

**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**

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SC Court of Appeals

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

Janet L. Nelums: Christopher Nelums..... Appellants

v.

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

**APPELLANTS' REPLY MOTION TO THE OPPOSITIONS RETURN TO MOTION
FOR LEAVE TO FILE SANCTIONS**

Appellants Janet L. Nelums: Christopher Nelums, this case considers whether a motion for sanctions under SCRCRCP Rules 269 South Carolina Statutes, S.C. R. Civ. P. 11, South Carolina Rules of Appellate Procedure, and Rule 38, Federal Rules of Appellate Procedure may be dismissed without prejudice when the underlying facts and issues allegedly establishing the sanctionable conduct are also, at issue in another pending Case No. 2017CP4001687 involving the same parties. We also consider whether a final order must be signed by a district court clerk or judge, BEN N. MILLER III as Special Referee Circuit Court

Judge, lack subject-matter jurisdiction. under 28 U.S.C. § 636(c)(1), [**See** **[See Exhibit-A** Supreme Court of the United States **Kimberly v. Arms**:129 U.S. 512 (1889, Holding a court may not, through appointment of a master or otherwise, "Abdicate its duty to determine by its own judgment the controversy presented Under Fed. R. Civ P. 73(b)(1). 28 U.S.C. §636(c)(1) and 28 U.S.C. §636(c)(2), These restrictions apply to magistrates serving as special Master's except when the parties' consent to the master reference.28 U.S.C.§ 636(b)(2) (1976), Circuit Court for an appeal to lie from that order, the issue of consent is key, because a magistrate is an Article I (Not Article III) judicial officer, so subject-matter jurisdiction vests under the Federal Magistrates Act only "upon consent of the parties." 28 U.S.C. § 636(c)(1). Such consent is provided in writing and filed with the clerk of the court. [**See Exhibit-A** Appellants Janet L. Nelums: Christopher Nelums, further hold that the signature of a court clerk or judge is generally necessary for appellate review of a final order. In the circumstances of this case, the integrity of the Supreme Court is based on the idea that justices should act with fairness, impartiality, and respect for the law. The court's integrity is important because it helps to maintain public trust in the judicial system. Furthermore, Deutsche Bank National Trust Company prudential mootness-certified by the district court. the panel held that because Deutsche Bank was a quintessential creditor, its claims were third-tier general unsecured liabilities under 12 U.S.C. § 1821(d)(11)(A)(iii), and the district court properly held that Deutsche Bank's claims were prudentially moot, as There were insufficient funds to satisfy general unsecured liabilities. [See

Henrichs, 474 F.3d at 615; see also Deutsche Bank II, 854 F. Supp. 2d at 760 (“The FDIC has made a determination that the assets of IndyMac and IndyMac Federal are insufficient to make any distribution on general unsecured claims and therefore, such claims, asserted or unasserted, will recover nothing and have no value since (Nov. 18, 2009). [See UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT No. 11-56339 D.C. No.2:09-cv-03852-DEUTSCHE BANK NAT’L TRUST CO. V. FDIC Deutsche Bank claims were prudentially moot, as there were insufficient funds to satisfy general unsecured liabilities, Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”); and (2) that § 1821(d)(2)(G)(i)(II) of FIRREA does not preempt a contractual provision that required FDIC to obtain consent from Deutsche Bank before selling the failed bank's servicing rights.

I. BACKGROUND AND PROCEDURAL HISTORY

On August 6, 2002, Appellants Janet L. Nelums: Christopher Nelums, obtained a loan from IndyMac Bank, F.S.B. (IndyMac) that was secured by a mortgage (the Mortgage) encumbering the property acquired by Appellants Janet L. Nelums: Christopher Nelums (the Property). The Mortgage states that The promissory note for the loan (the Note) was made payable to IndyMac, and it identifies IndyMac as the mortgage/lender. On July 11, 2008, IndyMac was closed by the Federal Deposit Insurance Corporation (FDIC). Upon IndyMac’s closure, IndyMac Federal Bank, F.S.B. (IndyMac Federal) was

assigned IndyMac's interest in the Mortgage.

In late 2013, Appellants Janet L. Nelums: Christopher Nelums defaulted on the Note. IndyMac Federal subsequently instituted a non-judicial foreclosure sale. A notice of foreclosure was recorded in the Richland County Circuit Court IN THE COURT OF COMMON PLEAS, and a public auction of the Property was scheduled. The foreclosure auction was conducted in early April 1, 2024. An affidavit regarding the foreclosure sale (Affidavit of Sale) identified "FDIC as Receiver for IndyMac Federal Bank, FSB" as mortgagee and Appellants Janet L. Nelums: Christopher Nelums as mortgagor. The highest bidder at the auction was listed as "Deutsche Bank National Trust Company" (Deutsche Bank). A deed was filed in Richland County Circuit Court Forged by attorney BEN N. MILLER III, identifying the grantor as FDIC as Receiver for "IndyMac Bank, FSB" and the grantee as Deutsche Bank (the Deed). Deutsche Bank then mailed a written notice to vacate to the occupants of the Property known as 813 N. Highland Forest Drive, Columbia, South Carolina. Appellants Janet L. Nelums: Christopher Nelums remained on the premises.

A. Ejectment Complaint, Motion for Summary Judgment,

Deutsche Bank filed a Verified Complaint for Ejectment (ejectment action) against Appellants Janet L. Nelums: Christopher Nelums in the Circuit, Court of the Richland County (Circuit, court) seeking a judgment and writ of Possession of Property. Deutsche Bank subsequently filed a Motion for Summary Judgment and Writ of Possession (Motion for Summary Judgment) asserting that, through its purchase at the non-judicial foreclosure sale, it became the fee simple owner of the Property and was entitled to possession.

In response to the Motion for Summary Judgment, Appellants Janet L. Nelums: Christopher Nelums challenged the validity of Deutsche Bank's interest in the Property, arguing, inter alia, that IndyMac's assignment of the Mortgage to IndyMac Federal was fraudulently conducted seven months after the FDIC's closure of IndyMac. Further, Appellants Janet L. Nelums: Christopher Nelums asserted, the Deed conflicted with the Affidavit of Sale because the Deed listed "FDIC as Receiver for IndyMac Bank, FSB" as the grantor whereas the Affidavit of Sale listed "FDIC as Receiver for IndyMac Federal, F.S.B." as the mortgagee. Thus, Appellants Janet L. Nelums: Christopher Nelums contended, neither IndyMac nor IndyMac Federal had contractual authority to conduct the power of sale or the non-Judicial foreclosure conveying the Property to Deutsche Bank. Because title to the Property was in dispute, Appellants Janet L. Nelums: Christopher Nelums concluded, summary judgment was inappropriate and the Circuit Court lacked jurisdiction under Fed. R. Civ P. 73(b)(1). 28 U.S.C. §636(c)(1) and 28 U.S.C. §636(c)(2), to hear the case.

Appellants Janet L. Nelums: Christopher Nelums also filed a complaint in the Circuit Court of Richland County (circuit court action) naming Deutsche Bank; IndyMac Federal; OneWest Bank, F.S.B.; and as defendants and asserting various claims of fraud pertaining to the title of the Property. 2

See: United States v. Throckmorton, 98 U.S. 61(1878) established the well settled doctrine at law that fraud vitiates everything, to include judgments,

orders, rulings and proceedings, and all judges of all courts of the United States, the reason **Fraud upon the Court by Officers of the Court has no statute of limitations** is because it can never be, as a check on balance of judicial powers, that an officer of the court may use an inherent level of trust and influence upon the system in the hope that an intentional Deception need only skate by a time pathway to succeed. **Fraud** any type of fraud related to the property will also result in a title defect. In the event a False deed was accepted as legitimate, and is later found to be fraudulent, it creates confusion around who the legal title holder is, resulting in a cloud on title. A deed that is forged “Lacks the voluntariness of conveyance.” **Faison v. Lewis**, 25 N.Y.3d 220, 224 (2015) (citation omitted). Accordingly, a deed with a forged signature “holds a unique position in the law; a legal nullity at its creation is never entitled to legal effect because void things are as no things.” Faison, 25 N.Y.3d at 224 (citation, internal quotation marks and brackets omitted). The Court in Faison held that since a deed with a forged signature is “void ab initio” (that is, it has no legal effect from inception), a statute of limitations defense is unavailable. Faison, 25 N.Y.3d at 222. A forged deed “cannot convey good title” nor can one become a “bona fide purchaser of real estate ... from one who never had any title....” Faison, 25 N.Y.3d at 224-25 (citations, internal quotation marks and brackets omitted). **See also Wu v. Wu**, 288 A.D.2d 104 (1st Dept. 2001). Along the same lines, “no property shall be encumbered, including by a mortgagee, in

reliance on a forged deed.” Faison, 25 N.Y.3d at 225-26 (citations omitted).

