

No. 2024-002119

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

RECEIVED
DEC 27 2024
SC Court of Appeals
SC Court of Appeals

John C Nelums: Delmarshi Nelums Appellants

v.

Deutsche Bank/Altisource Solutions Inc, defendant, et al.....Respondent

ON APPEAL FROM RICHLAND COUNTY Court of Common Pleas
Hon Daniel Coble Chief Judge/ as Special Referee, Attorney Bar # 100576
Court of Common Pleas Judge (Lower Court Trial Court Case No.
2024CP4004715)

Submitted: December 12 ,2024 Decided: November 14, 2024,

NO TRANSCRIPT TO ORDER

**APPELLANTS' MOTION REQUESTING PERMISSION TO FILE
APPELLANTS' OPENING BRIEF ON APPEAL**

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

1. We are the Appellants in the above-captioned case before the Court of
Appeal, THE STATE OF SOUTH CAROLINA In The Court of Appeals
2. That we are proceeding in a court of Constitutional Due Process

[under Article III of the Constitution of the United States for America, and the common law]

3. That on November 14, 2024, at 2:PM the court holding via WebEx Hearing without a Court certified Court Reporter, therefore NO TRANSCRIPT TO ORDER In STATE OF SOUTH CAROLINA IN A CIVIL CASE COUNTY OF IN THE COURT OF COMMON PLEAS

4. **From:** JOHN NELUMS <johnnelums@yahoo.com> to transcripts@sccourts.org <transcripts@sccourts.org> **Cc:** tholmes@sccourts.org <tholmes@sccourts.org> **Sent:** Monday, December 9, 2024, at 10:24:52 AM EST Subject: Fw: Court Reporter/Transcript Request,

I am requesting the name of the court reporter and requesting the transcript for my case 2024CP4004715. I have included below the transcript request form with the information needed to process the request. VR, John Nelums 315 Bentwood Lane Cola, SC 29229 803-513-9903 [See: EXHIBIT-A

5. Therefore, the Appellants are requesting permission from this Court to File Appellants opening Brief on Appeal that was timely filed.

RECEIVED

PROOF OF SERVICE OF NOTICE OF APPEAL

DEC 27 2024

I certify that I have served the NO TRANSCRIPT TO ORDER, APPELLANTS' MOTION REQUESTING PERMISSION TO FILE APPELLANTS' OPENING BRIEF ON APPEAL To: The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to The Honorable Jenny Abbott Kitchings Clerk, South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211], and by e-mailing a copy of the NO TRANSCRIPT TO ORDER, APPELLANTS' MOTION REQUESTING PERMISSION TO FILE APPELLANTS' OPENING BRIEF ON APPEAL to Hutchens Law Firm,

SC Court of Appeals

Saturday, 22 December 2024

Respectfully submitted,


John C. Nelums Delmarshi Nelums
315 Bentwood Ln
803-513-9903
Columbia, SC 29229-8981
Appellant pro se litigants

Other Counsel of Record:

Hon, Mr. Daniel McLeod Coble
COUNTY: RICHLAND
CHIEF ADMIN JUDGES
1701 Main Street
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John Kay, S.C. Bar # 7914
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Counsel William Shepro and Altisource solutions,
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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

Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
The Richland County Sheriffs Department
and Civil Process Division 5623 Two Notch
Road Columbia, S.C. 29223
phone: 803-576-3000.
fax: 803-576-319

Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
The Richland County Sheriffs Department
ATTN: Sgt. Kyle Kovalchuk
623 Two Notch Road
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Saturday, 22 December 2024

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SC Court of Appeals

EXHIBIT-A

A copy of the order[s] [judgment] which is [are] to be challenged on appeal.



South Carolina Judicial Branch

TRANSCRIPT REQUEST FORM

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter/Transcriptionist and to South Carolina Court Administration at [redacted]. If WebEx or DCRP were used to capture the record, please indicate below and send the form to [redacted].

