



March 13, 2025

Via Electronic Filing
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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RECEIVED
Mar 13 2025
SC Court of Appeals

Re: *Mark Boyles v. NCP Bayou, LLC*
Appellate Case No. 2024-000460
Notice of Supplemental Authority

Matthew Tillman
Partner
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Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, we write to provide the Court with notice of supplemental authority that supports the Appellants' argument that the circuit court is not an improper jurisdiction in which to assert a claim impacted by the unauthorized practice of law and the South Carolina Supreme Court is not the exclusive jurisdiction for such claims. (Pages 7–10 of Appellants' Final Brief, and Pages 7-8 of Appellants' Reply Brief):

- *U.S. Bank N.A. v. Mack-Marion*, 2025 S.C. LEXIS 10 at *2 (S.C. Sup. Ct. Jan. 23, 2025) (attached) (“Today, we overrule *Hambrick* to the extent it holds South Carolina circuit courts do not have subject matter jurisdiction to hear causes of action involving allegations of the unauthorized practice of law.”).

We appreciate the Court's consideration of this notice. With kind regards, I remain

Best regards,

Womble Bond Dickinson (US) LLP

A handwritten signature in black ink that reads "Matt Tillman".

Matthew Tillman
Partner

Enclosure

cc: Russell P. Patterson russell@russellpattersonlaw.com
Lauren P. Williams lauren@russellpattersonlaw.com



Cited

As of: March 12, 2025 8:28 PM Z

U.S. Bank N.A. v. Mack-Marion

Supreme Court of South Carolina

May 22, 2024, Heard; January 23, 2025, Filed

Opinion No. 28255

Reporter

2025 S.C. LEXIS 10 *

U.S. Bank National Association, as Trustee, as successor to U.S. Bank Trust National Association, as Trustee, for Conseco Finance Home Equity Loan Trust 2001-C, Respondent, v. Frances L. Mack n/k/a Frances L. Mack-Marion, Appellant.

Notice: THIS DECISION IS NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Prior History: [*1] Appeal From Orangeburg County. James B. Jackson, Jr., Master-in-Equity. Appellate Case No. 2022-001147.

Disposition: AFFIRMED AS MODIFIED.

Core Terms

unauthorized practice of law, mortgage, subject matter jurisdiction, circuit court, lender, novel, declaratory judgment action, original jurisdiction, cause of action, trial court, allegations, equitable, hear

Case Summary

Overview

Key Legal Holdings

- Circuit courts have subject matter jurisdiction to hear civil causes of action involving allegations of the unauthorized practice of law.
- There is no private cause of action for the unauthorized practice of law in South Carolina.
- The holding in *Matrix Financial Services Corp. v. Frazer* only applies prospectively to mortgages recorded after August 8, 2011, not retroactively. Accordingly, the Master had subject matter jurisdiction to hear Mack-Marion's declaratory judgment claim and properly dismissed it under *Rule 12(b)(6)*, *SCRPC*.

Material Facts

- Frances Mack-Marion refinanced her property mortgage loan in 2001.
- In 2020, U.S. Bank, the successor lender, initiated foreclosure proceedings against Mack-Marion.
- Mack-Marion filed a counterclaim seeking a declaratory judgment that U.S. Bank was barred from foreclosing due to the 2001 loan closing without attorney supervision.

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- The Master dismissed Mack-Marion's claim, stating the court lacked subject matter jurisdiction and that Matrix did not apply retroactively to the 2001 mortgage.

Controlling Law

- [S.C. Const. art. V, § 11](#)(granting circuit courts original jurisdiction in civil cases).
- [Matrix Financial Services Corp. v. Frazer, 394 S.C. 134 \(2011\)](#).
- [BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619 \(2012\)](#).

Court Rationale

The court overruled Hambrick v. GMAC Mortgage Corp., to an extent, clarifying circuit courts have subject matter jurisdiction over claims involving alleged unauthorized practice of law. While there is no private cause of action for unauthorized practice of law, a party can still pursue existing civil remedies if damaged by such conduct. The court reaffirmed Matrix's prospective-only application to mortgages recorded after its effective date of August 8, 2011.

Outcome**Procedural Outcome**

The court affirmed the Master's dismissal of Mack-Marion's declaratory judgment claim, as modified by its rulings.