The Court of Appeals held that a forged deed is void ab initio and not subject to a statute of limitations defense because “[t]hat legal status cannot be changed, regardless of how long it may take for the forgery to be uncovered.” Faison, 25 N.Y.3d at 226. [also See NOTICE TO POTENTIAL BIDDERS: If you are

considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitles you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder’s office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property. **Fraud upon the court**" has been defined by the 7th Circuit Court of Appeals to "Embrace that species of fraud which does, or attempts to defile the court itself, or is a fraud perpetrated by

officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

Kenner v.C.I.R., 387 F.3d689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "decision produced by fraud upon the court is not in essence a decision at all and never becomes final. In addition, any ruling that involves violation of due process. Of law under the Fifth, Sixth, or Seventh Amendments is also a void judgment. Void judgment Can be attacked or vacated at any time and there is no statute of limitation. **See Long v. Shorebank Development Corp.**, 182 F.3d 548 (C.A. 7 Ill. 1999). A void Judgment is one which, from its inception, was a complete nullity and without Legal effect, **Lubben v.Selective Service System Local Bd.** No. 27, 453 F.2d 645, 14 A.L.R.Fed. 298 (C.A. 1 Mass. 1972). **Statute of limitations** interestingly, fraud on the court is the one of the only remedies in law that does not have a time limit to set aside the judgment that was obtained by the fraud on the court.

B. Appellants Motion for Sanctions

On December 18, 2024, Appellants Janet L. Nelums: Christopher Nelums submitted a motion for SCRCR Rules 269 South Carolina Statutes, S.C. R. Civ. P. 11, South Carolina Rules of Appellate Procedure, and Rule 38, Federal Rules motion for costs and fees based upon Court Rules of Civil Procedure, (Motion for Sanctions) for the filing of a “false verified complaint.” Relying upon evidence and proceedings in the circuit court

action, Appellants Janet L. Nelums: Chrisopher Nelums argued that Deutsche Bank had no right to possession of the Property and that its counsel negligently and recklessly failed to make any reasonable inquiry into the validity of Deutsche Bank's title claims prior to filing the ejectment action.⁶ Thus, Appellants Janet L. Nelums: Chrisopher Nelums, argued, sanctions against both Deutsche Bank and its counsel was necessary because the ejectment action lacked a factual basis, was frivolous, and was brought for improper purposes. Accordingly, Appellants Janet L. Nelums: Chrisopher Nelums requested that The Court of Appeals under SCRCP Rules 269 South Carolina Statutes, S.C. R. Civ. P. 11, South Carolina Rules of Appellate Procedure, and Rule 38, Federal Rules of Appellate Procedure and enter an award for all attorney's fees and costs Appellants Janet L. Nelums: Chrisopher Nelums incurred in defending the ejectment action, with interest. NELSON MULLINS RILEY & SCARBOROUGH LLP, firm was "malicious and deliberate" abuse of process. And attorneys Matthew A. Abee, SC Bar No. 101100, Madison C. Guyton, SC Bar No.105205, in two lawsuits filed in the State of South Carolina. The South Carolina lawsuits claimed that the ongoing action against Appellants pro se litigants, Janet Nelums & Chris Nelums in STATE OF SOUTH CAROLINA, IN THE COURT OF COMMON PLEAS, COUNTY OF RICHLAND, **CASE: NO. 2017CP4001687**, was frivolous and sought an order for its dismissal. In THE STATE OF SOUTH CAROLINA, In the Court of Appeals **No. 2024-001062**, On October 1, 2024, Respondent served and filed its motion to

dismiss. On Oct 23, 2024, This Court deny Respondent's motion to dismiss, The Appellants pro se litigants, Janet Nelums & Chris Nelums “in fact” this misconduct of the law firms was in direct defiance of the South Carolina Circuit Court’s adjudicative function See: State v. Price (2023), and that the court is within its discretion in imposing the sanctions award.

Scott and Corley, P.A firm was “malicious and deliberate” abuse of process.

And attorney Reginald P. Corley Bar #: 69453 in two lawsuits filed in the State of South Carolina. The South Carolina lawsuits claimed that the ongoing action against Appellants pro se litigants, Janet Nelums & Chris Nelums in STATE OF SOUTH CAROLINA, IN THE COURT OF COMMON PLEAS, COUNTY OF

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Mckenzie Lybrand, LLP, was “malicious and deliberate” abuse of process.

And attorney Ben N. Miller, III SC Attorney Bar # :3977 (“special referee.”) in two lawsuits filed in the State of South Carolina. The South Carolina lawsuits

claimed that the ongoing action against Appellants pro se litigants, Janet Nelums & Chris Nelums in STATE OF SOUTH CAROLINA, IN THE COURT OF COMMON PLEAS, COUNTY OF RICHLAND, CASE: NO. 2017CP4001687, was frivolous and sought an order for its dismissal. In THE STATE OF SOUTH CAROLINA, In the Court of Appeals No. 2024-001062, On October 1, 2024, Respondent served and filed its motion to dismiss. On Oct 23, 2024, This Court deny Respondent's motion to dismiss, The Appellants pro se litigants, Janet Nelums & Chris Nelums “in fact” this misconduct of the law firms was in direct defiance of the South Carolina Circuit Court’s adjudicative function See: State v. Price (2023), and that the court is within its discretion in imposing the sanctions award.

Curtis & Croft, LLC, was “malicious and deliberate” abuse of process.

And attorney Kristi F. Curtis Bar #: 8595, in two lawsuits filed in the State of South Carolina. The South Carolina lawsuits claimed that the ongoing action against Appellants pro se litigants, Janet Nelums & Chris Nelums in STATE OF SOUTH CAROLINA, IN THE COURT OF COMMON PLEAS, COUNTY OF RICHLAND, CASE: NO. 2017CP4001687, was frivolous and sought an order for its dismissal. In THE STATE OF SOUTH CAROLINA, In the Court of Appeals No. 2024-001062, On October 1, 2024, Respondent served and filed its motion to dismiss. On Oct 23, 2024, This Court deny Respondent's motion to dismiss, The Appellants pro se litigants, Janet Nelums & Chris Nelums “in fact” this misconduct of the law firms was in direct defiance of the South Carolina

Circuit Court's adjudicative function See: State v. Price (2023), and that the court is within its discretion in imposing the sanctions award.

1. The aim of Rule 11 is to "curb abuses of the judicial system,"¹ and to require litigants to refrain from conduct that frustrates Rule 1's goal of the "just, speedy, and inexpensive determination of every action."²

2. Rule 11 imposes two basic categories of duties: when presenting a paper to the court, the presenter certifies that (1) the paper is not presented for an improper purpose: and (2) reasonable inquiry was made into the factual and legal contentions made.

3. It is professional misconduct for a lawyer such as Kristi F. Curtis, The Attorney Ben N. Miller, III SC Bar No. 3977 was appointed as special referee, Matthew A. Abee, SC Bar No. 101100, Mary S. Williams, SC Bar No. 105883, Attorney Ronald C. Scott SC Bar: 4996, Attorney Reginald Patrick Corley SC Bar No.69453 and their chain of command to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

(c) Engage in conduct involving dishonesty, **Fraud**, deceit or misrepresentation.

4. Please look at entire court record filings, at Circuit court and appellate

court to get the WHOLE BIG picture.

5. We also had to file a document in Circuit court showing how all the attorney is misleading the courts.

These attorneys(s) have shown a pattern

¹Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 397 (1990)

²Fed. R. Civ. P. 1; Fed. R. Civ. P. 11 advisory committee's notes (1993).