Requestor's Information			
Full Name John C. Nelums	Law Firm/Agency	Phone Number 803-513-9903	
Email Address johnnelums@yahoo.com	Mailing Address 315 Bentwood Lane, Columbia, SC 29229		
Is the requestor a party in the case? ☒ Yes ☐ No			
If no, does the requestor represent a party? ☐ Yes ☐ No If yes, name of party			
Transcript Information			
Docket Number 2024CP4004715	Full Case Caption (i.e. State v. John Doe or John Smith v. Jane Smith) John C. Nelums, plaintiff et al vs Altisource Solutions Inc. defendant, et al		Circuit ☒ Family ☐
Date(s) of Proceeding November 14, 2024	County Richland	Appeal pending ☒ Yes ☐ No	Death Penalty ☐ Yes ☒ No
Presiding Judge Honorable Daniel Coble		Special Circumstances Is the hearing to be transcribed one of the following: ☐ Termination of parental rights ☐ Adoption ☐ Any actions involving child custody/visitation.	
Opposing Counsel(s) (name and email address) Michael Brian Wren, mwren@dml-law.com John Kay, John.kay@hutchenslawfirm.com		Delivery Timeframe (check Rule 607 for current page rates) ☐ Quote ☐ Rough Draft ☒ Overnight delivery ☐ Daily delivery ☐ Expedited delivery (7 days) Due on/before: ☐ Regular delivery (60 days)	
Court Reporter(s)	☒ WebEx ☐ DCRP	Delivery Method (additional fees may apply) ☐ PDF / Email ☐ Hard Copy/Priority Mail (\$50 + shipping) ☒ PDF & Hard Copy/Priority Mail (\$50 + shipping).	
Portion of proceeding to be transcribed ☒ Entire hearing ☐ Voir dire by juror ☐ Jury selection ☐ Plaintiff's opening statement ☐ Defendant's opening statement ☐ Plaintiff's closing arguments ☐ Defendant's closing arguments ☐ Entire direct examination ☐ Entire cross examination ☐ Entire redirect ☐ Examination of witness (W) by attorney (A) W: _____ A: _____ ☐ Ruling of the court		Responsible Payor ☒ Private / Self ☐ Court Appointed Counsel Appeals Attorney Email ☐ Other	
Next Hearing Date			

Requestor's Signature: John C. Nelums Date: December 09, 2024
(Typed name will serve as signature)

NOTE: Requests will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party, regardless of indigent status. Please promptly submit your payment in the method of payment requested, in order for the transcript to be produced. In some cases, a deposit may be required before the transcript can be placed in the production queue. You may also request a quote before deciding to order. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court.

**LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL**

December 22, 2024

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

Dear Ms. Kitchings:

Trial Court Case No. 2024-CP-40-05681

Enclosed for the filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order[s] [judgment] which is [are] to be challenged on appeal.
- (3) A filing fee of \$250
- [(4) This appeal is being filed with the South Carolina Court of Appeals)

John C Nelums: Delmarshi Nelums Appellants

v.

Altisource Solutions Inc, defendant, et al..... Respondent

NOTICE OF APPEAL

John C. Nelums Delmarshi Nelums appeals the order [judgment] of the Honorable Daniel Coble, as Special Referee, Trial Court Case No. 2024-CP-40-05681) dated December 2, 2024. Appellant received written notice of entry of this order [judgment] on December 9, 2024.

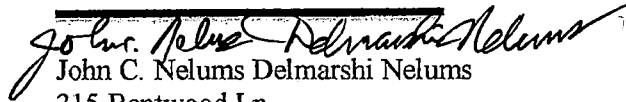
PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal to The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to The Honorable Jenny Abbott Kitchings

Clerk, South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211], and by e-mailing a copy of the Notice of Appeal to Hutchens Law Firm

Sunday, 22 December 2024

Sincerely,



John C. Nelums Delmarshi Nelums

315 Bentwood Ln

803-513-9903

Columbia, SC 29229-8981

Appellant pro se litigants

Other Counsel of Record:

Hon. Mr. Daniel McLeod Coble

COUNTY: RICHLAND

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Counsel William Shepro and Altisource solutions,
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
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Richland County, Sheriff Leon Lott
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ATTN: Sgt. Kyle Kovalchuk
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phone: 803-576-3000.
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Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums
315 Bentwood Ln
803-513-9903
Columbia, SC 29229-8981
Appellant pro se litigants

EXHIBIT-A

A copy of the order[s] [judgment] which is [are] to be challenged on appeal.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John C. Nelums and Delmarshi Nelums.

Plaintiffs.

v.

Deutsche Bank National Trust Company as
Trustee for agent, John Kay, William Shepro
and Altisource Solutions, Inc.; Hutchens Law
Firm, LLP a S.C. professional association;
John S. Kay, an individual; Alan Martin
Stewart, an individual; Jeanette McBride, an
individual; Joseph Strickland an individual;
Richland County, Sheriff Leon Lott in his
official capacity as the Sheriff of Richland
County; and Sgt. Kyle Kovalchek.

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2024-CP-40-05681

**ORDER DISMISSING CASE AND FOR
SANCTIONS AGAINST PLAINTIFFS**

This matter came before me for hearing via Webex on November 14, 2024 on the motion to dismiss Plaintiff's complaint and motion for sanctions filed by Altisource Solutions, Inc., William Shepro, Deutsche Bank National Trust Company, John Kay, Hutchens Law Firm LLP, and Alan Stewart, ("Defendants"). Appearing at the hearing were the Defendants' counsel, John S. Kay, and counsel for Richland County, Jeanette McBride, Joseph Strickland, Sheriff Leon Lott, and Sgt. Kyle Kovalchek ("Richland County Defendants"). John P. Grimes, Jr., Esq. Also appearing was the Plaintiff, John C. Nelums ("Nelums"). In addition to a dismissal of the Plaintiff's case, both the Defendants and the Richland County Defendants request sanctions against the Plaintiffs in the form of a "gatekeeper order" to prevent the Plaintiffs from filing further frivolous actions against these same defendants for the same matters.