LexisNexis® Headnotes

Civil Procedure > Preliminary Considerations > Jurisdiction > Subject Matter Jurisdiction

Legal Ethics > Unauthorized Practice of Law

[HN1](#)  Jurisdiction, Subject Matter Jurisdiction

The Supreme Court of South Carolina overrules Hambrick to the extent it holds South Carolina circuit courts do not have subject matter jurisdiction to hear causes of action involving allegations of the unauthorized practice of law. This corrects prior cases that imprecisely and inaccurately referred to different procedural and substantive rules as limitations on a court's subject matter jurisdiction. The Court also clarifies the procedure a party should follow when a claim involves the unauthorized practice of law. Finally, the Court reaffirms that Matrix only applies prospectively.

Civil Procedure > Preliminary Considerations > Jurisdiction > Subject Matter Jurisdiction

Legal Ethics > Unauthorized Practice of Law

[HN2](#)  Jurisdiction, Subject Matter Jurisdiction

The Supreme Court of South Carolina now clarifies In re Unauthorized Practice of Law and Linder do not alter the subject matter jurisdiction of the circuit courts to determine civil causes of action that may include allegations of conduct involving the unauthorized practice of law.

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Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > Constitutional Sources

Governments > Courts > Authority to Adjudicate

Civil Procedure > Appeals > Standards of Review > De Novo Review

[HN3](#) **Jurisdictional Sources, Constitutional Sources**

The question of subject matter jurisdiction is a question of law, which is reviewed de novo. The South Carolina circuit court is a general trial court with original jurisdiction in civil and criminal cases. [SC Const art. V, § 11](#). Upon reference, a Master-in-Equity has the same power and authority that a circuit judge sitting without a jury would have in a similar matter. [Rule 53\(c\), SCRCPC](#).

Business & Corporate Compliance > Legal Ethics
Legal Ethics

Governments > Courts > Authority to Adjudicate

Constitutional Law > State Constitutional Operation

[HN4](#) **Business & Corporate Compliance, Legal Ethics**

South Carolina constitutional and statutory law grant the Supreme Court of South Carolina the duty to regulate the practice of law in this state. [SC Const art. V, § 4](#); [S.C. Code Ann. § 40-5-10](#) (2011).

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > Scope of Declaratory Judgments

Legal Ethics > Unauthorized Practice of Law

[HN5](#) **State Declaratory Judgments, Scope of Declaratory Judgments**

Where it is unclear whether a person has engaged in the unauthorized practice of law, any interested individual who becomes aware of such conduct should bring a declaratory judgment action in the Supreme Court of South Carolina's original jurisdiction to determine the validity of the conduct. This invitation by the Court was not intended to grant it exclusive subject matter jurisdiction over any cause of action that included allegations of the unauthorized practice of law. Rather, the Court was signaling it would accept a declaratory judgment action in its original jurisdiction when the action involves a novel issue regarding what constitutes the unauthorized practice of law. See [Rule 245\(a\), SCACR](#).

Civil Procedure > Preliminary Considerations > Jurisdiction > Subject Matter Jurisdiction

Legal Ethics > Unauthorized Practice of Law

[HN6](#) **Jurisdiction, Subject Matter Jurisdiction**

The Supreme Court of South Carolina overrules the Hambrick "intertwined" test and holds circuit courts have subject matter jurisdiction to hear civil causes of action that include factual allegations of the unauthorized practice of law. The circuit courts may also adjudicate equitable actions and contempt motions that involve conduct the Supreme Court has already deemed to constitute the unlawful practice of law.

Legal Ethics > Unauthorized Practice of Law

[HN7](#) Legal Ethics, Unauthorized Practice of Law

The Supreme Court of South Carolina reaffirms Linder's holding that South Carolina does not recognize a cause of action for the unauthorized practice of law. A party must show something more than the unauthorized practice of law to have a valid claim. Although there is no independent civil cause of action for the unauthorized practice of law, a party who has been proximately damaged by conduct that includes the unauthorized practice of law may still avail himself of any appropriate existing civil remedy. The mere fact that the conduct includes the alleged unauthorized practice of law will not defeat recovery, and evidence of such conduct is admissible. For example, one who has lost money or property due to actions of a fraudster may still pursue a civil action for fraud, even if the fraud was accomplished or accompanied by actions amounting to the unauthorized practice of law. If these actions reflect conduct that the Court has previously deemed the unauthorized practice of law, the trial court shall proceed and resolve the case like any other. But the Court will continue to resolve novel issues of whether conduct involves the unauthorized practice of law in its original jurisdiction.