6. **Another basis for sanctions lies in 28 U.S.C. § 1927, which serves “to Deter unnecessary delays in litigation.” Oliveri v. Thompson, 803 F.2d 1265, 1273 (2d Cir. 1986)**

7. Rule 11 authorizes the court to sanction both attorneys and their clients.

8. **Second, Rule 11(b)(2) states that any claims, defenses, or legal contentions presented to the court must be grounded in existing law, asserted to extend, modify, or reverse existing law, or establish new law**

9. Rule 11(b) enumerates four standards to which litigants and counsel must adhere when presenting materials to the court. First, Rule 11(b)(1) requires that The papers are not presented for an improper purpose. Prohibited improper purposes include harassment, unnecessary delay, and the needless increase in the cost of litigation

10. Rule 11 also imposes an obligation on counsel to make a reasonable inquiry to determine the accuracy of assertions made in motion papers.

11. The "reasonable inquiry" requirement imposes on the attorney a duty to stop and investigate the legal and factual basis for a claim or defense before

making it in writing Coonts v. Potts, 316 F.3d 745, 753 (8th Cir. 2003).

12. Safe harbor under Rule 11 is not appropriate/applicable for this case as raised by lawyer such as Kristi F. Curtis, The Attorney Ben N. Miller, III SC Bar No. 3977 was appointed as special referee, Matthew A. Abee, SC Bar No. 101100, Mary S. Williams, SC Bar No. 105883, Attorney Ronald C. Scott SC Bar: 4996, Attorney Reginald Patrick Corley SC Bar No.69453 because.

13. All attorneys above already knows that they made false statement as per Our filing in Circuit Court and, In the Court of Appeals on October 1, 2024; DBNTC moved to dismiss the appeal and for sanctions, which this Court denied. (Order, Oct. 23, 2024), which misled this court.

14. Wilder v. GL Bus Lines, 258 F.3d 126 (2d Cir.2001), stating that Rule 11 sanctions are appropriate "where the attorney has negligently or recklessly failed to perform his responsibilities as an officer of the court." Id. at 128. **Finally, he reasoned that "[s]ince the Court as an institution has a far greater interest in weeding out abuses than does any individual litigant, there is no reason not to apply** the well-established 'objective reasonableness' standard to Rule 11 proceedings initiated by the Court."

15.

Federal Rule of Appellate Procedure 46 Rule (1) (c) Serious Crime. Serious crime means (2) any lesser crime a necessary element of which, as determined by statutory or common law definition of such crime in the jurisdiction where the conviction occurred, is (i) interference with the administration of justice, (ii) false swearing, (iii) misrepresentation, (iv) fraud, (vi) deceit, (vii) bribery, (viii)

extortion, (ix) misappropriation, (xi) an attempt or conspiracy or solicitation of another to commit a serious crime.

FRCP Rule 3. Types of Discipline (a) Discipline for Misconduct. Discipline for attorney misconduct may consist of disbarment, suspension for a definite period, monetary sanction, public reprimand, private reprimand, or any other disciplinary action that the court deems appropriate.

FRCP Rule 3 (b) Disbarment. Disbarment is the presumed discipline for conviction of a serious crime.

FRCP Rule 3 (d) Sanctions under other Provisions. Assessment of damages, costs, expenses, or attorney fees

16. "Rule 11 authorizes a court to sanction a party who submits a pleading for an improper purpose." **Smith v. Psychiatric Sols., Inc.**, 750 F.3d 1253, 1260 (11th Cir. 2014) [24 Fla. L. Weekly Fed. C1307a] (citing Fed. R. Civ. P. 11(b)(1)).

17. Inherent Power of the Courts, **Inherent Authority and their chilling effect on development of common law**

The Supreme Court has held that federal courts have the power to impose sanctions pursuant to the court's inherent power even if the violation is subject to sanctions under existing statutes or rules.

Federal Courts are empowered to "protect the administration of justice by levying sanctions in response to abusive litigation practices." **Kovilic Const. Co., v. Missbrenner**, 106 F.3d 768, 772- 73 (7th Cir. 1997); **Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co.**, 771 F.2d 5, 11 (1st 3rd Cir. 1985), cert. denied, 475 U.S. 1018 (1986), quoting **Penthouse Int'l, Ltd. v. Playboy Enters.**, 663 F.2d 371, 386 (2d Cir. 1981).

The source of the court's inherent power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." **Link v. Wabash R.R.**, 370 U.S. 626, 630-631 (1962). **See also Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co.**, 771 F.2d 5, 11 (1st Cir. 1985), cert. denied, 475 U.S. 1018 (1986). That authority extends to all matters that come before the court. There is no limitation as to the type of proceedings - criminal or civil, trial or appeal - in which sanctions may be issued.

In addition to powers deriving from rule or statute, courts also have inherent authority to sanction litigation misconduct when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." **Alyeska Pipeline Service Co.v. Wilderness Society**, 421 U.S. 240, 258-59 (1975) (citations omitted).

Such power is governed "by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."

³The Inherent Power of the Court (<http://www.federalpracticemanual.org/chapter4/section2>)

The sanctioning power of the federal courts "is not limited to what is enumerated in statutes or in the rules of civil procedure."⁹⁴ Federal courts have the inherent power to punish persons who abuse the judicial process. The inherent power of the court is an "implied power squeezed from the need to make the courts function."⁹⁵ Rule 11 and § 1927 do not displace the court's inherent power, but instead they exist concurrently.⁹⁶

The inherent power to sanction is broad.⁹⁷ The scope of the power reaches "any abuse" of the judicial process.⁹⁸ This includes the authority to sanction for conduct that occurs outside of the courtroom and is not limited to attorneys or

parties.⁹⁹ Courts also have broad discretion to determine the appropriate sanction to be imposed.¹⁰⁰

Use of the power will be reviewed under the abuse of discretion standard.¹⁰⁵

Accordingly, the Supreme Court has advised that courts "ordinarily should rely on the Rules rather than the inherent power" if there is bad faith misconduct that can adequately be sanctioned under applicable rules or statutes. *Id.* If, however, "Neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power." *Id.*

Inherent power sanctions are the quintessential gap filler of sanctions law. In the leading modern decision, **Chambers v. Nasco, Inc.**, 501 U.S. 32 (1991), the Supreme Court made clear that the existence of a sanctioning scheme in statutes and rules does not displace the court's inherent power to impose sanctions for bad faith conduct. Whereas rules-based sanctions "reach only certain individuals or conduct, the inherent power extends to a full range of litigation abuses" and "at the very least . . . must continue to exist to fill in the interstices

18.1 Chambers v. NASCO, Inc., 501 U.S. 32, 46 (1991) (finding that, despite Rule 11 and 28 U.S.C. § 1927 both being potentially applicable, court was not required to resort to using them when **inherent power of court was best suited to facts**); see also Danielle Kie Hart, *And the Chill Goes on--Federal Civil Rights Plaintiffs Beware: Rule 11 Vis-À-Vis 28 U.S.C. § 1927 and the Court's Inherent Power*, 37 Loy. L.A. L. Rev. 645 (2004) (exploring interaction of Rule 11, § 1927, **and inherent power of**

court, and their chilling effect on the development of common law).

(http://www.lawpipe.com/US/Chambers_v_NASCO_Inc.html)

But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules.

Furthermore, when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power. *Id.* at 50

19. A court may also levy sanctions *sua sponte* . a *sua sponte* order to show cause does not allow an attorney the opportunity to withdraw the offending filing. *see 1-10 Industry Associates LLC v. United States*, 528 F.3d 859, 867 (Fed. Cir.2008); *Johnson v. Cherry*, 422 F.3d 540, 551-53 (7th Cir. 2005); *Plaintiffs' Baycol Steering Committee v. Bayer Corp.*, 419 F.3d 794, 809-10 (8th Cir. 2005)

Including actual knowledge and intentional misconduct. Affirmative

misconduct...

In general, requires deliberate action in the face of a known risk, the likelihood or impact of which the actor inexcusably underestimates or ignores." *Id.* at

1219-20. A finding of subjective

4 28 U.S.C. § 1927 (<http://www.federalpracticemanual.org/chapter4/section2>)

Another basis for sanctions lies in 28 U.S.C. § 1927, which serves “to deter unnecessary delays in litigation.”⁸⁰ The statute authorizes sanctions in the form of “excess costs, expenses, and attorneys’ fees” against any attorney who

“multiplies the proceedings in any case unreasonably and vexatiously.” Courts have resorted to § 1927 more frequently since the statute was amended to include attorney fees.⁸³

The scope of authority to sanction under § 1927 is both broader and narrower than Rule 11.⁸⁴ Section 1927 is broader in that the attorney’s behavior is examined throughout the entire litigation, as a “course of conduct,”⁸⁵ while Rule 11 applies to individual filings. The filing of a frivolous complaint, alone, may violate Rule 11, but not § 1927 because such a complaint does not “multiply” the proceedings.⁸⁶ Conversely, a course of conduct can be sanctionable under § 1927 even though the individual filings during that conduct comport with Rule 11 standards.