I. INTRODUCTION

The Plaintiffs' pleading, styled as "Plaintiffs' "Notice to Quit" and "Complaint for Damages" (hereafter the "Nelums Pleading") is the second case¹ the Nelums have filed in 2024 in what is an attempt to overturn the results of a foreclosure judgment obtained against them in a previous case filed by Deutsche Bank in the Court of Common Pleas for Richland County under case number 2021-CP-40-00895 (the "Foreclosure Case"). The complaint in the within case seeks to undo the foreclosure judgment granted to Deutsche Bank in Foreclosure Case concerning real property located at 315 Bentwood Lane, Columbia, South Carolina 29229 (the "Property") that was once owned by the Plaintiffs and is now owned by Deutsche Bank. The Nelums Pleading fails to meet the most basic requirements for these types of pleadings. Generally, the Plaintiffs' complaint fails to list causes of action and seeks relief under various federal statutes, which are not applicable to the case at hand. Thus, pursuant to Rules 8, and 12(b)(6) of the SCRCP, the Nelums Complaint should be stricken and the case dismissed with prejudice for failure to state a sufficient claim.

BACKGROUND

On or about January 27, 2003, the Nelums obtained a home mortgage loan for the original principal amount of \$270,900.00 (the "Loan"). To secure the Loan, the Nelums executed a mortgage in favor of IndyMac Bank, F.S.B., which granted the lender a first lien on the real property located at 315 Bentwood Lane, Columbia, SC 29229. The transaction is memorialized by a recorded mortgage executed by the Plaintiffs (the "Mortgage"). The Mortgage was recorded on November 27, 2002 in Book 729 at Page 3951, in the Office of the Register of Deeds for Richland

¹ The other case filed by the Nelums in 2024 was filed under case number 2024-CP-40-4715 and there is an Order dismissing that case as well.).

County, South Carolina. Thereafter, in an assignment dated December 2, 2020, recorded December 14, 2020, in Mortgage Book 2564 at Page 1571, Federal Deposit Insurance Corporation as receiver for IndyMac Federal Bank, assigned the Mortgage to Deutsche Bank National Trust Company as Trustee for Residential Asset Securitization Trust 2005-A8CB Mortgage Pass-Through Certificates Series 2005-H ("Deutsche Bank"). The monthly payments due on said note and mortgage had not been made since April 1, 2020. Deutsche Bank filed a foreclosure action in case 2021-CP-40-00895 and received an Order for Foreclosure issued by the Master in Equity for Richland County. The Hon. Joseph M. Strickland (also a Defendant in this case). The property was sold at public auction back to the Plaintiff as the highest bidder and Judge Strickland conveyed the property to Deutsche Bank by Master's deed recorded December 21, 2023 in Book 2803 Page 3870 in the Office of the Register of Deeds for Richland County. After the Plaintiffs failed to vacate the property, Deutsche Bank proceeded to have the Court issue an eviction order with a Writ of Assistance issued by Judge Strickland to have the Plaintiffs evicted from the Property.

The within case is one of a series of attempts by the Plaintiffs to undo, or re-litigate the Foreclosure Case. Additionally, counsel for the Defendants advised the Court at the hearing that the Plaintiffs have moved back into the property at 315 Bentwood Lane in Columbia without the permission of the Defendants.

A. The 2020 Litigation

On June 29, 2020, and prior to the filing of the Foreclosure Case, the Nelums filed a lawsuit in the Court of Common Pleas for Richland County against Deutsche Bank and other defendants, as Case No. 2020-CP-40-02956 (the "2020 Litigation Case"). Deutsche Bank, along with other defendants, removed the case to federal court where it was assigned Case No. 3:20-cv-02932-JFA, as reflected in the federal court docket. After removal, Deutsche Bank and other defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). On November 18, 2020, the assigned

magistrate judge issued a Report and Recommendation that the motion to dismiss be granted. In the Report and Recommendation, the magistrate judge states that, "The undisputed facts show that Deutsche Bank possesses the note and has a right to enforce it." The court stated that fact clearly precluded the Nelums' causes of action where they asserted Deutsche Bank did not have the right to enforce the promissory note which included the causes of slander of title, quiet title, declaratory relief, and lack of standing. Furthermore, the Court held that the Nelums failed to plausibly allege facts that could support intentional infliction of emotional distress, failed to meet the pleading standards required to allege fraud, and claims pursuant to the Truth in Lending Act and Real Estate Settlement Procedures Act were barred by the statute of limitations. The Nelums objected to the magistrate's report and recommendation. On December 9, 2020, the District Court adopted the magistrate's report and recommendation and entered a final order and judgment dismissing the 2020 Litigation, which granted the defendants' Rule 12(b)(6) Motion to Dismiss.² The Nelums did not appeal.

