, July 2014.) She represented Defendants when this Court granted Plaintiff's motion for judgment on the pleadings. Although she moved to withdraw as counsel in April 2021, no order granting the withdrawal was filed until February 10, 2023. Plaintiff does not seek sanctions against Ms. Turner and the Court determines that she has *not* been involved in the numerous frivolous filings from Defendants in any way.

⁴ This Court has reviewed the filings from the bankruptcy proceedings that were filed with the Motion and agrees that the issues raised again by Defendants here have been raised and ruled upon already. Each court to have considered Defendants' challenges to the foreclosure have rejected them. So too does this Court.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

Order, Show Cause Order, and Permanent Injunction with Asset Freeze.” which the District Court characterized as “frivolous” for four reasons. (Pl.s’ Mot. Exhibit 6, R&R at 4–7.) The District Court dismissed the action and Defendants appealed (Case No. 22-1223). The Fourth Circuit Affirmed in June 2022. (Pl.s’ Mot. Exhibit 9, Unpublished Op., June 27, 2022.)

D. Status of the 2017 Foreclosure

In August 2022, Plaintiff gave notice of a September 7, 2022, foreclosure sale. Six days before the sale, Defendants filed their *pro se* Temporary Injunction Motion with this Court. The 47-page motion purports to assert 11 causes of action: lack of standing, fraud in the concealment, fraud in the inducement, intentional infliction of emotional distress, slander of title, quiet title, declaratory relief, violation of TILA, violation of RESPA, rescission, and anti-trust. This filing is frivolous as it raises the same issues Defendants had previously raised and had rejected in the previous proceedings. The motion also improperly and without any evidentiary support accuses Plaintiff, its counsel, and this Court of wrongdoing, fraud, ethics violations, and even treason. Because of the allegations created the appearance of impropriety, the Special Referee recused himself in November 2022. Plaintiff’s counsel also withdrew for the same reasons.

E. Plaintiff’s Attempts to Confer with Defendants

On February 7, 2023, Plaintiff’s counsel notified Defendants by letter that it intended to file its Motion for sanctions, enclosing a copy of the draft motion. (Pl.s’ Mot. Exhibit 10, Letter to Defendants.) The letter gave Defendants ten days to withdraw their Motion for Temporary Injunction and to agree to allow the foreclosure sale to proceed.⁵ Plaintiff’s counsel mailed and

⁵ Although not required by Rule 11 or the FCPSA, DBNT gave this pre-filing notice out of an abundance of caution and so Defendants could be on notice that their frivolous conduct could result in monetary and non-monetary sanctions. *Burns v. Universal Health Servs. Inc.*, 340 S.C. 509,

emailed a second letter on February 21, 2023, giving borrowers through Friday, February 24, 2023, to withdraw the motion. (Pl.s' Mot. Exhibit 11, Letter to Defendants (without enclosures).) Defendants failed to respond to Plaintiff's attempts to resolve the matter in good faith.

Based on the record and arguments presented at the hearing, the Court concludes that Defendants have abused the judicial process and engaged in a pattern of frivolous litigation aimed at stalling the foreclosure instead of the rightful administration of contested issues before the Court. The Court also finds that Defendants have been given ample opportunity to withdraw their frivolous filings and avoid the entry of this Order by the Court, but have refused or declined to do so despite notice that such filings could result in sanctions. As a result, the Court finds this gatekeeper order is reasonable, necessary, and appropriately tailored to address Defendants' conduct. The Court further finds it has the authority to enter this gatekeeper order under Rule 11, SCRCF, the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 through -100 ("FCPSA"), and its inherent authority.

Conclusions of Law⁶

"[A] court of equity may properly intervene to prevent continued and vexatious litigation[.]" *Ramantanin v. Poulos*, 240 S.C. 13, 25, 124 S.E.2d 611, 617 (1962). The State's courts have a history of issuing such pre-filing injunctions. *See Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 165 n.18, 758 S.E.2d 483, 498 n.18 (2014). Rule 11 and the FCPSA anticipate them as well. *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011) (authorizing trial courts to issue under Rule 11 "a directive of a nonmonetary

514, 532 S.E.2d 6, 9 (Ct. App. 2000) (requiring notice and an opportunity to respond to any motion for sanctions under Rule 11, SCRCF).

⁶ Any conclusions of law that are findings of fact shall be so regarded, and vice-versa.

nature designed to deter the party or the party's attorney from bringing any future action in bad faith."); S.C. Code Ann. § 15-36-10 (authorizing sanctions that include "a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith."). A trial court "has inherent power to do all things reasonably necessary to the administration of justice in the case before it," *State-Rec.*, 332 S.C. at 349, 504 S.E.2d at 593 (1998), including those necessary "to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." *Miller v. Miller*, 375 S.C. 443, 455, 652 S.E.2d 754, 760 (Ct. App. 2007) (quoting *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006)).

"[B]ecause many of the terms used in the [FCPSA] also appear in Federal Rule 11, the South Carolina courts may look to decisions interpreting the Federal Rule to determine what constitutes a proper purpose and good faith with respect to potential liability of attorneys under the [FCPSA]." *Father v. S.C. Dep't of Soc. Servs.*, 345 S.C. 57, 72 n.34, 545 S.E.2d 523, 531 n.34 (Ct. App. 2001) (quoting Susan Taylor Wall & Joseph R. Weston, *An Analysis of Current Theories of Liability*, 45 S.C. L.Rev. 857, 871 (1994)), *aff'd*, 353 S.C. 254, 578 S.E.2d 11 (2003). The Fourth Circuit uses a four prong test for deciding when a gatekeeper order is warranted: (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good-faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions. *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004).⁷ Pre-filing injunctions are appropriate where a litigant repeatedly

⁷ Other states have adopted the *Cromer* test. *Barrington v. Dyer*, 282 N.C. App. 404, 409, 872 S.E.2d 88, 93 (N.C. Ct. App. 2022) (affirming trial court's gatekeeper order under *Cromer* standard). Thus, the Court concludes it is the proper test to be applied here.

sues “everyone that did anything even remotely connected to a foreclosure.” *Scott v. U.S. Bank, N.A.*, No. 2:09-cv-516, 2011 WL 10618730, at *1 (E.D. Va. Oct. 14, 2011).

The *Cromer* elements are met here. *First*, Defendants have a history of *pro se* filings in state and federal court. Given the duplicative claims and arguments they have raised, Defendants have a history of “vexatious, harassing, or duplicative lawsuits” establishing the first prong. This is especially true given that other courts have previously considered and rejected Defendants’ foreclosure challenges. *Second*, Defendants have presented no good-faith basis for accusing DBNT and well-respected members of the South Carolina Bar of fraud, ethical violations, and even starting “a war against South Carolina. [sic] constitution,” and claiming they “will be jailed.” (Mot. Temp. Inj. at 7, ¶ 11.) *Kalos v. Centennial Sur. Assocs.*, No. CCB-12-1532, 2012 WL 6210117, at *6 (D. Md. Dec. 12, 2012) (considering litigants’ decision to sue counsel connected to previous litigation in granting pre-filing injunction). Such claims can be intended only to harass those parties and stall the foreclosure. *Third*, Defendants repeated frivolous filings have placed a burden on Plaintiff and its counsel, as well as the now nine judges across four courts who have been called to respond to Defendants’ claims. Further, Defendants have been put on notice by a federal judge that their claims were frivolous. *Id.* (considering prior warnings that claims were frivolous when granting gatekeeper order).