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > Scope of Declaratory Judgments

Legal Ethics > Unauthorized Practice of Law

[HN8](#) State Declaratory Judgments, Scope of Declaratory Judgments

When there is a novel question regarding whether an unlicensed individual has engaged in activities that should only be conducted by a member of the South Carolina Bar, the parties should file a declaratory judgment action in the Supreme Court's original jurisdiction. If this novel question surfaces in the midst of litigation, the trial court should stay the action until the Supreme Court of South Carolina decides the declaratory judgment action. The Court anticipates such novel questions will rarely arise, given the ample precedent available to guide South Carolina trial courts.

Civil Procedure > Preliminary Considerations > Equity > Relief

Real Property Law > Financing > Mortgages & Other Security Instruments

[HN9](#) Equity, Relief

Matrix bars a lender from the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by law, but only after the effective date of that opinion.

Civil Procedure > Preliminary Considerations > Equity

Real Property Law > Financing > Mortgages & Other Security Instruments > Definitions & Interpretation

[HN10](#) Preliminary Considerations, Equity

In BAC Home Loan Servicing, L.P., the Court reaffirmed the prospective-only nature of the remedy issued in Matrix and clarified that mortgages recorded before August 8, 2011 would be enforceable in a court of equity.

Counsel: Andrew Sims Radeker, of Radeker Law, P.A., of Columbia, for Appellant.

M. McMullen Taylor and David Shelton Kershaw, both of Riley Pope & Laney, LLC, of Columbia, for Respondent.

Chad Wilson Burgess and Mary Winter Clark Dawson, of Brock & Scott, PLLC; Reginald Patrick Corley and Jordan Daniel Beumer, of Scott & Corley, P.A.; and John Judson Hearn, of Rogers Townsend, LLC, all of Columbia, as Amicus Curiae for American Legal & Financial Network.

Judges: JUSTICE HILL, KITTREDGE, C.J., FEW, JAMES, JJ., and Acting Justice Donald W. Beatty, concur.

Opinion by: HILL

Opinion

JUSTICE HILL: Appellant Frances Mack-Marion refinanced her property in 2001, taking out a new mortgage. In 2020, the successor-in-interest to the mortgage, Respondent U.S. Bank National Association (U.S. Bank), started foreclosure proceedings against Mack-Marion. Mack-Marion asserted several counterclaims in response—one of which sought a declaratory judgment that U.S. Bank was barred from the equitable remedy of foreclosure because the 2001 mortgage loan closed without attorney supervision. See *Matrix Financial Services Corporation v. Frazer*, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011) (holding lenders are not entitled [*2] to equitable remedies to enforce mortgage loans that close without attorney supervision). The Master granted U.S. Bank's motion to dismiss, relying on two grounds. First the Master ruled it did not have subject matter jurisdiction over Mack-Marion's declaratory judgment claim. The Master interpreted *Hambrick v. GMAC Mortgage Corporation*, 370 S.C. 118, 124-25, 634 S.E.2d 5, 8-9 (Ct. App. 2006) to mean only the South Carolina Supreme Court has subject matter jurisdiction to determine whether a party has engaged in the unauthorized practice of law. Second, the Master ruled that, even if it had jurisdiction, Mack-Marion failed to allege facts sufficient to support a claim because the mortgage was recorded before the effective date of *Matrix*. Mack-Marion appealed, and we granted her motion to certify the appeal to this Court.

HNI^[↑] Today, we overrule *Hambrick* to the extent it holds South Carolina circuit courts do not have subject matter jurisdiction to hear causes of action involving allegations of the unauthorized practice of law. See *Rish v. Rish*, 443 S.C. 220, 224, 904 S.E.2d 862, 864 (2024) (correcting "our prior cases that imprecisely and inaccurately referred to different procedural and substantive rules as limitations on a court's 'subject matter jurisdiction'"); *State v. Price*, 441 S.C. 423, 434 n. 4, 895 S.E.2d 633, 638 n. 4 (2023) (same). We also clarify the procedure a party should follow when a claim involves the [*3] unauthorized practice of law. Finally, we reaffirm that *Matrix* only applies prospectively. Accordingly, we hold the Master had subject matter jurisdiction to hear Mack-Marion's declaratory judgment claim and properly dismissed it under *Rule 12(b)(6)*, *SCRCP*. We therefore affirm as modified.