B. The 2021 Litigation

On July 19, 2021 – while the Foreclosure Case was pending – the Nelums filed a complaint in the U.S. District Court for South Carolina as Case No. 3:21-cv-02161-JFA (the "2021 Litigation Case") against several defendants, including Deutsche Bank and Hutchens Law Firm. The Nelums Complaint was titled "Motion for An Ex-Parte Temporary Restraining Order, Show Cause Order, and Permanent Injunction with Asset Freeze" alleging Racketeer Influenced and Corrupt Organization Act (RICO) violations against Hutchens Law Firm, John B. Kelchner, LPS Default Solutions, Fidelity National Title Insurance, Deutsche Bank, Ocwen Loan Servicing, PHH

² The December 9, 2020 order operated as a dismissal *with prejudice* pursuant to Fed. R. Civ. P. 41(b).

Mortgage Services, and Mortgage Electronic Registration System. On August 31, 2021, the assigned magistrate judge issued a Report and Recommendation ("R. & R.") that the case be dismissed. In the R. & R. the magistrate judge states that, "The Court concludes the actions are frivolous and that they should be summarily dismissed without prejudice and issuance and service of process." The R. & R. also mentions that the Complaint was "over one hundred pages long, typed, and written with purported legal jargon that is not coherent." Furthermore, the Court concluded the Nelums' claims were barred by principles of res judicata due to the Court's granting of the motion to dismiss in the 2020 Litigation Case alleging fraud and conspiracy against several of the same defendants. On September 21, 2021, the District Court adopted the magistrate's report and recommendation and entered a final order and judgment dismissing the 2021 Litigation without prejudice. The Nelums appealed, and the appeal was dismissed on April 22, 2022.

IV. STANDARD OF REVIEW

A. Motion to Dismiss

A motion to dismiss under Rule 12(b)(6), SCRCP, tests *the legal sufficiency* of a claim and should be granted if the claim does not set forth sufficient allegations entitling the party to relief. Rule 12(b)(6), SCRCP: *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001). Although the court must accept the allegations of the claim, it is not permitted to read into the claim unalleged facts. *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (S.C. 2005). Rather, "The motion must be granted if the facts and inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." *Id.*

The Plaintiffs' pleading is subject to the pleading requirements outlined in Rule 8 which require the Plaintiff to stick to "fact pleading." Rule 8, SCRCP. Where Plaintiffs have failed to allege sufficient facts to provide Defendants with fair notice of the claims in question, courts have

held time and time again that stringing together a long list of claims is not sufficient to satisfy Rule 8(a)'s short and plain statement requirement.

In addition to its many pleading defects, discussed more fully below, the claims asserted within the Nelums Pleading are barred by the doctrines of res judicata, collateral estoppel or similar doctrines and should be dismissed and stricken on that basis. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (S.C. 1999) (internal citations omitted). As a result, "...a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.* "To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *RIM Assocs. v. Blackwell*, 359 S.C. 170, 183, 597 S.E.2d 152, 159 (Ct. App. 2004). The bar is broad, and applies not just to claims actually alleged, but also precludes any claims that could have been raised in the prior litigation. *Venture Eng'g, Inc. v. Tishman Constr. Corp. of S.C.*, 360 S.C. 156, 162, 600 S.E.2d 547, 550 (Ct. App. 2004). Similarly,

Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (S.C. 1992). Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues. *Nelson v. OHG of S.C. Inc.*, 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003).

All of the elements of res judicata are easily met by reference to the 2020 and 2021 Litigation. First, the parties are identical in that the Nelums were parties to the Foreclosure Case

and were parties to the 2020 and 2021 litigation as well. The Defendants are standing in the shoes of Deutsche Bank as they are the company hired by Deutsche Bank to complete the eviction of the Plaintiffs from the property pursuant to the Writ of Assistance issued by Judge Strickland in the 2021 foreclosure case. Hutchens Law Firm, John Kay, and Alan Stewart are the attorneys and the law firm that represent Deutsche Bank and Altisource in the within case and in the 2020 and 2021 litigation. The Defendants are the agents of Deutsche Bank. Similarly, the Richland County Defendants are the representatives of the State and County charged with administering the judicial process in Richland County. Plaintiff has not alleged facts indicating the Richland County Defendants acted in any individual capacity, and as such, they were acting solely in their official judicial capacities.³

Second, the subject matter is identical and arises from the same transaction or occurrence – namely the parties’ respective rights, duties and obligations under the terms of the mortgage loan. The with action by Plaintiffs seeks to, yet again, attempt to vacate the previously litigated mortgage foreclosure action prosecuted against the Plaintiffs in the 2021 Foreclosure Case. The 2020 Litigation was filed on June 29, 2020 (i.e., after the same loan default) and was an obvious attempt to delay or avoid the consequences of that default by asserting claims against the lender, Deutsche Bank.