Fourth, monetary sanctions cannot address Defendants’ repeated abuses of the court system and the waste of time their filings have caused. Defendants’ involvement in foreclosure proceedings suggest they may not have liquid assets available to satisfy monetary sanctions. Defendants’ repeated filings seek only to stall Plaintiff’s ability to sell the Property at foreclosure and secure the equitable relief this Court has already determined it is entitled to. A sanction short of prohibiting Defendants from presenting frivolous filings would be inadequate.

As a result, the Court finds and concludes that the gatekeeper order Plaintiff seeks is both appropriate and narrowly tailored to permit Plaintiff to exercise its remedies under the mortgage.

Order

Therefore, it is **ORDERED** that:

1. Defendants are **PROHIBITED** from filing, presenting, or serving additional documents, papers, or pleading related to the Property, Plaintiff, SLS, and/or this foreclosure until the Property can be sold and the foreclosure proceedings completed unless (i) Defendants secure leave of the undersigned to present the document to the Clerk of Court, or (ii) the filing is signed by a member of the South Carolina Bar in good standing. This order is not meant to prohibit Defendants from resorting to the judicial branch to redress the claims, but is necessary to prevent additional frivolous proceedings from being initiated by Defendants. *Defendants are cautioned that a failure to comply with the provisions of this order is punishable by contempt of Court.*

2. The Clerk of Court is **ORDERED** that it may *not* accept for filing any document, paper, or pleading from Defendants in this foreclosure unless it is accompanied by a separate Order from the undersigned permitting the filing or unless it is signed by a member of the South Carolina Bar in good standing. Plaintiff's counsel is **ORDERED** to provide a copy of this order to the Clerk of Court, specifically directing her and her deputies' attention to this provision of the Order.

3. To remedy Defendants' frivolous pleadings aimed at delaying this matter and ensure this foreclosure proceeds towards a timely resolution, it is **ORDERED** that Plaintiff shall file a motion to refer this matter to a special referee in this matter given the recusal of the Richland County Master in Equity. Upon the filing of such motion, the Richland County Clerk of Court refer this matter to another appropriate special referee for the resolution of all remaining issues and judgments necessary in this action. *See* Rule 53, SCRPC. Upon the entry of the order of

reference, the special referee shall be further empowered to enforce, modify, or amend the terms of this gatekeeper order as he or she deems appropriate to remedy the frivolous litigation in which Defendants have engaged to date.

4. Plaintiff's counsel is **ORDERED** to serve a copy of this order on Defendants by regular mail and to file a certificate of service, in accordance with Rule 5, SCRCP.

IT IS SO ORDERED.

[Court's electronic signature page to follow.]



Richland Common Pleas

Case Caption: Deutsche Bank National Trust Company , plaintiff, et al vs Christopher Nelums , defendant, et al
Case Number: 2017CP4001687
Type: Order/Sanctions

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-10-31 15:17:35 page 11 of 11

Appellant's Notice of Appeal to Circuit Court

RECEIVED

JUN 25 2024

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
BEN N. MILLER III as Special Referee, Court of Common Pleas Judge

**ON WRIT OF CERTIORARI TO THE COURT OF GENERAL
SESSIONS**

Appeal Case Number: Coming
Lower Court Case No. 2017CP4001687

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 September 1,
2002,

Respondent,

v.

Janet L. Nelums; Christopher
Nelums;

Defendants,

Of Which Janet L. Nelums;
Christopher Nelums; are the
Appellants.

1.
THE NOTICE OF APPEAL

RECEIVED

JUN 25 2024

S.C. SUPREME COURT

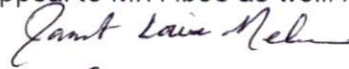

NOTICE OF APPEAL

Janet L. Nelums; Christopher Nelums, appeals the order [judgment] of the Honourable BEN N. MILLER III as Special Referee dated May 13, 2024. Appellant received written notice of entry of this order [judgment] on May 19, 2024.

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Respondent Miller by depositing a copy of it in the United States Mail, postage prepaid, on Tuesday, 12 June 2024, addressed to NELSON MULLINS RILEY & SCARBOROUGH LLP, Matthew A. Abee, SC Bar No. 101100 Madison C. Guyton, SC Bar No.105205 1320 Main Street / 17th Floor Post Office Box 11070 (29211-1070) Columbia, SC 29201], and by e-mailing a copy of the Notice of Appeal to Mr. Abee as well. As Mr. Guyton

Tuesday, 12 June 2024

Janet Louise Nelums
Chris Nelums
813 N. Highland Forest Dr,
Columbia, SC 29203-1929
(803) 730-6003
inelums@gmail.com
chrisnelums@yahoo.com
Appellant pro se litigants

Other Counsel of Record:
NELSON MULLINS RILEY & SCARBOROUGH LLP
Matthew A. Abee, SC Bar No. 101100
Madison C. Guyton, SC Bar No.105205
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000
Email: matt.abee@nelsonmullins.com
Email: madison.guyton@nelsonmullins.com

Mr. Ben N. Miller, III
Mckenzie Lybrand, LLP
1704 Main Street
Columbia, South Carolina 29201
bmiller@mckenzielybrand.com
(803) 223-6155

Jeanette McBride
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street, Room 205 (29201)
Post Office Box 2766
Columbia, South Carolina 29202

SCOTT AND CORLEY, P.A.
Attorneys and Counselors at Law
Street Address:
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

The Honorable Kristi F. Curtis
215 North Harvin Street
Sumter, SC 29150
OFFICE: (803) 436-2152
FAX: (803) 774-2825
kcurtissc@sccourts.org

INDEX

Contents of Document Provided

Respondent's Trial Exhibit 6

Respondent's Motion to Dismiss Appeal September 19, 2024

INDEX

Contents of Document Provided

Respondent’s Trial Exhibit 7

RECEIVED
Sep 19 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Ben N. Miller, III, Special Referee

Appellate Case No. 2024-001062
Case No. 2017-CP-40-01687

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, 2002Respondent,

v.

Janet L. Nelums a/k/a Janet Nelims, Christopher Nelums, Imperial
Warehouse Finance, Inc., and Best Distributing Company, Defendants,

of which

Janet L. Nelums and Christopher Nelums are the..... Appellants.