I.

In *Hambrick*, the court of appeals interpreted our decisions in *In re Unauthorized Practice of Law Rules Proposed by South Carolina Bar*, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992)—where the Court held the definition of the unauthorized practice of law would be determined on a case by case basis—and *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 497, 560 S.E.2d 612, 623 (2002)—where the Court held there is no private right of action for the unauthorized practice of law in South Carolina—as depriving the circuit court of jurisdiction to hear any of the Hambricks' claims. **HN2**^[↑] We now clarify *In re Unauthorized Practice of Law* and *Linder* do not alter the subject matter jurisdiction of the circuit courts to determine civil causes of action that may include allegations of conduct involving the unauthorized practice of law.

HN3^[↑] The question of subject matter jurisdiction is a question of law, which we review de novo. *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 353-54 (2022). The South Carolina circuit court is a "general trial court with original jurisdiction in civil and criminal cases[.]" *S.C. Const. art. V, § 11*. Upon reference, a Master-in-Equity has the same power and authority that a circuit judge sitting without a [*4] jury would have in a similar matter. *Rule 53(c)*, *SCRCP*.

HN4^[↑] South Carolina constitutional and statutory law grant this Court the duty to regulate the practice of law in this state. *S.C. Const. art. V, § 4*; *S.C. Code Ann. § 40-5-10* (2011). In 1991, the South Carolina Bar submitted a set of proposed rules governing the unauthorized practice of law in South Carolina to the Court. *In re Unauthorized Prac. of L.*, 309 S.C. at 305, 422 S.E.2d at 124. We chose not to adopt the rules, reasoning the better course is to determine "what is and what is not the unauthorized practice of law in the context of an actual case or controversy." *Id.* Recognizing the elusiveness of a comprehensive definition of what amounts to practicing law, we have declined to give one. *In re S.C. NAACP Hous. Advoc. Program*, 442 S.C. 189, 198, 897 S.E.2d 691, 695 (2024); *Boone v. Quicken Loans, Inc.*, 420 S.C. 452, 460-61, 803 S.E.2d 707, 711-12 (2017); *Medlock v. Univ. Health Servs., Inc.*, 404 S.C. 25, 28, 743 S.E.2d 830, 831 (2013). **HN5**^[↑] We have directed that, where it is

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unclear whether a person has engaged in the unauthorized practice of law, "any interested individual who becomes aware of such conduct" should "bring a declaratory judgment action in this Court's original jurisdiction to determine the validity of the conduct." *In re Unauthorized Prac. of L.*, 309 S.C. at 307, 422 S.E.2d at 125. This invitation by the Court was not intended to grant us exclusive subject matter jurisdiction over any cause of action that included allegations of the unauthorized practice of law. Rather, the Court was signaling it would accept a declaratory judgment action in our original [*5] jurisdiction when the action involves a novel issue regarding what constitutes the unauthorized practice of law. See *Rule 245(a), SCACR*.

The Court considered such a declaratory judgment action in *Linder*. In *Linder*, the novel question of whether the conduct of a public insurance adjuster constituted the unauthorized practice of law arose in the midst of a contract dispute. 348 S.C. at 481, 560 S.E.2d at 615. Because of the presence of this novel question, the trial court prudently stayed the litigation so the parties could petition this Court to determine whether the adjuster's actions constituted the unauthorized practice of law. Consistent with *In re Unauthorized Practice of Law*, we accepted the parties' declaratory judgment action in our original jurisdiction. The *Linders* also asked this Court to recognize a private right of action for the unauthorized practice of law. We declined to do so. *Id.* at 496-97, 560 S.E.2d at 622-23.