Section 1927 is narrower because, unlike Rule 11 requirement of objective reasonableness, § 1927 generally requires subjective bad faith.⁸⁷ Some courts, however, interpret § 1927 as authorizing sanctions when attorney conduct falls short of bad faith: “viewed objectively, manifests either intentional or reckless disregard of the attorney’s duties to the court.”⁸⁸ For these courts, malicious intent or bad purpose is not required. Thus, the “circuits are split as to whether § 1927 requires a showing of subjective bad faith or whether mere recklessness is sufficient.”⁸⁹

Since Rule 11 and § 1927 have different standards, courts deciding whether to issue sanctions under both may conduct a separate inquiry into § 1927 and Rule 11. ⁹¹ Sanctions under § 1927 serve both deterrence and compensatory functions. As a result, the amount awarded need not be the least amount necessary to deter subsequent misconduct and is appropriately payable to the opposing party.⁹² The circuits are divided on whether it is not an abuse of discretion for a trial court to reduce a fee award to account for the sanctioned attorney's ability to pay it.⁹³

bad faith requires “willfulness” or “deliberate intent to harm.” *American Hosp.*

Ass'n v. Sullivan, 938 F.2d 216, 221 (D.C. Cir. 1991). **The bad faith must**

also be material to warrant sanctions; in other words, it must have

occurred in an area “critical to the success of [plaintiffs’] case.” *Perichak v.*

Int'l Union of Electrical Radio & Machine Workers, 715 F.2d 78, 84 & n.9

(3d Cir. 1983); see also *Ass'n of Amer. Physicians & Surgeons, Inc. v. Clinton*,

187 F.3d 655, 661 (D.C. Cir. 1999)

In re Pennie & Edmonds, 323 F.3d 86 (2d Cir. 2003) (holding that subjective Bad faith is required when court issues sanctions *sua sponte*, thereby not permitting attorney to withdraw filing under safe harbor provision).

By declining to make the "safe harbor" provision applicable to court-initiated show cause orders, the Committee was signalling that the unavailability of an opportunity to withdraw or correct makes the sanction appropriate for conduct "akin to contempt," conduct that traditionally requires a heightened *mens rea* standard. We believe we implement the Committee's expectation by applying a contempt-like *mens rea* standard to court-initiated show cause orders issued where there is no opportunity to withdraw or correct. We note that the Advisory Committee considered and rejected a proposal to provide "safe harbor" protection for court-initiated sanctions:

C. Disqualification Standard

Canon 3E(I) of the South Carolina Code of Judicial Conduct provides a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. The Commentary to 3E(I) states that under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(I) apply. The question whether disqualification of a judge is required focuses on those matters from which a litigant may

Reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. A judge has a duty to disclose

information that the litigants or their counsel might consider pertinent to the issue of disqualification. A judge's obligation to disclose relevant information is broader than the duty to disqualify. **Stevens v. Americana Healthcare Corp.** of Naples, 919 So.2d 713, Fla. App. 2 Dist., 2006

That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned."

Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). **In Pfizer Inc. v. Lord**, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he Believes that he has received justice."

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S. Ct. 1038 (1960), citing **Offutt v. United States**, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice." Recusal under Section 455 is self-executing: a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances."

Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). Further, *the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification*. The Seventh Circuit Court of Appeals further stated that "We think that this language [455(a)] imposes a duty on the judge to act sua sponte,

even if no motion or affidavit is filed." Balistrieri, at 1202.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "Appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "Appearance of partiality" and has possibly disqualified himself/herself. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.

Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce". The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). However, some judges may not follow the law.

The Supreme Court has also held that if a judge wars against the Constitution,

or if he acts without jurisdiction, he has engaged in treason to the Constitution.

If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts.

- **28 U.S.C. § 455((a))** Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- **28 U.S.C. § 455((b))** He shall also disqualify himself in the following circumstances:
 - **28 U.S.C. § 455((1))** Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.
 - **28 U.S.C. § 455((2))** Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
 - **28 U.S.C. § 455((3))** Where he has served in governmental employment and in

such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.

- **28 U.S.C. § 455 (i)** Is a party to the proceeding, or an officer, director, or trustee of a party.
- **28 U.S.C. § 455 (ii)** Is acting as a lawyer in the proceeding.
- **28 U.S.C. § 455 (iii)** Is known by the judge to have an Interest that could be substantially affected by the outcome of the proceeding.
- **28 U.S.C. § 455 (d)** For the purposes of this section the following words or phrases shall have the meaning indicated:
 - **28 U.S.C. § 455 (d) (1)** "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.
 - **28 U.S.C. § 455 (d) (2)** the degree of relationship is calculated according to the civil law system.
 - **28 U.S.C. § 455 (d) (3)** "fiduciary" includes such relationships as executor, administrator, trustee, and guardian.
 - **28 U.S.C. § 455 (d) (4)** "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

D. Disqualification For Conflict of Interest

I MOVE TO DISQUALIFY United States Magistrate Judge

The Honorable Hon. Jeffrey M. Tzerman Bar #: 5667 County: Kershaw for 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. On June 29, 2021). lack subject-matter jurisdiction under See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize nor the district court otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections. AO Form 85, Notice, Consent, and Reference of a Civil Action to a Magistrate Judge was not. Signed-ORDER OF REFERENCE TERMINATE [See Exhibit-A]

I MOVE TO DISQUALIFY United States Magistrate Judge

The Honorable Hon. Kristi Fisher Curtis Bar #: 8595, for Sanctions and Gatekeeper Order, Oct. 31, 2023). lack subject-matter jurisdiction under See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize nor the district court otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections. AO Form 85, Notice, Consent, and Reference of a Civil Action to a Magistrate Judge was not. Signed-ORDER OF REFERENCE TERMINATE [See Exhibit-A]

I MOVE TO DISQUALIFY United States Magistrate Judge

The Honorable Hon. Ben N. Miller, III, the Special Referee for Richland

County, Attorney SC Bar # :3977, for The Honorable Ben N. Miller, III was appointed as special referee and then sold the property at foreclosure in April 1 2024, Foreclosure Order, On May I 3,15 2024,). lack subject-matter jurisdiction See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize nor the district court otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections. AO Form 85, Notice, Consent, and Reference of a Civil Action to a Magistrate Judge was not. Signed-ORDER OF REFERENCE TERMINATE [**See Exhibit-A**

I MOVE TO DISQUALIFY United States Magistrate Judge The Honorable Hon. Kristi Fisher Curtis Bar #: 8595, her Order appointing the undersigned as Special Referee to conduct a foreclosure sale and to issue related post-sale documents. January 9, 2024). lack subject-matter jurisdiction under See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize nor the district court otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections. AO Form 85, Notice, Consent, and Reference of a Civil Action to a Magistrate Judge was not. Signed-ORDER OF REFERENCE TERMINATE [**See Exhibit-A**

“The Court take judicial notice that the clerk of court COUNTY OF RICHLAND IN THE COURT OF COMMON PLEAS CASE NO. 2017-CP-40-01687 never sent the parties the original consent. notice 28 U.S.C. §§ 636(c)(1) &

(c)(3). 28 U.S.C. §636(c)(2). AO Form 85 Notice, Consent, and Reference of a Civil Action to a Magistrate Judge was not. Signed-**[See Exhibit-A]**

I MOVE TO DISQUALIFY NELSON MULLINS RILEY & SCARBOROUGH LLP, Matthew A. Abee, SC Bar No. 101100 Madison C. Guyton, SC Bar No.105205, Mary S. Williams, SC Bar No. 105883, lack subject-matter jurisdiction under See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize nor the district court otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections. AO Form 85, Notice, Consent, and Reference of a Civil Action to a Magistrate Judge was not. Signed-**ORDER OF REFERENCE TERMINATE** **[See Exhibit-A]**

I MOVE TO DISQUALIFY United States Magistrate Judge The Honorable Hon. Kristi Fisher Curtis Bar #: 8595, for Sanctions and Gatekeeper Order, Oct. 31, 2023). lack subject-matter jurisdiction under See 28 U.S.C. § 636(b)(2), under 28 U.S.C. § 636(c)(1), 28 U.S.C. §636(c)(2). is not authorize nor the district court otherwise complied with the requirements and 28 U.S.C. §§ 636(c)(1) & (c)(3). of the sections. AO Form 85, Notice, Consent, and Reference of a Civil Action to a Magistrate Judge was not. Signed-**ORDER OF REFERENCE TERMINATE** **[See Exhibit-A]**

“The Court take judicial notice that Also See FED. R. Civ. P. 53(b) (limiting nonjury master appointments to "exceptional" conditions); note 76 infra (construction of exceptional conditions). These restrictions apply to magistrates serving as special. Master’s except when the parties’ consent to the master reference. 28 U.S.C. § 636(b)(2) (1976); see note 43 infra. This subdivision

implements the blind consent provision of 28 U.S.C. §636(c)(2) and is designed to ensure that neither the judge nor the magistrate attempts to induce a party to consent to reference of a civil matter under this rule to a magistrate with regard to the case-dispositive consent authority of magistrate judges, the Court added specifically, that “[c]onsistent with Our precedents, the Courts of Appeals have unanimously upheld the constitutionality of 28 U.S.C. § 636(c).” Id. at 1948 n.12

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.