Respondent’s Motion to Dismiss and for Sanctions

Respondent moves this Court under Rule 240(a), SCACR to dismiss the Notice of Appeal
filed in the above-captioned matter by Appellants Janet L. and Christopher Nelums on
June 12, 2024. Dismissal of this appeal from a Richland County foreclosure is proper because:

- (1) Appellants seek untimely review of an unappealable report of sale, not the
foreclosure order and judgment issued more than three years ago;
- (2) Appellants have failed to pay the required appellate bond; and
- (3) Appellants have violated the circuit court’s Gatekeeper Order.

As is explained in more detail below, the Court should dismiss this appeal. Alternatively, the Court should dispense with further briefing and affirm the trial court under Rule 220, SCACR, given the issues set forth in Appellants' Initial Brief filed September 12, 2024 lack merit.

Background

This is a foreclosure involving 813 N. Highland Forest Drive, Columbia, SC 29203 (Parcel 11916-2-16) (the Property). (**Exhibit 1**, Order on Pl.'s Motion for Sanctions and Gatekeeper Order, Oct. 31, 2023). Respondent, 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 (DBNTC), has been attempting to foreclose on the Property since 2013. (**Exhibit 2**, Foreclosure Order and Judgment, July 1, 2021). After the recusal of the Richland County Master in Equity, Special Referee Jeffrey M. Tzerman issued his Order and Judgment of Foreclosure Sale in favor of DBNTC. (*Id.*)¹ Simultaneously with the Foreclosure Order, the Special Referee issued an Order Setting Appeal Bond. (**Exhibit 3**, Order Setting Appeal Bond, Jul. 1, 2021). No appeal was taken from the foreclosure judgment and order and no appeal bond was deposited.

In an effort to stall the foreclosure sale, Appellants filed an action for bankruptcy and multiple *pro se* lawsuits against DBNTC and other defendants. (Ex. 1, Gatekeeper Order at 3-5). As detailed in the Gatekeeper Order, Appellants have unsuccessfully litigated the issues raised in this underlying this appeal and other issues related to the Property, in four different state and federal courts since 2018. (*Id.*) As a result of their repeated frivolous filings, DBNTC sought sanctions and entry of a gatekeeper order to prohibit Appellants from making additional frivolous

¹ Special Referee Tzerman later recused himself and the Clerk of Court appointed the Honorable Ben N. Miller, III, as Special Referee. (Ex. 2, Gatekeeper Order at 2 n.1).

filings. (*Id.* at 1). After a hearing at which Appellants appeared, the Honorable Kristi F. Curtis granted DBNTC’s motion and issued a ten-page Gatekeeper Order; Judge Curtis found sanctions were appropriate because of Appellants’ (1) “history of ‘vexatious, harassing, or duplicative lawsuits;’” (2) meritless accusations of fraud, ethical violations, and threats of jail time against “well-respected members of the South Carolina bar;” (3) “repeated frivolous filings . . . [considered by] nine judges across four courts;” and (4) the insufficiency of mandatory sanctions to “address Defendants’ repeated abuses of the court system and waste of time their filings have caused.” (*Id.* at 8–9). The Gatekeeper Order specifically ordered that Appellants were.

PROHIBITED from filing, presenting, or serving additional documents, papers, or pleading related to the Property, Plaintiff, SLS, and/or this foreclosure until the Property can be sold and the foreclosure proceedings completed unless (i) Defendants secure leave of the undersigned to present the document to the Clerk of Court, or (ii) the filing is signed by a member of the South Carolina Bar in good standing. This order is not meant to prohibit Defendants from resorting to the judicial branch to redress the claims, but is necessary to prevent additional frivolous proceedings from being initiated by Defendants. Defendants are cautioned that a failure to comply with the provisions of this order is punishable by contempt of Court.

(*Id.* at 9). Despite the Gatekeeper Order, Appellants filed additional motions and documents, all of which were ultimately dismissed. (**Exhibit 4**, Report on Sale, Order of Confirmation, and Order for Deficiency Judgment, May 15, 2024).

Pursuant to the Foreclosure Order and “after due legal advertisement and publication according to law,” the Special Referee conducted a judicial sale of the Property on April 1, 2024. (*Id.* at 2). At the sale, DBNTC made the highest bid of \$201,388.37 and purchased the Property. (*Id.*) On May 15, 2024, the Special Referee issued his Report of Sale finding, (1) that DBNTC was the highest bidder and thus the rightful owner of the Property; (2) that Appellants’ March 25, 2023, motions “were in contravention of the Order of Kristi F. Curtis filed October 31, 2023[:.]”

(3) and ordering the confirmation of the sale of the Property. (*Id.*, at 3–4). On May 20, 2024, the Special Referee issued his Deed of Foreclosure to DBNTC, recorded in book R2924 at page 2697. (**Exhibit 5**, Foreclosure Deed).

On June 12, 2024, Appellants purported to serve a notice of appeal on the undersigned counsel. More than ten days later, they filed their notice with the Supreme Court, which subsequently transferred the appeal to this Court. To date, however, Appellants have not paid the appellate bond required by the Special Referee’s prior order.

Argument

I. Appellants’ notice of appeal is untimely and they have appealed from the foreclosure report, not the foreclosure order and judgment.

“A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule, 203(b)(1), SCACR; *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 422 S.C. 211, 214, 810 S.E.2d 856, 857–58 (2018) (finding a notice of appeal filed thirty-one days after an email notification of the entry of judgment was untimely). The thirty-day timeline is jurisdictional and “if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004)).

Here, the Foreclosure Order was entered by the circuit court in 2021. (Ex. 2, Foreclosure Order and Judgment). The bidding for the foreclosure sale ended on May 1, 2024. (Ex. 4, Report on Sale). Appellants did not serve their Notice of Appeal until June 12, 2024—three years after the foreclosure order and forty-one days after the sale concluded. Given the timing of their notice

of appeal. Appellants appear to be seeking improper review of the Special Referee's Report on Sale, not the Foreclosure Order and Judgment.

To maintain their right to appeal, Appellants should have appealed the Foreclosure Order and Judgment, and cannot, now that the sale they knew was impending has been confirmed by the Special Referee, appeal the Report on Sale. Again, the order that *arguendo* impeded on Appellants' legal right to the Property was the Foreclosure Order and Judgment because that is the order that determined Appellants no longer had any right to the Property, and that DBNTC could proceed with a foreclosure sale. Accordingly, the time to file a notice of appeal under Rule 203(b), SCACR expired in 2021. Appealing the Foreclosure Order and Judgment three years since its entry on the docket is indicative of Appellants' proclivity for frivolous filings that are meant to delay this case and prolong their inevitable ejection. In recognition of this complete failure of adherence to court rules, the Court should dismiss this appeal with prejudice.

II. Even if the appeal were timely, the Court should still dismiss this appeal because Appellants have failed to pay the appellate bond ordered by the circuit court.