In the 2020 Litigation the Nelums asserted at least ten causes of action against Deutsche Bank and others related to the same mortgage loan at issue in the Current Lawsuit, asserting claims for (1) lack of standing to foreclose, (2) fraud in the concealment, (3) fraud in the inducement, (4)

³ As such, the Richland County Defendants are entitled to judicial and/or quasi-judicial immunity for Plaintiff’s claims, and dismissal of the claims against them is appropriate. *See O’Laughlin v. Windham*, 330 S.C. 379, 383 (Ct. App. 1998) (“Judicial immunity affords absolute immunity from suit.”)

intentional infliction of emotional distress, (5) quiet title, (6) slander of title, (7) declaratory relief, (8) violations of the federal Truth in Lending Act (TILA), (9) violations of the Real Estate Settlement Procedures Act (RESPA) and (10) rescission. The “new” allegations of the Plaintiffs’ complaint seek to attack the standing or the prosecution of the court’s order granting the eviction. The Plaintiffs were unable to attack Deutsche Bank’s standing to foreclose, so they are now attempting to attack the eviction stemming from the foreclosure by attacking the Defendants who represented Deutsche Bank and carried out the eviction itself. These claims and allegations are fundamentally an attack on the 2021 foreclosure action upon which the eviction was based. In sum, claims contesting the eviction and the foreclosure deed are another attempt to contest Deutsche Bank’s right to foreclose upon this defaulted mortgage. These matters could have been raised, and in fact were raised, in the 2020 and 2021 Litigation. Accordingly, these two cases involve the same transaction or occurrence, meeting the second element of *res judicata*.

The third element, adjudication in the former suit, is also met here. The 2020 Litigation resulted in a dismissal of the Nelums’ claims after Deutsche Bank and other defendants filed a motion to dismiss. That dismissal order operated as an “adjudication on the merits.” *See* Fed. R. Civ. P. 41(b).⁴ Accordingly, the Nelums have already had a full and fair opportunity to dispute any issues arising from their mortgage loan default, including Deutsche Bank’s right to foreclose. In addition, the Master’s Order and Judgment of Foreclosure and Sale issued by Judge Strickland also operates as an adjudication on these same matters.

The doctrine of collateral estoppel also applies here. Collateral estoppel, also known as issue preclusion, prevents a party from relitigating in a subsequent suit an issue actually and

⁴ Rule 41(b), SCRCP contains identical language.

necessarily litigated and determined in a prior action. *Shelton v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 251, 481 S.E.2d 706, 707 (S.C. 1997). Collateral estoppel bars re-litigation if the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). “Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suits are the same.” *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009).

Much of the Nelums Pleading – generously construed – appears to be alleging claims of wrongdoing against the Defendants based upon some allegation of an invalid eviction. Even the most cursory comparison of the pleadings confirms that this was the exact same subject matter of the 2021 Lawsuit. The foreclosure lawsuit and the resulting eviction order were issued in the case on the filing of the requisite pleadings in the case by Deutsche Bank, first as the mortgagee and then as the owner of the Property. The Defendants in this case did not initiate the filing for the foreclosure or the eviction, they are agents of Deutsche Bank, or the Richland County officials charged with the judicial and administrative activities in carrying out the eviction. The Plaintiffs, could, and did, object and file numerous post-trial motions in the foreclosure action and those were denied. The Nelums cannot now attack, yet again, the foreclosure, the foreclosure deed and eviction that resulted from them.

The U.S. District Court already held, in dismissing the 2021 federal court lawsuit filed by the Plaintiffs, the claims asserted therein against Deutsche Bank and others were barred by principles of *res judicata* and claim preclusion by virtue of the 2020 Litigation. If those claims were barred in the 2021 Litigation, they should also be barred again here. Ultimately – as the District Court correctly recognized – the 2020 Litigation was the Nelums’ opportunity to assert

claims against Deutsche Bank to avoid foreclosure. It was not successful, and the Nelums are now bound by that judgment. Likewise, the Nelums had the opportunity to appeal, and did appeal, the original foreclosure and eviction. That appeal was not successful, and the Nelums are now bound by that judgment. The Nelums may not now relitigate the validity of the foreclosure and eviction. These issues have been actually litigated on multiple occasions, directly determined the outcome of those prior litigations, and were necessary to support those judgments. As a result, the Nelums Pleading – which simply repeats those already-rejected claims or claims that could have been raised previously – should be dismissed based on well-settled principles of res judicata and collateral estoppel.

Any legal pleading in filed in South Carolina must contain “a short and plain statement of the facts showing that the pleader is entitled to relief.” Rule 8(a)(2), SCRPC. The Nelums Pleading falls far short of that standard.