In *Hambrick*, the Hambricks alleged their mortgage lender charged them for "legal fees" when there was no lawyer involved in the transaction. 370 S.C. at 121, 634 S.E.2d at 6. The *Hambrick* Court held that, because the plaintiff's causes of action were "intertwined" with the mortgage lender's unauthorized practice of law in closing the loan without an attorney present, even the Hambricks' unjust enrichment [*6] claim based on the fee scam was precluded by *Linder*. The court of appeals also rejected the Hambricks' argument that the circuit court had jurisdiction to hear the unjust enrichment claim because this Court had already declared that the conduct at issue (closing a loan without a lawyer) constituted the unauthorized practice of law.

Hambrick was wrongly decided. While the court of appeals did not err in finding the Hambricks could not recover damages from their mortgage lender merely because their mortgage closed without an attorney (a private cause of action for the unauthorized practice of law), it did err in finding the Hambricks' unjust enrichment claim failed because it was "intertwined" with allegations that the defendant's conduct constituted the unauthorized practice of law. *Id.* at 124, 634 S.E.2d at 8 ("Every allegation in the complaint ultimately stems from the Hambricks's assertion that Ditech engaged in the unauthorized practice of law during the loan transaction."). *HN6* [↑] We accordingly overrule the *Hambrick* "intertwined" test and hold circuit courts have subject matter jurisdiction to hear civil causes of action that include factual allegations of the unauthorized practice of law. The circuit courts may also adjudicate equitable [*7] actions and contempt motions that involve conduct this court has already deemed to constitute the unlawful practice of law. The Master therefore erred in dismissing Mack-Marion's claim on the basis of lack of subject matter jurisdiction.

However, *HN7* [↑] we reaffirm *Linder's* holding that South Carolina does not recognize a cause of action for the unauthorized practice of law. A party must show something more than the unauthorized practice of law to have a valid claim. Although there is no independent civil cause of action for the unauthorized practice of law, a party who has been proximately damaged by conduct that includes the unauthorized practice of law may still avail himself of any appropriate existing civil remedy. The mere fact that the conduct includes the alleged unauthorized practice of law will not defeat recovery, and evidence of such conduct is admissible. For example, one who has lost money or property due to actions of a fraudster may still pursue a civil action for fraud, even if the fraud was accomplished or accompanied by actions amounting to the unauthorized practice of law. If these actions reflect conduct that we have previously deemed the unauthorized practice of law, [*8] the trial court shall proceed and resolve the case like any other. But we will continue to resolve novel issues of whether conduct involves the unauthorized practice of law in our original jurisdiction.

HN8 [↑] We clarify that, when there is a novel question regarding whether an unlicensed individual has engaged in activities that should only be conducted by a member of the South Carolina Bar, the parties should file a declaratory judgment action in the Court's original jurisdiction. *Medlock*, 404 S.C. at 28, 743 S.E.2d at 831. If this novel question surfaces in the midst of litigation, the trial court should stay the action until this Court decides the declaratory judgment action. We anticipate such novel questions will rarely arise, given the ample precedent available to guide our trial courts.

II.

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As an alternative sustaining ground, U.S. Bank contends the Master correctly dismissed Mack-Marion's claim for failure to state of cause of action. *See Rule 12(b)(6), SCRPC*. We agree.

[Matrix HN9](#)^[↑] bars a lender from "the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by our law," but only after the effective date of that opinion. [Matrix, 394 S.C. at 140, 714 S.E.2d at 535. HN10](#)^[↑] In [BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 624, 731 S.E.2d 547, 550 \(2012\)](#), we reaffirmed the prospective-only nature of the remedy issued in [*9] [Matrix](#) and clarified that mortgages recorded before August 8, 2011 would be enforceable in a court of equity. Mack-Marion's mortgage at issue here was recorded before August 8, 2011. Therefore, regardless of Mack-Marion's lender's alleged unauthorized practice of law, U.S. Bank is not barred from the equitable remedy of foreclosure.

Mack-Marion asks us to readdress [Matrix](#) and declare it applies retroactively to any loans closed without an attorney supervision, regardless of the recording date. We see no sound reason to do so.

Accordingly, the Master's order dismissing Mack-Marion's declaratory judgment claim is

AFFIRMED AS MODIFIED.

KITTREDGE, C.J., FEW, JAMES, JJ., and Acting Justice Donald W. Beatty, concur.