Under state law, the execution of the judgment for the sale of real property "shall not be stayed" unless an adequate bond is rendered on behalf of the appellant. S.C. Code Ann. § 18-9-170. Here, the Special Referee ordered that if Appellants sought to appeal the foreclosure, a bond amounting \$150,000.00 was required. (*See* Ex. 3, Appeal Bond Order at 1). For three years, Appellants have never even attempted to pay such a bond into the court and instead have demonstrated over and over again that they will not comply with direct court orders articulating the procedural safeguards the circuit court determined were necessary to maintain this action.

Appellants should not be allowed to come to this Court, after disregarding orders of the circuit court, and attempt to resuscitate their failed attempts to thwart the sale of the Property.

Because the notice of appeal was not properly filed with the accompanying bond, as ordered by the circuit court, this appeal should be dismissed with prejudice.

Moreover, the failure of Appellants to pay the required appellate bond has mooted their ability to seek relief in this Court. The circuit court has already completed the foreclosure sale, has issued and recorded its foreclosure deed, and has adopted its report confirming the sale. There is nothing left for this Court to decide because Appellants failed to pay the required appellate bond, thus the Foreclosure Order and Judgment were never subject to a stay pending appellate review. *See* Rule 241(b)(4), SCACR (identifying as an exception to an automatic stay pending an appeal, “Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170”). Notably, Appellants failed to seek reconsideration of those orders, or for the circuit court to set aside the foreclosure. *See Robinson v. Estate of Harris*, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (Ct. App. 2008) (finding the lack of a motion to alter or amend a foreclosure order precluded appellate review of additional arguments).

These procedural mechanisms distinguish this case from *Wachesaw Plantation E. Cmty. Servs. Ass’n, Inc. v. Alexander*, 414 S.C. 355, 778 S.E.2d 898 (2015). In that case, our Supreme Court reiterated that the mere issuance of a foreclosure deed does not moot an appeal. *Id.* at 360, 778 S.E.2d at 901. There, however, the appellant moved before the Master-In-Equity to set aside the foreclosure before the court issued the foreclosure deed, and then appealed that order shortly after the foreclosure deed was recorded. *Id.* at 358, 778 S.E.2d at 900. By contrast, Appellants have put forth no such effort here. They have made no attempts to set aside the foreclosure before the Special Referee or the circuit court, nor did they attempt to comply with their obligation to pay the appeal bond. Instead, Appellants filed this direct appeal after the foreclosure sale occurred, the foreclosure deed has been recorded, and the report confirming the sale has been issued.

Appellants' failures leave them with no remaining available relief from this Court, thus, their appeal should be dismissed because the Court has no avenue of redress for the alleged injury. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (citing *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) for the proposition that, "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. [Like] when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." (second alteration in original))).

III. Appellants have violated the circuit court's Gatekeeper Order and continue their pattern of frivolous filings made solely for the purposes of delay, so they should be sanctioned.

The Gatekeeper Order is clear: Appellants are *prohibited* from filing any papers with the court related to the Property or the foreclosure until the foreclosure sale of the Property is completed—unless they obtained leave of court to file such papers, or the papers are signed by an attorney of good-standing within the South Carolina bar. (*See* Ex. 1, Gatekeeper Order at 9 (emphasis added)). Not only did Appellants file three motions with the circuit court in violation of the Gatekeeper Order, but they also filed this appeal in violation of the Gatekeeper Order.

Under the South Carolin Rules of Civil Procedure, the "signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief *there is good ground to support it; and that it is not interposed for delay.*" Rule 11(a), SCRPC (emphasis added). The lack of support for Appellants' repeated filings and their intent to further delay the foreclosure sale of the Property is the crux of the reasoning behind the Gatekeeper Order. Because of Appellants' history of harassing and meritless filings, the court took authorized measures to ensure that any further filings from

Appellants were warranted when it issued the Gatekeeper Order. Appellants, however, continue to ignore that order and the established procedure for resolving their meritless claims.

Indeed, while this appeal was pending, Appellants have presented two new frivolous filings with the state and federal courts to continue their delay tactics. *First*, Appellants filed a new, federal, civil lawsuit pro se against Judge Curtis, Special Referee Miller, foreclosure counsel, and undersigned counsel at Nelson Mullins. (See **Exhibit 6**, Compl., *Nelums v. Mill*, No. 3:24-cv-04898-MGL). The action seeks to disqualify the judges involved in the foreclosure and generally alleges the defendants violated plaintiffs' civil rights under § 1983. *Second*, Appellants filed their initial brief with this court. The brief references improper jury charges, (Appellant's Initial Br., at i), and recounts a statement of the case in which "John B. Doe" brought an action alleging fraud, with judgment being entered December 1, 2007, (*id.* at 1). The brief, along with this entire appeal, is frivolous and in violation of Rule 269, SCACR.

Unless this Court is willing to put a stop to Appellants' continued abuse of the judicial system, these frivolous filings will continue. Although Appellants' involvement in the foreclosure proceedings suggest they may not have liquid assets available to satisfy monetary sanctions, Mr. Nelums—who did not sign the promissory note underlying this foreclosure—at least has sufficient assets to run for South Carolina Commissioner of Agriculture in 2022, making nearly \$10,000 in contributions and loans to his own campaign. He should, therefore, be responsible for payment of the attorneys' fees and costs incurred by Respondent in this appeal.

Conclusion

For the reasons set forth above, the Court should dismiss this appeal. Alternatively, the Court should dispense with further briefing and affirm the trial court under Rule 220, SCACR, given the meritless issues set forth in Appellants' Initial Brief, filed September 12, 2024.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

Matthew A. Abee, SC Bar No. 101100
E-Mail: matt.abee@nelsonmullins.com
Mary S. Williams, SC Bar No. 105883
E-Mail: mary.williams@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Respondent 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

Columbia, South Carolina
September 19, 2024

Exhibit 1
(Gatekeeper Order)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

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.

Plaintiff.

vs.

Janet L. Nelums a/k/a Janet Nelums;
Christopher Nelums; Imperial
Warehouse Finance, Inc.; and Best
Distributing Company.

Defendants.

Civil Action No. 2017-CP-40-01687

**Order on Plaintiff's Motion for Sanctions
and
Gatekeeper Order**

This is a foreclosure action involving 813 N. Highland Forest Drive, Columbia, SC 29203 (Parcel 11916-2-16) (the "Property"). On August 21, 2023, the Court heard the Motion for Sanctions Against Janet and Christopher Nelums and Entry of a Gatekeeper Order ("the Motion") filed by Plaintiff 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 by WebEx. Present for the hearing was Matthew A. Abee of Nelson Mullins Riley & Scarborough LLP for Plaintiff, and Defendants Janet L. Nelums a/k/a Janet Nelums and Christopher Nelums, both appearing *pro se*. All parties were appropriately notified of the hearing.

After reviewing the Motion, relevant case law, and the record, I find it proper to enter a vexatious-litigant gatekeeper order barring Janet and Christopher Nelums ("Defendants") from filing new documents related to the Property without leave of the Court or the signature of a licensed attorney. The Court also makes the following findings of fact and conclusions of law.