Rather, it may be aptly characterized as a “shotgun pleading”, defined as a pleading “that fails to articulate claims with sufficient clarity to allow the Plaintiff to frame a responsive pleading or one in which it is virtually impossible to know which allegations of fact are intended to support which claims for relief.” *Alexander v. S.C. DOT*, No. 3:20-4480-TLW-SVH, 2021 U.S. Dist. LEXIS 118907, at 3 (D. S.C. June 25, 2021) (quotations omitted).

The Nelums Pleading is a textbook example of a shotgun pleading. The entire pleading is filled with unsupported legal conclusions and irrelevant facts that have nothing to do with the Defendants or the subject matter of this lawsuit. The Plaintiffs refer to matters that not only do not relate to the instant case, but also to matters that lack sufficient clarity to allow Defendants to frame a responsive pleading. Although there are scarce and vague references to landlord/tenant matters, nowhere in the Complaint do the Plaintiffs mention a lease agreement or produce such an

agreement. Plaintiffs omit any reference to the mortgage loan agreement and the foreclosure action, foreclosure sale, foreclosure deed, or the writ of eviction.

The Plaintiffs cannot avoid pleading supporting facts for *their* claims and defenses by relying on incomprehensible claims against the Defendants. All of the actions taken were made in accordance with orders of the Court. Further, the eviction action was undertaken pursuant to the Writ of Assistance by the Order of the Richland County Master in Equity. The Plaintiffs' Complaint fails to satisfy the requirements of Rule 8, SCRPC, so it should be dismissed.

With regards to the Plaintiff's complaint, it also fails to meet the requirements to a Rule 12(b)(6) motion. Plaintiffs' conflate federal law and South Carolina state law as though they are the same thing, a deficiency which, in itself, warrants dismissing the Plaintiffs' Complaint in its entirety. However, the Plaintiff's arguments are not viable regardless of how they are presented. Therefore, the complaint should be dismissed pursuant to Rule 12(b)(6), SCRPC.

The Plaintiffs have sought a cause of action for what appears to be fraud on the part of the Defendants. Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to her or to surrender a legal right. Black's Law Dictionary 660 (6th ed. 1990). To prevail on a cause of action for fraud, a Plaintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010). The right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying

the truth with respect to the representations made to him. *Florentine Corp., Inc. v. PEDA I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (S.C. 1985). Moreover, there is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. *Id.* This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests. *Id.*

Allegations of fraud must be stated with particularity. See Rule 9(b), SCRCP. Here, the Plaintiffs failed to establish fraud at all, let alone with the requisite degree of particularity, because the Plaintiffs fail to plead any plausible facts that could establish fraud against the Defendants. To support the fraud claim, the Plaintiffs state that the Defendants "without a warrant of eviction illegal Evictions and Lockouts against the Nelums Family without probable cause to do so, that cause an unlawfully eviction at 315 Bentwood Lane Columbia, S.C." (Complaint Para. 8). Further, the Complaint alleges that "The Court take judicial notice that Plaintiffs John C. Nelums and Delmarshi Nelums Mortgage Satisfaction states that on 5-4-15, paid in full and the lien or the foregoing instrument has been released." (Complaint Para. 9 and Exhibit A to the Complaint). As shown in Exhibit C to the motion to dismiss, Deutsche Bank had the right to evict the Plaintiffs from the Property by virtue of the Writ of Assistance. Further, the Mortgage Satisfaction Plaintiff's cite in their complaint was for the satisfaction of a mortgage recorded in Book 1232 Page 756. The mortgage foreclosed by the Plaintiff in the 2021 foreclosure action was an entirely different mortgage recorded in Book 755 Page 615. The Plaintiffs' allegations are an attempt to re-visit the completed foreclosure action. No plausible facts are pled that could establish that the Defendants engaged in any wrongdoing and the Plaintiffs have failed to establish a proximate injury resulting from the alleged falsity. Thus, the Plaintiffs' complaint claim should be dismissed.

B. Motion for sanctions

All of the Defendants in this case have also sought relief from this court in the way of sanctions against the Plaintiffs. The sanctions sought are the issuance of a "Gatekeeper Order" pursuant to S.C. Code Ann. §15-36-10, *et seq.*, also known as the South Carolina Frivolous Proceedings Sanctions Act. This Act provides that a pro se litigant may be sanctioned for "filing a frivolous pleadings, motion, or document;" "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts;" or "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law." S.C. Code Ann. §15-36-10(A)(4). Further, sanctions the Court may enter include "a directive of a nonmonetary nature, including injunctive relief, designed to deter a frivolous action or an action in bad faith." S.C. Code Ann. §15-36-10(G)(3).