E. Jeffrey M. Tzerman—Order of Recusal

On November 16, 2022, at 11:27 AM, By Order Judge Jeffrey M. Tzerman recused himself as Special Referee in the case. And Tzerman cancelled the Foreclosure Sale on the Plaintiffs Property and stated that he carefully reviewed the Neelum’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 **[See Exhibit-B**

F. Challenge the Jurisdiction of the Circuit Court

TAKE NOTICE: that We, the Plaintiff Appellants Janet L. Nelums: Christopher Nelums, here by Challenge the Jurisdiction of the Court which is the legal procedure for resolving the issue of judicial authority. This measure is necessary in the light of the fact that the Judicial Officer intends to summarily conduct these proceedings without the Court obtaining my clear and unequivocal Consent to be without a Jury, which is in accordance with the mandates of English Common Law for the administration of Justice – with Justice being “the protection of rights and the punishment of wrongs”. This Challenge to the Jurisdiction of the Court is to be determined by a Special Jury.

G. CHALLENGE GROUNDS:

This Challenge to the Jurisdiction of the Court is made on all grounds, including Subject Matter, Relationship and Competency. In any action, both parties must give their clear and unequivocal consent to be without a Jury. Without that consent, the Court has no Jurisdiction to proceed summarily, and the Jurisdiction of the Court must be challenged. This Challenge can only be judged by a Special Jury. Should a Judge or Magistrate disregard or dismiss this Challenge, then he or she is liable to punishment for Contempt of Court, which is “interfering with the administration of Justice, as defined above. Should a Judge or Magistrate disregard or dismiss this Challenge, that is a violation of Due Process and the Rule of Law.

Challenge of the Jurisdiction of the Court, and of the Judge necessary regarding to these matters and causes and to prove constitutional judicial standing required for this Court and its Judge(s) before they can proceed one step further, as all proceedings must stop upon a challenge of a court’s jurisdiction to hear the case.

A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court

must have the authority to decide that question in the first instance.” Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S. Ct. 1409.

“Once challenged, jurisdiction cannot be assumed, it must. Be proved to exist.” Stuck v. Medical Examiners, 94 Ca 2d 751. 211 P2d 389. The burden shifts to the court to prove jurisdiction.” Rosemond v. Lambert, 469 F2d 416.

“A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property.” Norwood v. Renfield, 34 C 329; Ex parte Giambonini, 49 P. 732. There is no discretion to ignore lack of jurisdiction.” Joyce v. U.S. 474 2D 215.

“Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted.” Latana v. Hopper, 102 F. 2d 188; Chicago v. New York, 37 F Supp. 150.

The law provides that once State and Federal Jurisdiction has been challenged, it must be proven.” Main v. Thiboutot, 100 S. Ct. 2502 (1980).

“A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well-established law that a void order can be challenged in any court”. **OLD WAYNE MUT. L. ASSOC. v. McDONOUGH**, 204 U. S. 8, 27 S. Ct. 236 (1907).

H. JURISDICTION CANNOT BE WAIVED

The principles of waiver, consent, and estoppel do not apply. to jurisdictional issues—the actions of the litigants cannot vest a district court with jurisdiction above the limitations provided by the Constitution and Congress.

United States Magistrate Judge the Honorable Kristi F. Curtis,

The Honorable Ben N. Miller, III was appointed as special referee

The Courts of Appeals have unanimously upheld the constitutionality of 28 U.S.C. § 636(c)(1).” *Id.* at 1948 n.12.

I. Fraudulent Concealment

Do Fraud upon the Court, Fraud upon the Judge, and Fraud upon the Officers of the Court affect a court’s jurisdiction (“YES”) ***See: United States v. Throckmorton***, 98 U.S. 61(1878) established the well settled doctrine at law that fraud vitiates everything, to include judgments, orders, rulings and proceedings, and all judges of all courts of the United States, to

6 The people of the United States and the people of South Carolina, respectively, the State, have a strong interest in protecting their constitutional rights The constitutional right of specific interest of the Appellants Janet L. Nelums: Chrisopher Nelums is the peoples’ constitutional right to a fair proceeding overseen by an impartial judge lawful ordained under constitutional judicial power by the people through their Secretary of State pursuant to the Constitution for the United States of America (1789), and said judge (and officers of the court) to not be disqualified from acting as a judge pursuant to South Carolina Constitution, Article 6. 18(a); and is in breach of U.S. Constitution, Article III, Section 1 requiring a “good behaviour.”

The Supreme Court of the United States possesses the power to investigate, question and overturn cases that were decided in lower courts to ensure “EQUAL JUSTICE UNDER LAW” as written above the main entrance to the Supreme Court Building.

Second, when "Jurisdiction, once challenged, cannot be Assumed and must be decided." ***Maine v. Thiboutot***, 100 S. Ct. 250 and the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; [...] and all persons

concerned in executing such judgments or sentences, are considered, in law, as trespassers." **Elliot v. Piersol**, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

Third, courts are required to follow the decisions of higher courts in the same jurisdiction

Fourth, Federal law & Supreme Court cases apply to state. court cases.”

Howlett v. Rose, 496 U.S. 356 (1990). Fifth, this case illustrates the deliberately planned and carefully executed scheme to defraud, directed to the judicial machinery itself, with fabrication of evidence by Respondents in which the attorney and judge are implicated. Coupled with defiance of the higher court, lacking jurisdiction and ignoring Federal law, the main case, now over years-old, has been afforded no discovery, no opportunity to defend, remains in a stayed status and has Appellants Janet L. Nelums: Chrisopher Nelums, under a crippling preliminary entry.

Fraud upon the Court by Deutsche Bank National and their Counsels of Record, Attorney / Judge Kristi F. Curtis, SC Bar No. 8595 County: Sumter, the attorney Ben N. Miller, III SC Bar No. 3977 was appointed as special referee, Matthew A. Abee, SC Bar No. 101100, Mary S. Williams, SC Bar No. 105883, Attorney Ronald C. Scott SC Bar: 4996, Attorney Reginald Patrick Corley SC Bar No.69453, help the party to conceals some material fact within his own knowledge, which it is his duty to disclose, Non-disclosure by Deutsche Bank National and their Counsels of Record, Attorney / Judge Kristi F. Curtis, SC Bar No. 8595 County: Sumter, the attorney Ben N. Miller, III SC Bar No. 3977 was appointed as special referee, Matthew A. Abee, SC Bar No. 101100, Mary S. Williams, SC Bar No.105883, Attorney Ronald C. Scott SC Bar: 4996, Attorney Reginald Patrick Corley SC Bar No.69453, becomes fraudulent concealment. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (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. Ardis v. Cox, 431 S.E.2d 267, 269 (S.C. Ct. App. 1993).

A second species of fraud exists, fraudulent concealment. As the South Carolina Supreme Court explained: In the case of Holly Hill Lumber Co. v. McCoy, 201 S.C. 427, 23 S.E.2d372, we held that were either party to a transaction conceals some material fact within his own knowledge, which it is his duty to disclose, he is guilty of actual fraud. Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. Lawson v. Citizens & S. Nat. Bank of S.C., 193 S.E.2d 124, 126 (S.C. 1972).

Nondisclosure is fraudulent when there is a duty to speak.

Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. Pitts v. Jackson Nat. Life Inc. Co., 574 S.E.2d 502, 002) (citations and quotations omitted)

“The Court take judicial notice that on 11/18/19 Appellants Janet L. Nelums: Chrisopher Nelums, received by US mail from Specialized Loan Servicing LLC (SLS), address 8742 LUCENT BOULEVARD, SUITE 300 HIGHLANDS RANCH, CO 80129, Mortgage Statement, Account Number 1008919314 Payment Date 12/01/19 \$13,402.61, Janet L. Nelums Property Address: 813 N. Highland Forest Dr, Columbia, SC 29203-1929[**See Exhibit-C,**

“The Court take judicial notice that 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; C/A No. 18-05885-JW Adv. Pro. No. 19-80032-JW Chapter 13 ORDER

“The Court take judicial notice that 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. [See Exhibit-D

“The Court take judicial notice that On August 6, 2002, Plaintiff executed and gave a note in the amount of \$112,000 to IndyMac Bank, F.S.B. (“Note”). [See Exhibit-D

“The Court take judicial notice that 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”). [See Exhibit-D

“The Court take judicial notice that 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”). [See Exhibit-D

“The Court take judicial notice that 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.”). [**See Exhibit-D**

“The Court take judicial notice that 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 11U.S.C. § 1322(a)(5) and does not provide a cure of Plaintiff’s pre-petition arrearage.”). [**See Exhibit-D**

“The Court take judicial notice that 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 prepetition default of \$121,753.45.3 The proof of claim included a copy of the original indorsed Note, the Mortgage, and the Assignment. [**See Exhibit-D**

“The Court take judicial notice that On January 31, 2020, SLS filed its Motion for Summary Judgment and Plaintiff filed an Amended Motion for Summary Judgment. [**See Exhibit-D**

“The Court take judicial notice that 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 [See Exhibit-D]

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.

"The Court take judicial notice on November 26, 2019, SLS filed an affidavit of Shane Ellis, an Assistant Vice President of SLS, to authenticate the Note and Mortgage. For payment [See Exhibit-D]

"The Court take judicial notice that Matthew A. Abee, SC Bar No. 101100, Mary S. Williams, SC Bar No. 105883, Attorneys for Respondent Deutsche Bank National Trust Company, Admitted to this Court (Id. at page 5). That Ms. Nelums filed for bankruptcy but Attorneys for Respondent Deutsche Bank conceals to this Court that On January 25, 2019, Deutsche Bank as Trustee through SLS filed a proof of claim stating a total debt amount of **\$218,479.21 that was approved by John E. Waites US Bankruptcy Judge District of South Carolina Entered: 03/17/2020 and dismissed Ms. Nelums petition for bankruptcy. After the facts (Id. at 3). [See Exhibit-D]**

See: MAT, Inc. v. American Tower Asset Sub, LLC., 312 Or App 7 (June 3, 2021). The Oregon Court of Appeals made it very clear that if it is determined that an entity 56, then the statute of limitations tolled and a claim against the bad actor may thus be timely brought. The Court confirmed well settled law that fraudulent concealment of a cause of action by the "Bad actor" constitutes an implied exception to the statute of limitations and postpones the commencement of the running of the statute until reasonable opportunity for discovery of the fact.

Fraudulent concealment may also be defined as the deliberate suppression, hiding, or non-disclosure of an important situation or fact which the employer is legally bound to reveal with an intent to deceive. Fraudulent concealment may

occur when there is a risk of injury on a job, and the employer deliberately conceals that fact. An employer may also commit fraudulent concealment with a direct lie or lying by omission.

J. 1. Argument

Supreme Court of South Carolina. *State v. Price* (2023), (1) the circuit court

And appointed as special referee Shortly thereafter, Special Referee Ben N.

Miller, III issued a Foreclosure Deed and Writ of Assistance, and Appellants

were removed from the Property in October 2024. Foreclosure Deed, May 13,

2024, in fact, which was signed and forged by Special Referee Ben N.

Miller, III fraud Upon Richland County Circuit Court and THE STATE OF SOUTH

CAROLINA In the Court of Appeals [See **Exhibit 5** (Foreclosure Deed) for the

Respondent's Deutsche Bank and counsellors of third parties-that issue

mootness, Return to Motion for Leave to File Sanctions, in which the forged

(Foreclosure Deed) by Special Referee Ben N. Miller, III is attached to the

Appellants Janet L. Nelums: Christopher Nelums Reply Motion [See **Exhibit-E**

See Henrichs, 474 F.3d at 615; see also Deutsche Bank II, 854 F. Supp. 2d at

760 ("The FDIC has made a determination that the assets of IndyMac and

IndyMac Federal are insufficient to make any distribution on general

unsecured claims and therefore, such claims, asserted or unasserted, will

recover nothing and have no value. Ben N. Miller, III did not have the

authority pursuant to section Fed. R. Civ P. 73(b)(1). 28 U.S.C. §636(c)(1) and

28 U.S.C. §636(c)(2), These restrictions apply to magistrates serving as special

Master's except when the parties' consent to the master reference.28 U.S.C.§

636(b)(2) (1976), Circuit Court for an appeal to lie from that order, the issue of

consent is key, because a magistrate is an Article I (Not Article III) judicial officer, so subject-matter jurisdiction vests under the Federal Magistrates Act only “upon consent of the parties.” 28 U.S.C. § 636(c)(1). Such consent is provided in writing and filed with the clerk of the court. and the circuit court did not comply with any of the requirements set forth in the applicable statute, and (2) the circuit court and the clerk of the court did not have the authority pursuant to section 28 U.S.C. § 636(c)(1). Such consent is provided in writing and filed with the clerk of the court of the parties) and there is no indication that Such consent is provided the "Case Management System Public Index" was recorded

K. 2. Argument

United States Magistrate Judge the Honorable Kristi F. Curtis, The attorney Ben N. Miller, III SC Bar No. 3977 was appointed as special referee, Matthew A. Abee, SC Bar No. 101100, Mary S. Williams, SC Bar No. 105883, Attorney Ronald C. Scott SC Bar: 4996, Attorney Reginald Patrick Corley SC Bar No.69453, The Courts of Appeals have unanimously upheld the constitutionality of 28 U.S.C. § 636(c)(1).” *Id.* at 1948 n.12.

• PART 52—PROCEEDINGS BEFORE U.S. MAGISTRATE JUDGES

§ 52.01 Civil proceedings: Special master, pretrial, trial, appeal.

(a) Sections 636 (b) and (c) of title 28 of the United States Code govern pretrial and case-dispositive civil jurisdiction of magistrate judges, as well as service by magistrate judges as special masters.

L.3. Argument issue mootness

Since 2009 Deutsche Bank and their counsellors are third-tier, general unsecured liabilities under 12 U.S.C. § 1821(d)(11)(A)(iii), and the district court properly held that Deutsche Bank's claims were prudentially moot, as there were insufficient funds to satisfy general unsecured liabilities, 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, ("The FDIC has made a determination that the assets of IndyMac and IndyMac Federal are insufficient to make any distribution on general unsecured claims and therefore, such claims, asserted or unasserted, will recover nothing and have no value.

M.4. Argument

This appeal stems from a wrongful foreclosure action involving 813 N. Highland Forest Drive, Columbia, South Carolina 29203, when the lender foreclosed on a property without proper legal grounds, and often due to errors, negligence, or intentional misconduct in the foreclosure process, (the "Property"), pending in some form since 2013. The harassment by 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. ("SLS"). before and after Specialized Loan Servicing, LLC, are third party tier and Specialized Loan Servicing LLC, as servicing

agent for Deutsche Bank National Trust Company, **On March 17, 2020**, Deutsche Bank as Trustee through SLS filed a proof of claim stating a total debt amount of **\$218,479.21**, Deutsche Bank as Trustee through SLS filed a proof of claim stating a total debt amount **of \$218,479.21, 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. [**See Exhibit-D**]

“The Court take judicial notice on Appellants Janet L. Nelums:

Chrisopher Nelums has Article III standing to seek statutory damages from Specialized Loan Servicing, LLC; Deutsche Bank, the mortgage servicers for its violations of **South Carolina. SECTION 29-3-320**. Liability for failure to enter satisfaction. mortgage-satisfaction-recording statutes, these statutes require. mortgage lenders and Servicers to record satisfactions of mortgage (Also known as “certificates of discharge”) within thirty days of the borrowers. repayment: a failure renders the lender and Servicers “liable to the mortgagor” for increasing statutory damages in amounts. dependent on the tardiness of the ultimate filing. Here, the Bank and Servicers did not record the satisfaction of the Lewis’ mortgage,

N. 5. Argument

See Miller v. US, 230 F 486, 489. “There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights.”