Findings of Fact

A. 2013 Foreclosure Proceedings

As set forth in the Special Referee's Foreclosure Order, in August 2002, Janet L. Nelums signed a \$112,000 note to Plaintiff predecessor-in-interest. (Foreclosure Order and J. ¶ 11, July 1, 2021).¹ Defendants also signed a first-priority mortgage on the Property, which was recorded in the County Register of Deeds. (*Id.* ¶ 12.) Defendants defaulted on the mortgage, (*id.* ¶ 10), and Plaintiff sued them and others for foreclosure. (*Id.* ¶ 4.) Defendants answered and counterclaimed for (1) accounting; (2) failure to provide default notice; (3) breach of contract/rescission; (4) violation of the Truth in Lending Act; (5) violation of the Real Estate Settlement and Procedures Act; (6) predatory lending; (7) predatory servicing; (8) violation of the Fair Debt Collection Practices Act; and (9) malicious prosecution. (*Id.* ¶ 5.) The Clerk of Court referred the case to the Master in Equity in February 2014, but in November 2014, the Master recused himself. (*Id.* ¶ 4.) The Circuit Court then granted Plaintiff's motion for judgment on the counterclaims. (Order Granting Mot. for J. on the Pleadings, July 16, 2015; Foreclosure Order ¶ 5.) Then in November 2015, the case was stricken from the active roster under Rule 40(j), SCRPC. (*Id.* ¶ 4.)

B. 2017 Foreclosure Proceedings and Ms. Nelums's Bankruptcy

Plaintiff restored the case to the roster in March 2017 (Case No. 2017-CP-40-01687) and the Clerk of Court referred the case to the Honorable Jeffrey M. Tzerman, Special Referee. (*Id.*)

¹ This matter was previously referred to the Richland County Master in Equity Joseph M. Strickland. After he recused, the Clerk referred the matter to Special Referee Jeffrey M. Tzerman. Thereafter, the Special Referee also recused himself, vesting jurisdiction of the matter in the Circuit Court once again. Although Defendants sought to have the undersigned judge and Plaintiff's counsel also disqualified, the Court denies Defendants' motion and concludes it may properly consider the pending motions in this action. The Court rejects Defendants' claim that Plaintiff's current and former counsel is also disqualified from representing Plaintiff.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

Ms. Nelums petitioned for relief under Chapter 13 of the Bankruptcy Code (Case No. 18-05885-jw) in November 2018, and the Court stayed the foreclosure. (Foreclosure Order ¶ 9.) Then Ms. Nelums filed an adversary proceeding against Plaintiff and its servicing agent, Specialized Loan Servicing LLC (“SLS”) (Case No. 19-80032-jw), in May 2019. (*See* Pl.s’ Mot. Exhibit 4, Bankr. Order on Summ. J., March 17, 2020.)²

After discovery and a hearing, the Bankruptcy Court granted summary judgment against Ms. Nelums. (*Id.* at 1.) Among other arguments, the Bankruptcy Court rejected Ms. Nelums’ claims that Plaintiff and SLS (1) were not creditors under the Bankruptcy Code; (2) lacked rights of payment under Article 3 of the South Carolina Commercial Code; (3) lacked standing to foreclose on the note and mortgage; (4) could not enforce the note and mortgage because of securitization; and (5) had no valid note and mortgage because servicing/pooling agreements between Plaintiff and SLS rendered them void. (*Id.* at 6–19.) Ms. Nelums’ bankruptcy counsel withdrew shortly after the order. Ms. Nelums then filed a 112-page motion with 353 pages of attachment *pro se* titled “Motion Fraud Upon the Court Bogus Adversary Proceeding We Demand for a Mistrial,” which the Court denied in a detailed 17-page order. (Pl.s’ Mot. Exhibit 5, Order Denying Motion, May 22, 2020.) The Court rejected Ms. Nelums’ claims that counsel for Plaintiff and SLS—the same firm previously representing Plaintiff in this foreclosure—committed fraud upon the court. (*Id.*)

In the month after granting summary judgment in the adversary proceeding, that court also dismissed Ms. Nelums’ bankruptcy case. (Pl.s’ Mot. Exhibit 6, Order Dismissing Bankr., April

² Defendants raised no objection to the Court’s consideration of the court filings in the collateral proceedings. These filings are appropriate subjects for taking judicial notice, and the Court does so here.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

21, 2020; *see also* Foreclosure Order ¶9.) This dismissal caused the Special Referee to restore this foreclosure to the active docket, and then issue his Foreclosure Order and Judgment in July 2021. (*Id.*)³ In so doing, he rejected Defendants' claim—renewed in their pending Temporary Injunction Motion—that Plaintiff does “not have the right to foreclose on the property because said defendant, and each of them, did not properly comply with the terms of plaintiffs own scrutinization requirement[.]” (Def.s' Mot. Temp. Inj. at 29, ¶ 59.) In rejecting this claim, the Court noted that the bankruptcy court had already resolved Ms. Nelums' claim that Plaintiff lacked standing to foreclose. (Foreclosure Order at 8.)⁴ The Special Referee then issued a \$150,000 appellate-bond order. (Order Setting Appeal Bond, July 1, 2021.)

C. Defendants' Frivolous RICO Lawsuit and Appeal

While the case was proceeding towards a foreclosure sale, Defendants again turned to the federal courts by filing a *pro se* complaint in alleging RICO claims against Bankruptcy Judge John E. Waites, Special Referee Jeffrey Tzerman, foreclosure counsel, Defendants' prior retained counsel, Plaintiff, and SLS (Case No. 3:21-cv-2161). (Pl.s' Mot. Exhibit 7, Report and Recommendation, Aug. 31, 2021; Pl.s' Mot. Exhibit 8, Order Adopting R&R, Feb. 2, 2022.) Defendants commenced the lawsuit by filing a “Motion for an *Ex-Parte* Temporary Restraining

³ When the case was restored to the active roster in 2017, Attorney Adrienne L. Turner was listed as counsel of record for Defendants. She originally appeared as counsel for Defendants in 2014, about a year after they had filed their counterclaims *pro se*. (Not. Appearance, July 2014.) She represented Defendants when this Court granted Plaintiff's motion for judgment on the pleadings. Although she moved to withdraw as counsel in April 2021, no order granting the withdrawal was filed until February 10, 2023. Plaintiff does not seek sanctions against Ms. Turner and the Court determines that she has *not* been involved in the numerous frivolous filings from Defendants in any way.