These elements are readily met here, and it is appropriate for the Court to enter a "Gatekeeper Order" as outlined above to prevent these Plaintiffs from filing any future frivolous suits relating to this subject matter. The Plaintiffs have demonstrated that regardless of how many times their cases have been dismissed as being without merit, they will continue to file frivolous lawsuits which serve no purpose other than to waste time, resources, and harass parties to these lawsuits. The language below is narrowly tailored to address the Plaintiff's frivolous filings regarding this subject matter while still allowing them to make necessary filings through counsel and preserving their *pro se* right to file other litigation not related to this subject matter. Such sanctions appear to be the only matter by which the Court can avoid having to address these lawsuits in the future. Therefore, I find that such an order would be proper and necessary to stop the Plaintiffs from wasting the Court's time and that of the Defendants and their counsel.

It is therefore ORDERED, that the Plaintiffs are prohibited from filing any new pleadings

in Richland County relating to these matters without (a) approval from the Court or (b) said pleadings having been reviewed and signed by a member of the South Carolina Bar in good standing. Also, the Clerk of Court for Richland County is directed to not accept any future pleadings from the Plaintiffs relating to these matters without (a) approval from the Court or (b) said pleadings having been reviewed and signed by a member of the South Carolina Bar in good standing. Lastly, the Plaintiffs are warned any violation of this Order would constitute contempt of court.

It is further Ordered, that the Plaintiffs' case is dismissed with prejudice.

JUDGE, DANIEL COBLE'S SIGNATURE PAGE TO FOLLOW



Richland Common Pleas

Case Caption: John C Nelums , plaintiff. et al vs John S Kay , defendant. et al

Case Number: 2024CP4005681

Type: Order/Dismissal

So Ordered

s/ Daniel Coble. 2774

Electronically signed on 2024-12-02 13:21:47 page 15 of 15

**LETTER TO CLERK OF LOWER COURT FILING
NOTICE OF APPEAL**

December 22, 2024

The Honorable Jeanette McBride
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street, Room 205 (29201)

Dear Ms. McBride:

Enclosed for the filing is a notice of appeal in the above case. No. 2024-CP-40-05681

John C Nelums: Delmarshi Nelums Appellants

v.

Altisource Solutions Inc, defendant, et al..... Respondent

NOTICE OF APPEAL

John C. Nelums Delmarshi Nelums appeals the order [judgment] of The Honorable Jeanette McBride Richland County Clerk of Court, Trial Court Case No. 2024-CP-40-05681) dated November 14, 2024. Appellant received written notice of entry of this order [judgment] on November 20, 2024.

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on The Honorable Jeanette McBride, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to Richland County Clerk of Court, Richland County Judicial Center 1701 Main Street, Room 205 (29201), and by e-mailing a copy of the Notice of Appeal to The Honorable Jeanette McBride.

Sunday, 22 December 2024

Sincerely,



John C. Nelums Delmarshi Nelums

315 Bentwood Ln

803-513-9903

Columbia, SC 29229-8981

Appellant pro se litigants

Other Counsel of Record:

Hon. Mr. Daniel McLeod Coble
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CHIEF ADMIN JUDGES
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
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ATTN: Sgt. Kyle Kovalchuk
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Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums
315 Bentwood Ln
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Columbia, SC 29229-8981
Appellant pro se litigants

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

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

**Daniel Coble, as Special Referee
Circuit Court Judge**

Trial Court Case No. 2024-CP-40-05681

John C Nelums: Delmarshi Nelums Appellants

v.

Altisource Solutions Inc, defendant, et al..... Respondent

NOTICE OF APPEAL

John C. Nelums Delmarshi Nelums appeals the order [judgment] of the Honorable Daniel Coble, as Special Referee, Trial Court Case No. 2024-CP-40-05681) dated December 2, 2024. Appellant received written notice of entry of this order [judgment] on December 9, 2024.

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Michael Brian Wren, S.C. Bar # 69669, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to Davidson & Wren, PA 1611 Devonshire Drive, Second Floor Columbia, South Carolina 29204], and by e-mailing a copy of the Notice of Appeal to Michael Brian Wren
Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums
315 Bentwood Ln
803-513-9903
Columbia, SC 29229-8981
Appellant pro se litigants

Other Counsel of Record:

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Jeanette McBride
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Richland County Judicial Center
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
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phone: 803-576-3000.
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
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ATTN: Sgt. Kyle Kovalchuk
623 Two Notch Road
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phone: 803-576-3000.
fax: 803-576-319

Sunday, 22 December 2024

Sincerely,



John C. Nelums Delmarshi Nelums

315 Bentwood Ln

803-513-9903

Columbia, SC 29229-8981

Appellant pro se litigants

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

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

**Daniel Coble, as Special Referee
Circuit Court Judge**

Trial Court Case No. 2024-CP-40-05681

John C Nelums: Delmarshi Nelums Appellants

v.