Contempt of court can involve acts of omission. Criminal contempt is harassment of another party i.e. Appellants Janet L. Nelums: Christopher Nelums. Specialized Loan Servicing, LLC; Deutsche Bank National and their Counsels of Record, Attorney / Judge Kristi F. Curtis, SC Bar No. 8595 County: Sumter, the attorney Ben N. Miller, III SC Bar No. 3977 was appointed as special referee, Matthew A. Abee, SC Bar No. 101100, Mary S. Williams, SC Bar No. 105883, Attorney Ronald C. Scott SC Bar: 4996, Attorney Reginald Patrick Corley SC Bar No.69453 has shown both civil and criminal contempt of court.

O. 6. Argument

In The Court of Appeals Order Filed Oct 23, 2024, by Judge H. Bruce Williams, On September 12, 2024, Appellants filed their initial brief. On September 19, 2024, Respondent served and filed its motion to dismiss. On October 1, 2024, Appellants moved to amend their initial brief. **No returns were filed.** After careful consideration, we deny Respondent's motion to dismiss and alternative request to dispense with further briefing and affirm the order of the trial court. This court will consider the merits of this appeal after briefing is complete. Respondent's motion for sanctions is also denied. ¹ See ²18L[Fed. R. App. P. 38].is considered abandoned where he fails to properly prosecute his appeal or does some act inconsistent with its prosecution, such as when he refuses to submit himself to the jurisdiction of the authorities. At [38]

See; In Perez v. Deutsche Bank Trust Co. (3D09-504), the Third District

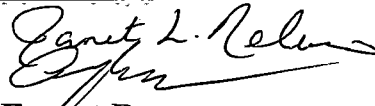
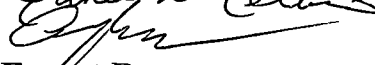
highlighted one possible penalty for failing to timely file an appellate brief.

The Appellee was excluded from oral argument and lost the appeal.

- For the Record, 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 CJ.

See In re Prudential Ins. Co. America Sales Practice Litig. Agent, 278 F.3d 175, 181 (3d Cir. 2002). Were Bad faith being a necessary predicate for a court to use its inherent authority, an untrue Statement is made in bad faith if the statement was made for a harassing or frivolous purpose. **Byrne v. Nezhad**, 261 F.3d 1075, 1125 (11th Cir. 2001). Bad faith can be inferred where an Attorney knowingly and deliberately makes blatantly incorrect statements. **See Crowe v. Smith**, 151 F.3d 217, 239 (5th Cir. 1998) (Finding adequate support in the record for the conclusion that an attorney acted in bad faith in providing “Blatantly incorrect discovery response” counsel Knew to be untrue at that the time it was offered).

Respectfully submitted,

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

Sunday, January 19, 2025

EXHIBIT-A

UNITED STATES DISTRICT COURT
for the

Plaintiff
v.

Defendant

)
)
)
)
)

Civil Action No. _____

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

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

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

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

Motions: _____

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

Reference Order

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

Date: _____

District Judge's signature

Printed name and title

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

EXHIBIT-B

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).

(151091.00064RCCO)

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.

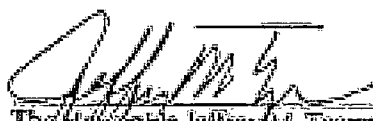
This Order is issued *ex sponte* in response to Defendants' Motion and Memorandum in Support of Temporary Injunction and Appointment of Receiver and Rule to Show Cause. I have carefully reviewed the Defendants' motion and note that it includes unsubstantiated allegations of wrongdoing by the Plaintiff, 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 QMVE

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

IT IS SO ORDERED


The Honorable Jeffrey M. Tzemen
Special Referee for Highland County

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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,

CERTIFICATE OF SERVICE BY MAIL

PLAINTIFF,

VS.

Janet L. Nelums wife Janet Nelums; Christopher Nelums; Imperial Warehouse Finance, Inc.; and Best Distributing Company,

DEFENDANT(S).

(151091.00064RCO)

The undersigned hereby certifies that she 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 15, 2022, she 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.

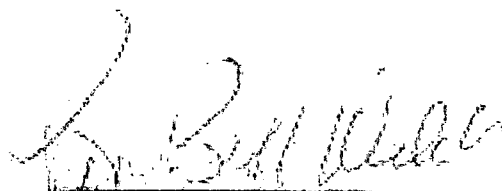
Addressee:

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

Adrianna 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 26519
Charleston, SC 29413

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



Tony Bell-Weich, Paralegal
SCOTT AND CORLEY, P.A.
2752 Middleburg Dr., St 200 (29204)
P.O. Box 2055 (29202)
Columbia, South Carolina

EXHIBIT-C

Specialized Loan
Servicing

Part of the Comprehensive Group
8742 LUCENT BOULEVARD, SUITE 300
HIGHLANDS RANCH, CO 80129

JANET L NELUMS
813 N HIGHLAND FRST D
COLUMBIA, SC 29203

To obtain information about your account, contact us at:
1-800-306-6057. We accept calls from relay services on behalf
of hearing impaired borrowers.

Account Number	1008910314
Payment Date	12/01/19
Payment Amount	\$13,402.61

Mortgage Statement
Statement Date: 11/18/19
Property Address:
813 N HIGHLAND FRST
COLUMBIA, SC 29203

Bankruptcy Notice
Our records show that you are a debtor in bankruptcy. We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.
If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, you should pay the Trustee instead of us. Please contact your attorney or the Trustee if you have questions.
If you want to stop receiving statements, write to us.

Explanation of Payment Amount	Amount
Principal	\$409.50
Interest	\$454.72
Escrow (for Taxes and Insurance)	\$166.00
Regular Monthly Payment	\$1,030.22
Total Fees and Charges	\$0.00
Past Unpaid Amounts	\$12,371.64
Total Payment Amount	\$13,402.61

The Payment Amount does not include any amount that was past due before you filed for bankruptcy.

Breakdown of Past Payments	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
Escrow (Taxes and Insurance)	\$0.00	\$0.00
Fees/Charges/Optional Product	\$0.00	\$0.00
Suspense	\$0.00	\$0.00
Total	\$0.00	\$0.00

Account Information	Amount
Outstanding Principal	\$128,124.03
Deferred Principal	\$0.00
Escrow Balance	\$-17,536.20
Interest Rate	5.87500%
Prepayment Penalty	No
Deferred Interest (to Other Deferred Amounts)	\$0.00
Unaffiliated Interest	\$0.00

Important Messages
We may not have received all of your mortgage payments due since you filed for bankruptcy. This statement may not show recent payments you sent to the Trustee that the Trustee has not yet forwarded to us. Please contact your attorney or Trustee if you have questions.
If You Are Experiencing Financial Difficulty: You may contact the U.S. Department of Housing and Urban Development (HUD) for a list of home ownership counselors or counseling organizations in your area, call 1-800-368-4287 or go to <http://www.hud.gov/offices/hud/sbl/hudchccc.htm>.

Summary of Amounts Paid (Due) Before Bankruptcy Filing (or Petition Rearranged)	Amount	Description
Paid Last Month	\$0.00	
Total Paid During Bankruptcy	\$0.00	
Current Balance	\$121,783.45	

This box shows amounts that were paid due when you filed for bankruptcy. It may also include other allowed amounts on your mortgage loan. The Trustee is sending us the payments shown here. These are separate from your regular monthly mortgage payment.

Transaction Activity (10/18/19 to 11/18/19)	Effective Date	Description	Total	Interest	Principal	Escrow (for Taxes and Insurance)	Optional Product	Fees/Charges	Suspense*
NO TRANSACTIONS TO REPORT									

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION AND DISCLOSURES.

142CLP0008 / R

142SL0101.MICR by Mail 1.4.2013/013769/015423/

SPECIALIZED LOAN SERVICING LLC
PO BOX 63000
LITTLETON, CO 80168-0007

Check if your address has changed and fill out form on reverse side, signature required.