⁴ This Court has reviewed the filings from the bankruptcy proceedings that were filed with the Motion and agrees that the issues raised again by Defendants here have been raised and ruled upon already. Each court to have considered Defendants' challenges to the foreclosure have rejected them. So too does this Court.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

Order, Show Cause Order, and Permanent Injunction with Asset Freeze,” which the District Court characterized as “frivolous” for four reasons. (Pl.s’ Mot. Exhibit 6, R&R at 4–7.) The District Court dismissed the action and Defendants appealed (Case No. 22-1223). The Fourth Circuit Affirmed in June 2022. (Pl.s’ Mot. Exhibit 9, Unpublished Op., June 27, 2022.)

D. Status of the 2017 Foreclosure

In August 2022, Plaintiff gave notice of a September 7, 2022, foreclosure sale. Six days before the sale, Defendants filed their *pro se* Temporary Injunction Motion with this Court. The 47-page motion purports to assert 11 causes of action: lack of standing, fraud in the concealment, fraud in the inducement, intentional infliction of emotional distress, slander of title, quiet title, declaratory relief, violation of TILA, violation of RESPA, rescission, and anti-trust. This filing is frivolous as it raises the same issues Defendants had previously raised and had rejected in the previous proceedings. The motion also improperly and without any evidentiary support accuses Plaintiff, its counsel, and this Court of wrongdoing, fraud, ethics violations, and even treason. Because of the allegations created the appearance of impropriety, the Special Referee recused himself in November 2022. Plaintiff’s counsel also withdrew for the same reasons.

E. Plaintiff’s Attempts to Confer with Defendants

On February 7, 2023, Plaintiff’s counsel notified Defendants by letter that it intended to file its Motion for sanctions, enclosing a copy of the draft motion. (Pl.s’ Mot. Exhibit 10, Letter to Defendants.) The letter gave Defendants ten days to withdraw their Motion for Temporary Injunction and to agree to allow the foreclosure sale to proceed.⁵ Plaintiff’s counsel mailed and

⁵ Although not required by Rule 11 or the FCPSA, DBNT gave this pre-filing notice out of an abundance of caution and so Defendants could be on notice that their frivolous conduct could result in monetary and non-monetary sanctions. *Burns v. Universal Health Servs. Inc.*, 340 S.C. 509,

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

emailed a second letter on February 21, 2023, giving borrowers through Friday, February 24, 2023, to withdraw the motion. (Pl.s' Mot. Exhibit 11, Letter to Defendants (without enclosures).) Defendants failed to respond to Plaintiff's attempts to resolve the matter in good faith.

Based on the record and arguments presented at the hearing, the Court concludes that Defendants have abused the judicial process and engaged in a pattern of frivolous litigation aimed at stalling the foreclosure instead of the rightful administration of contested issues before the Court. The Court also finds that Defendants have been given ample opportunity to withdraw their frivolous filings and avoid the entry of this Order by the Court, but have refused or declined to do so despite notice that such filings could result in sanctions. As a result, the Court finds this gatekeeper order is reasonable, necessary, and appropriately tailored to address Defendants' conduct. The Court further finds it has the authority to enter this gatekeeper order under Rule 11, SCRCF, the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 through -100 ("FCPSA"), and its inherent authority.

Conclusions of Law⁶

"[A] court of equity may properly intervene to prevent continued and vexatious litigation[.]" *Ramantanin v. Poulos*, 240 S.C. 13, 25, 124 S.E.2d 611, 617 (1962). The State's courts have a history of issuing such pre-filing injunctions. *See Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 165 n.18, 758 S.E.2d 483, 498 n.18 (2014). Rule 11 and the FCPSA anticipate them as well. *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011) (authorizing trial courts to issue under Rule 11 "a directive of a nonmonetary

514, 532 S.E.2d 6, 9 (Ct. App. 2000) (requiring notice and an opportunity to respond to any motion for sanctions under Rule 11, SCRCF).

⁶ Any conclusions of law that are findings of fact shall be so regarded, and vice-versa.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

nature designed to deter the party or the party's attorney from bringing any future action in bad faith."); S.C. Code Ann. § 15-36-10 (authorizing sanctions that include "a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith."). A trial court "has inherent power to do all things reasonably necessary to the administration of justice in the case before it," *State-Rec.*, 332 S.C. at 349, 504 S.E.2d at 593 (1998), including those necessary "to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." *Miller v. Miller*, 375 S.C. 443, 455, 652 S.E.2d 754, 760 (Ct. App. 2007) (quoting *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006)).

"[B]ecause many of the terms used in the [FCPSA] also appear in Federal Rule 11, the South Carolina courts may look to decisions interpreting the Federal Rule to determine what constitutes a proper purpose and good faith with respect to potential liability of attorneys under the [FCPSA]." *Father v. S.C. Dep't of Soc. Servs.*, 345 S.C. 57, 72 n.34, 545 S.E.2d 523, 531 n.34 (Ct. App. 2001) (quoting Susan Taylor Wall & Joseph R. Weston, *An Analysis of Current Theories of Liability*, 45 S.C. L.Rev. 857, 871 (1994)), *aff'd*, 353 S.C. 254, 578 S.E.2d 11 (2003). The Fourth Circuit uses a four prong test for deciding when a gatekeeper order is warranted: (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good-faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions. *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004).⁷ Pre-filing injunctions are appropriate where a litigant repeatedly

⁷ Other states have adopted the *Cromer* test. *Barrington v. Dyer*, 282 N.C. App. 404, 409, 872 S.E.2d 88, 93 (N.C. Ct. App. 2022) (affirming trial court's gatekeeper order under *Cromer* standard). Thus, the Court concludes it is the proper test to be applied here.

Order on Plaintiff's Motion for Sanctions
Case No. 2017-CP-40-01687

sues "everyone that did anything even remotely connected to a foreclosure." *Scott v. U.S. Bank, N.A.*, No. 2:09-cv-516, 2011 WL 10618730, at *1 (E.D. Va. Oct. 14, 2011).

The *Cromer* elements are met here. *First*, Defendants have a history of *pro se* filings in state and federal court. Given the duplicative claims and arguments they have raised, Defendants have a history of "vexatious, harassing, or duplicative lawsuits" establishing the first prong. This is especially true given that other courts have previously considered and rejected Defendants' foreclosure challenges. *Second*, Defendants have presented no good-faith basis for accusing DBNT and well-respected members of the South Carolina Bar of fraud, ethical violations, and even starting "a war against South Carolina. [sic] constitution," and claiming they "will be jailed." (Mot. Temp. Inj. at 7, ¶ 11.) *Kalos v. Centennial Sur. Assocs.*, No. CCB-12-1532, 2012 WL 6210117, at *6 (D. Md. Dec. 12, 2012) (considering litigants' decision to sue counsel connected to previous litigation in granting pre-filing injunction). Such claims can be intended only to harass those parties and stall the foreclosure. *Third*, Defendants repeated frivolous filings have placed a burden on Plaintiff and its counsel, as well as the now nine judges across four courts who have been called to respond to Defendants' claims. Further, Defendants have been put on notice by a federal judge that their claims were frivolous. *Id.* (considering prior warnings that claims were frivolous when granting gatekeeper order).