Altisource Solutions Inc, defendant, et al..... Respondent

NOTICE OF APPEAL

John C. Nelums Delmarshi Nelums appeals the order [judgment] of the Honorable Daniel Coble, as Special Referee, Trial Court Case No. 2024-CP-40-05681) dated November 2, 2024. Appellant received written notice of entry of this order [judgment] on November 9, 2024.

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Sgt. Kyle Kovalchuk, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to Sgt. Kyle Kovalchuk 623 Two Notch Road Columbia, S.C. 29223], and by e-mailing a copy of the Notice of Appeal to Sgt. Kyle Kovalchuk.

Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums

315 Bentwood Ln

803-513-9903

Columbia, SC 29229-8981

Appellant pro se litigants

Other Counsel of Record:

Hon. Mr. Daniel McLeod Coble
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
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ATTN: Sgt. Kyle Kovalchuk
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Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums
315 Bentwood Ln
803-513-9903
Columbia, SC 29229-8981

Appellant pro se litigants

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

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

**Daniel Coble, as Special Referee
Circuit Court Judge**

Trial Court Case No. 2024-CP-40-05681

John C Nelums: Delmarshi Nelums Appellants

v.

Altisource Solutions Inc, defendant, et al..... Respondent

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PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Richland County, Sheriff Leon Lott, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to The Richland County Sheriff's Department and Civil Process Division 5623 Two Notch Road Columbia, S.C. 29223], and by e-mailing a copy of the Notice of Appeal to Richland County, Sheriff Leon Lott.

Sunday, 22 December 2024

Sincerely,



John C. Nelums Delmarshi Nelums

315 Bentwood Ln

803-513-9903

Columbia, SC 29229-8981

Appellant pro se litigants

Other Counsel of Record:

Hon. Mr. Daniel McLeod Coble
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Richland County, Sheriff Leon Lott
in His Official Capacity as The Sheriff of
The Richland County Sheriffs Department

ATTN: Sgt. Kyle Kovalchuk

623 Two Notch Road

Columbia, S.C. 29223

phone: 803-576-3000.

fax: 803-576-319

Sunday, 22 December 2024

Sincerely,



John C. Nelums Delmarshi Nelums

315 Bentwood Ln

803-513-9903

Columbia, SC 29229-8981

Appellant pro se litigants

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

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

**Daniel Coble, as Special Referee
Circuit Court Judge**

Trial Court Case No. 2024-CP-40-05681

John C Nelums: Delmarshi Nelums Appellants

v.

Altisource Solutions Inc, defendant, et al..... Respondent

NOTICE OF APPEAL

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PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Respondent Hutchens Law Firm, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to Hutchens Law Firm 240 Stoneridge Dr Ste 400 Columbia, SC, 29210], and by e-mailing a copy of the Notice of Appeal to Hutchens Law Firm

Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums
315 Bentwood Ln
803-513-9903
Columbia, SC 29229-8981
Appellant pro se litigants

Other Counsel of Record:

John Kay, S.C. Bar # 7914
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Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums
315 Bentwood Ln
803-513-9903
Columbia, SC 29229-8981
Appellant pro se litigants

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

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

**Daniel Coble, as Special Referee
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Trial Court Case No. 2024-CP-40-05681

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v.

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NOTICE OF APPEAL

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PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Alan M. Stewart, S.C. Bar # 15576, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2024, addressed to Hutchens Law Firm 240 Stoneridge Dr Ste 400 Columbia, SC, 29210], and by e-mailing a copy of the Notice of Appeal to Hutchens Law Firm

Sunday, 22 December 2024

Sincerely,



John C. Nelums Delmarshi Nelums
315 Bentwood Ln
803-513-9903
Columbia, SC 29229-8981
Appellant pro se litigants

Other Counsel of Record:

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Sunday, 22 December 2024

Sincerely,


John C. Nelums Delmarshi Nelums
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Appellant pro se litigants



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PAYMENT BY ACCOUNT (if applicable)
USPS Corporate Acct. No. Federal Agency Acct. No. or Postal Service™ Acct. No.

ORIGIN (POSTAL SERVICE USE ONLY)

☐ 1 Day
PO ZIP Code 29207

☐ 2 Day
Expected Delivery Date 12/24/24

☐ Priority
Postage \$32.05

DELIVERY (POSTAL SERVICE USE ONLY)

Date Accepted (MM/DD/YYYY) 12/23/24

Time Accepted 12:19 PM

Expected Delivery Time 4:00 PM

Insurance Fee \$

COO Fee \$

Return Receipt Fee \$

Use Actual Transportation Fee \$

Surf/Holiday Premium Fee \$

Total Package & Fee \$32.05

Weight 8.97 lbs

Dimensions 14x14x14

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (AM/PM) AM

Time

Employee Signature

Delivery Attempt (AM/PM) AM

Time

Employee Signature

LAOL 11-6 MAY 2021 PSN 7500-02 000-0996

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