LOAN NUMBER: 1008910314
DATE: 11/19/19

How to Contact Us	Insurance Information	Insurance Loss Claims Information
<p>Notices of Error and Requests for Information (Including Qualified Written Requests):</p> <p>Specialized Loan Servicing LLC P.O. Box 630147 Littleton, CO 80163-0147</p> <p>General Inquiries:</p> <p>Specialized Loan Servicing LLC P.O. Box 630005 Littleton, CO 80163-0005 General Fax: 1-720-241-7218</p> <p>Tax Information:</p> <p>Specialized Loan Servicing LLC 3001 Hackberry Rd Irving, TX 75063 Phone: 1-800-801-1373 Fax: 1-817-825-0480</p>	<p>Specialized Loan Servicing LLC P.O. Box 920188 Atlanta, GA 30392 Phone: 1-800-541-4145 Fax: 1-678-475-0703 www.MyCoveredinfo.com FIN Number: mc2453</p>	<p>Specialized Loan Servicing LLC P.O. Box 0501 Springfield, OH 45501 Phone: 1-888-523-0454 Fax: 1-878-450-9748 www.InsuranceClaimCheck.com</p>

Important Information and Legal Disclosures
<p>Error Resolution and Requests for Information</p> <p>Borrowers have certain rights under Federal law related to resolving errors and requesting information about their account. You may learn more about your rights by contacting Specialized Loan Servicing LLC at 1-800-315-4797 or you may visit our website at www.sls.net to find additional information about our error resolution procedures and requests for information. Notices of Error and Requests for Information must be sent to P.O. Box 630147, Littleton, CO 80163-0147.</p> <p>SCRA Notice</p> <p>If you are a Servicemember or person eligible for protection under the Servicemembers Civil Relief Act (SCRA), your loan may not incur fees, and we will not move for foreclosure as long as you are protected by SCRA. If you believe you may be eligible for SCRA protection, please contact us at 1-800-315-4797.</p>

SPECIALIZED LOAN SERVICING LLC IS REQUIRED BY FEDERAL LAW TO ADVISE YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

BANKRUPTCY NOTICE - IF YOU ARE A CUSTOMER IN BANKRUPTCY OR A CUSTOMER WHO HAS RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT: PLEASE BE ADVISED THAT THIS NOTICE IS TO INFORM YOU OF THE STATUS OF THE MORTGAGE SECURED BY THE SUBJECT PROPERTY. THIS NOTICE CONSTITUTES NEITHER A DEMAND FOR PAYMENT NOR A NOTICE OF PERSONAL LIABILITY TO ANY RECIPIENT HEREOF, WHO MIGHT HAVE RECEIVED A DISCHARGE OF SUCH DEBT IN ACCORDANCE WITH APPLICABLE BANKRUPTCY LAWS OR WHO MIGHT BE SUBJECT TO THE AUTOMATIC STAY OF SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE. IF YOU RECEIVED A DISCHARGE OF THE DEBT IN BANKRUPTCY, WE ARE AWARE THAT YOU HAVE NO PERSONAL OBLIGATION TO REPAY THE DEBT. WE RETAIN THE RIGHT TO ENFORCE THE LIEN AGAINST THE COLLATERAL PROPERTY, WHICH HAS NOT BEEN DISCHARGED IN YOUR BANKRUPTCY, IF ALLOWED BY LAW AND/OR CONTRACT. IF YOU HAVE QUESTIONS, PLEASE CONTACT US AT 1-800-306-6057.

EXHIBIT-D

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

In re, Janet Louise Nelums, <div style="text-align: right;">Debtor(s).</div>	C/A No. 18-05885-JW Adv. Pro. No. 19-80032-JW Chapter 13
Janet Louise Nelums, <div style="text-align: right;">Plaintiff(s),</div>	ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT
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; <div style="text-align: right;">Defendant(s).</div>	

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

EXHIBIT-E

Book 2924-2697
2024021753 05/20/2024 12:22:33:327
Fee: \$15.00 County Tax: \$0.00
Master's Deed-Foreclosure
State Tax: \$0.00
2024021753 John T. Hopkins II Richland County R.O.D.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SPECIAL REFEREE'S
DEED OF FORECLOSURE

I, Ben N. Miller III as Special Referee, in the said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Richland County between 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, as Plaintiff and Janet L. Nelums a/k/a Janet Nelums; Christopher Nelums; Imperial Warehouse Finance, Inc.; and Best Distributing Company, as Defendants, by an Order filed on June 29, 2021, it was decreed that the property hereinafter described should be sold on the terms and for the purposes mentioned in the Orders granted in the case (see Judgment Roll No. 2017CP4001687).

NOW THEREFORE KNOW ALL MEN, that I, the undersigned as Special Referee, pursuant to the foregoing Decree and its resulting sale occurring on April 01, 2024, and for and in consideration of the sum of Two Hundred One Thousand Three Hundred Eighty-Eight and 37/100 (\$201,388.37) as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release the following described property unto the grantee: **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, 6200 S Quebec St., Suite 300, Greenwood Village, CO 80111:**

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

Return to Scott and Corley, P.A., P.O. Box 2065, Columbia, SC 29202

Ben Miller
Page 1

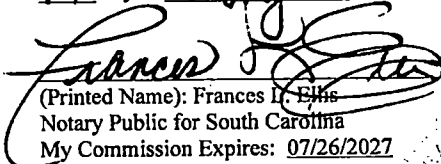
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

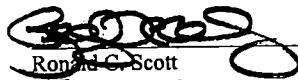
AFFIDAVIT

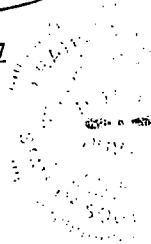
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says, to the best of my knowledge:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 813 N Highland Forest Drive, Columbia, SC 29203, bearing Richland County Tax Map Number 11916-2-16, was transferred by Special Referee's Deed to 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 on May 13, 2024.
3. Check one of the following: The deed is
 - (a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) exempt from the deed recording fee because: **Exemption 13: The deed is transferring realty subject to a mortgage to the mortgagee pursuant to foreclosure proceedings. §12-24-40(13).**
4. Check one of the following if either item 3(a) or 3(b) above has been checked.
 - (a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) ___ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES ___ or NO ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here _____
 - (b) Place the amount listed in item 5 above _____
 - (c) Subtract Line 6(b) from Line 6(a) and place the result here _____
7. The deed recording fee due based on the amount listed on Line 6(c) above and the deed recording fee due is: \$.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Attorney for Specialized Loan Servicing as servicer for 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.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN TO before me this
14 day of May, 2024.

 (L.S.)
(Printed Name): Frances L. Ellis
Notary Public for South Carolina
My Commission Expires: 07/26/2027


Ronald C. Scott
Reginald P. Corley
Angelia J. Grant
Allison E. Heffernan
H. Guyton Murrell
Jordan D. Beumer
Attorneys for the Plaintiff



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

RECEIVED

**JAN 21 2025
SC 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**

Janet L. Nelums: Christopher Nelums..... Appellants

v.

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

**APPELLANTS' REPLY MOTION TO THE OPPOSITIONS RETURN TO MOTION
FOR LEAVE TO FILE SANCTIONS**

PROOF OF SERVICE

This is to certify that We, Appellants pro se litigants, Janet Nelums & Chris Nelums has this day served a copy of **APPELLANTS' REPLY MOTION TO THE OPPOSITIONS RETURN TO MOTION FOR LEAVE TO FILE SANCTIONS**, by placing a copy of same in the United States Mail, postage prepaid, to Respondent's (as addressed below)

NELSON MULLINS RILEY & SCARBOROUGH LLP
Matthew A. Abee, SC Bar No. 101100
Madison C. Guyton, SC Bar No.105205
Mary S. Williams, SC Bar No. 105883
1320 Main Street / 17th Floor
Columbia, SC 29201
(803) 799-2000
Email: matt.abee@nelsonmullins.com
Email: madison.guyton@nelsonmullins.com
E-Mail: mary.williams@nelsonmullins.com
Sunday, January 19, 2025

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

Sunday, January 19, 2025

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

Sunday, January 19, 2025

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

Sunday, January 19, 2025

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Hon, Mr. Daniel McLeod Coble
COUNTY: RICHLAND
CHIEF ADMIN JUDGES
1701 Main Street
Columbia, SC 29202
Office: (803) 576-1773
dcoblej@sccourts.org

Sunday, January 19, 2025

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Respondent's (as addressed below)

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

Sunday, January 19, 2025

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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
5623 Two Notch Road
Columbia, S.C. 29223
phone: 803-576-3000.
fax: 803-576-319

Sunday, January 19, 2025