Fourth, monetary sanctions cannot address Defendants' repeated abuses of the court system and the waste of time their filings have caused. Defendants' involvement in foreclosure proceedings suggest they may not have liquid assets available to satisfy monetary sanctions. Defendants' repeated filings seek only to stall Plaintiff's ability to sell the Property at foreclosure and secure the equitable relief this Court has already determined it is entitled to. A sanction short of prohibiting Defendants from presenting frivolous filings would be inadequate.

As a result, the Court finds and concludes that the gatekeeper order Plaintiff seeks is both appropriate and narrowly tailored to permit Plaintiff to exercise its remedies under the mortgage.

Order

Therefore, it is **ORDERED** that:

1. Defendants are **PROHIBITED** from filing, presenting, or serving additional documents, papers, or pleading related to the Property, Plaintiff, SLS, and/or this foreclosure until the Property can be sold and the foreclosure proceedings completed unless (i) Defendants secure leave of the undersigned to present the document to the Clerk of Court, or (ii) the filing is signed by a member of the South Carolina Bar in good standing. This order is not meant to prohibit Defendants from resorting to the judicial branch to redress the claims, but is necessary to prevent additional frivolous proceedings from being initiated by Defendants. *Defendants are cautioned that a failure to comply with the provisions of this order is punishable by contempt of Court.*

2. The Clerk of Court is **ORDERED** that it may *not* accept for filing any document, paper, or pleading from Defendants in this foreclosure unless it is accompanied by a separate Order from the undersigned permitting the filing or unless it is signed by a member of the South Carolina Bar in good standing. Plaintiff's counsel is **ORDERED** to provide a copy of this order to the Clerk of Court, specifically directing her and her deputies' attention to this provision of the Order.

3. To remedy Defendants' frivolous pleadings aimed at delaying this matter and ensure this foreclosure proceeds towards a timely resolution, it is **ORDERED** that Plaintiff shall file a motion to refer this matter to a special referee in this matter given the recusal of the Richland County Master in Equity. Upon the filing of such motion, the Richland County Clerk of Court refer this matter to another appropriate special referee for the resolution of all remaining issues and judgments necessary in this action. *See* Rule 53, SCRCP. Upon the entry of the order of

reference, the special referee shall be further empowered to enforce, modify, or amend the terms of this gatekeeper order as he or she deems appropriate to remedy the frivolous litigation in which Defendants have engaged to date.

4. Plaintiff's counsel is **ORDERED** to serve a copy of this order on Defendants by regular mail and to file a certificate of service, in accordance with Rule 5, SCRCP.

IT IS SO ORDERED.

[Court's electronic signature page to follow.]



Richland Common Pleas

Case Caption: Deutsche Bank National Trust Company , plaintiff, et al vs Christopher Nelums , defendant, et al
Case Number: 2017CP4001687
Type: Order/Sanctions

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-10-31 15:17:35 page 11 of 11

ELECTRONICALLY FILED - 2023 Oct 31 4:17 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4001687

Magistrate's Return

Pursuant to Rule 75, SCRCP, upon receipt of the magistrate's return, the clerk of the Circuit Court to which the appeal is taken shall give notice in writing to the parties that the return has been filed. **No Return**

Respondent's No Return

Contents of Document Provided

Respondent's Trial Exhibit

Motion - To Amend Initial Brief of Appellant October 1,2024

No. 2024-001062

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

JANET L. NELUMS; CHRISOPHER NELUMS

RECEIVED

Plaintiff-Appellee/s,

OCT 01 2024

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, ET AL.

SC Court of Appeals

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

**APPELLANT'S MOTION REQUESTING PERMISSION TO FILE
AMENDED INITIAL BRIEF
AND RULE 269 FRIVOLOUS APPEALS, PETITIONS, MOTIONS,
OR RETURNS**

COME NOW, Pursuant to Rule 240, SCACR, appellant Janet Nelums & Chris Nelums hereinafter "The"), Appellants, pro se ("NELUMS") moves for an extension of time in which to serve and file appellant's Initial Brief and **Fraud On The Court** to be included in the Record on Appeal ("**Fraud On The Court**"). appellant Janet Nelums & Chris Nelums requests an extension of twenty days to file the Initial Brief and ("**Fraud On The Court**"). which are currently due July 28,2024. This is the first request for an extension

filed by Janet Nelums & Chris Nelums hereinafter "The"), pro se appellant, In support of the motion, most respectfully state that:

1. The appellant's initial brief is presently due to be filed no later than September 23, 2024.

2. appellant Janet Nelums & Chris Nelums appeals the order judgment of the Special Referee for Richland County, Attorney Ben N. Miller, III SC Bar # :3977, as Special Referee issued an order dated May 13, 2024, which was received by appellant's, in May 19, 2024. 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), lack subject-matter jurisdiction. See, under 28 U.S.C. § 636(c)(1), The ground for this motion is that other impending professional matters and obligations have created a need for additional time to prepare the Initial Brief and ("**Fraud On The Court** "). A twenty-day delay will not prejudice the rights of any of the parties. We have notified counsel for the parties below of our intent to file this motion. No party has objected.

Counsel for the Counsel of Record: FOR NELSON MULLINS RILEY &

SCARBOROUGH LLP, Matthew A. Abee, SC Bar No. 101100,
Madison C. Guyton, SC Bar No.105205, 1320 Main Street / 17th
Floor) Columbia, SC 29201, SCOTT AND CORLEY, P.A. Attorneys
and Counsellor's at Law Street Address: 2712 Middleburg Drive,
Suite 200 Columbia, SC 29204, the opposing party with respect to
the order from which appellant Janet Nelums & Chris Nelums has
appealed,

3. appellant Janet Nelums & Chris Nelums Appeal Case No.
2024-001062, was transfer by the Honorable Patricia A. Howard
Clerk, Supreme Court of South Carolina Post Office Box 11330
Columbia, South Carolina 29211, to South Carolina Court of
Appeals on June 28, 2024, in order to defend our cause, the
appellants Janet Nelums & Chris Nelums anticipates that they will
not be able to finish said appellants Brief within the period provided.
Hence, that they are constrained to ask for an extension of twenty
(20) days from today or until __ August 2024 within which to file
and submit appellants Brief.

4. Appellant motion for extension of time to File brief for twenty

day was granted. The new filing date of initial Brief was schedule for September 18, 2024

5. On September 18, 2024, appellant Janet Nelums & Chris Nelums filed NOTICE TO AMENDED THE APPEAL filed timely in the South Carolina Court of Appeals on September 18, 2024,

6. The Time remaining under South Carolina Court of Appeals for filing the appellant's initial brief is insufficient to ensure an adequate presentation of the appellant's arguments on appeal

7. There is no timeline for filing an amended brief, but you do need to move the court for permission to file an amended brief

8. Appellant submitted a motion to this court on September 18, 2024,

9. In September 2024, Catherine S. Harrison, Chief Deputy Clerk of the South Carolina Court of Appeals as stated in her letter to appellants Janet Nelums & Chris Nelums, that there was some Deficiencies in the appellants Janet Nelums & Chris Nelums, NOTICE TO AMENDED THE APPEAL FILED, that was timely submitted on September 23, 2024, to this Court.

10. Appellants submitted; APPELLANTS CORRECTED AMENDED OPENING BRIEF motion to this court on September 23, 2024,

11. In September 2024, Catherine S. Harrison, Chief Deputy Clerk of the South Carolina Court of Appeals as stated in her letter to appellants Janet Nelums & Chris Nelums, The Court Received your amended initial brief of Appellants, if you wish to File an amended brief, you must first a motion requesting Permission to file an amended initial brief.

12. on information and belief, appellants don't need to leave To file corrected brief in the South Carolina Court of Appeals

PRAYER

For these reasons, appellants Janet Nelums & Chris Nelums, **APPELLANT'S MOTION QUESTING PERMISSION TO FILE AMENDED INITIAL BRIEF**, requests an extension of the deadline for filing and serving the Initial Brief and ("**Fraud On The Court** "). Rule 11 requires lawyers and parties involved in a lawsuit To certify that every pleading, motion, or other paper they submit to the court is not frivolous, legally sound, and supported by evidence. In simpler terms, it says, "If you're going to court, be prepared, be honest, and be respectful." This case arises from Jeffrey M. Tzerman special referee for Richland County on Tuesday September 6, 2022, Attorney Jeffrey M.

Tzerman cancelled the Foreclosure Sale on the Plaintiffs Property and stated that he carefully reviewed the **Nelum's Motion** and note that it includes unsubstantiated allegations of wrongdoing by the Respondent's in this Case by the Respondent's counsel of Record, prior holders of the loan in question, prior Servicer of the loan DEUTSCHE BANK, and the lower Court itself. Mr. Tzerman Pursuant to Canon (2) of the Code of Judicial Conduct, Contained within Rule 501 of the SC Rules of Professional reasonability having Concluded that I am unable to hear the Motion, I am recusing myself and returning jurisdiction to the Circuit Court, Respondent's Motion to Dismiss and for Sanctions **DID** NELSON MULLINS RILEY & SCARBOROUGH LLP, Matthew A. Abee, SC Bar No. 101100, violates Rule 11 by making False statements or filing frivolous lawsuits **RULE 269 FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS**, in the South Carolina Court of Appeals on September 19, 2024.

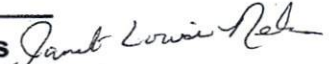
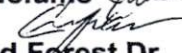
¹Supreme Court of South Carolina ADMINISTRATIVE ORDER The power of the circuit court to appoint a referee is governed by Rule 53 of the South Carolina Rules of Civil Procedure. Subsection (b) of the Rule provides only that "causes of action in a case" may be referred under the circumstances listed in 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. s/Donald W. Beatty C.J. s/John W. Kittredge C.J.

Greetings!

Please take notice that the Appellants Janet Nelums & Chris Nelums hereinafter "The"), pro se, Appellants is submitting the foregoing, **APPELLANT'S MOTION QUESTING PERMISSION TO FILE AMENDED INITIAL BRIEF AND RULE 269 FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS**, for the consideration and approval of the Honorable Court with need of

oral argument.

Respectfully submitted on this 1 day of October 1, 2024

Janet Louise Nelums 
Chris Nelums 
813 N. Highland Forest Dr,
Columbia, SC 29203-1929
(803) 730-6003
inelums@gmail.com
chrisnelums@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of **APPELLANT'S MOTION REQUESTING PERMISSION TO FILE AMENDED INITIAL BRIEF, AND RULE 269 FRIVOLOUS APPEALS, PETITIONS, MOTIONS, OR RETURNS**, APPELLANT'S Brief will be sent by regular U. S. Mail to The Honorable Jenny Abbott Kitchings Clerk, South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211, hand delivered, or by regular U. S. Mail to all parties of Record

Other Counsel of Record:
NELSON MULLINS RILEY & SCARBOROUGH LLP
Matthew A. Abee, SC Bar No. 101100
Madison C. Guyton, SC Bar No. 105205
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000
Email: matt.abee@nelsonmullins.com
Email: madison.guyton@nelsonmullins.com

RECEIVED

OCT 01 2024

SC Court of Appeals

Mr. Ben N. Miller, III
Mckenzie Lybrand, LLP
1704 Main Street
Columbia, South Carolina 29201
bmiller@mckenzielybrand.com
(803) 223-6155

Jeanette McBride
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street, Room 205 (29201)
Post Office Box 2766
Columbia, South Carolina 29202

SCOTT AND CORLEY, P.A.
Attorneys and Counsellors at Law
Street Address:
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

The Honorable Kristi F. Curtis

215 North Harvin Street
Sumter, SC 29150
OFFICE: (803) 436-2152
FAX: (803) 774-2825
kcurtissc@sccourts.org

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

The Honorable Patricia A.
Howard Clerk, Supreme Court
of South Carolina Post Office Box 11330
Columbia, South Carolina 29211]

Respectfully submitted on this 1 day of October 1, 2024

RECEIVED

OCT 01 2024

SC Court of Appeals

Janet Louise Nelums 
Chris Nelums 
813 N. Highland Forest Dr,
Columbia, SC 29203-1929
(803) 730-6003
inelums@gmail.com
chrisnelums@yahoo.com

Order on Plaintiff's Motion for Sanctions and Gatekeeper Order Oct/31/2023

Appellant's Reply to Respondent's Motion to Dismiss

Transfer - To Court of Appeals June 27, 2024

RECEIVED

Jun 27 2024

SC Court of Appeals

The Supreme Court of South Carolina

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, Respondents,

v.

Janet Nelums & Chris Nelums, Two of the people of the
United States, Article III, Sec.3, Appellants.

Appellate Case No. 2024-001062

ORDER

Pursuant to Rule 204(a) of the South Carolina Appellate Court Rules, this matter is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
June 26, 2024

cc: Janet L. Nelums
Matthew A. Abee
Madison Caroline Guyton
The Honorable Jenny A. Kitchings

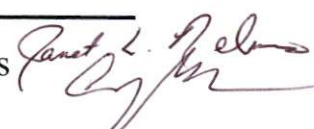
Trial Transcript

The Richland County "Case Management System Public Index" does not reflect that this Hearing occurred, and there is no indication the meeting was recorded or transcribed. The **Appellants** was not notified of any of these events.

Certificate of Appellants

The undersigned hereby certifies that the Record on Appeal contains all Material proposed to be included by any of the parties and not any other material.

November 27, 2024

Janet L. Nelums 
Chris Nelums
813 N. Highland Forest Dr,
Columbia, SC 29203-1929
(803) 730-6003
jnelums@gmail.com
chrisnelums@yahoo.com
Appellants pro se litigants 