THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble, Circuit Court Judge

Case No. 2024-CP-40-05681

Appellate Case Number: 2024-002119

John C. Nelums and Delmarshi Nelums.....Appellants,

v.

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

MOTION TO DISMISS APPEAL

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Respondents Jeanette McBride, Joseph Strickland, Richland County Sheriff Leon Lott, and Sgt. Kyle Kovalchek, hereby move to dismiss this appeal on the grounds that the matter is moot, that Appellants have failed to comply with Rule 208 of the South Carolina Appellate Court Rules, and that Appellants have abandoned any viable argument on appeal. Additionally, these Respondents request that the deadline for filing informal briefing in this appeal be suspended.

FACTS AND PROCEDURAL HISTORY

This appeal ostensibly arises out of two cases relating to the foreclosure of Appellants' home. *See* Appellants' Am. Init. Br. The original foreclosure of the Plaintiff's home was litigated in front of the Master-in-Equity for Richland County in Circuit Court Case No. 2021-CP-40-00895. That original foreclosure order entered by the Master-in-Equity remains in full force and effect. Though it is related, that case is not the subject of this appeal; rather, the two cases at issue here deal with lawsuits filed subsequent to that foreclosure, bearing civil action numbers 2024-CP-40-04715 and 2024-CP-40-05681. *See* Appellants' Am. Init. Br. These Respondents were only parties to Circuit Court Case 2024-CP-40-05681 and were not parties to Circuit Court Case 2024-CP-40-04715. *See* Ex. A and B (orders dismissing both cases). In short, these lawsuits are improper attempts by the Appellants to undo the foreclosure of their home in Circuit Court Case 2021-CP-40-00895, and this appeal ought to be dismissed for a plethora of reasons.

ARGUMENT

For the following reasons, this Appeal must be dismissed.

I. The matter is moot.

First, the matter is moot. "Where the questions presented by an appeal are moot, the appeal will be dismissed." *Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985). Appellants stated in their original Complaint that "[t]he present case involves an action for wrongful eviction where [Appellants] sued for damages to person and property and violation of their civil rights[,]" and "[t]his is an action to recover possession of real property at 315 Bentwood Lane, Columbia, S.C. 29229-8981." Complaint, ¶¶ 1 – 2, Nelums v. Deutsche, 2024-CP-40-05681. Therefore, the success of Appellants' arguments rests entirely upon the premise that they were unlawfully evicted from their home. However, as previously mentioned, the foreclosure and eviction of Appellants from their home was not litigated in the matters herein appealed. Rather, those issues have been fully litigated in a case which is not the subject of this Appeal, and the prior order to foreclose Appellants' home is still in full force and effect. Therefore, even if this Court were to overturn the dispositional orders from the Circuit Court, it would have no real effect, as Appellants have not successfully sought that the original foreclosure order be vacated in that case. Accordingly, there is no justiciable controversy at issue, and the matter is moot.

II. Appellants have failed to comply with the requirements of Rule 208(b)(1) of the South Carolina Appellate Court Rules.

Further, Appellants have blatantly failed to comply with Rule 208(b)(1) of the South Carolina Appellate Court Rules. "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). In *Henning*, the South Carolina Supreme Court stated noted:

> Appellant's brief fails to comply with Rule 207[, now Rule 208,] in the following particulars: the components of the brief are incorrectly organized and labeled, the issues are not distinctively headed, the table of authorities is not alphabetized or referenced to the body of the brief, the statement of the case contains contested matter and omits required information, and the arguments contain no citations to the record or to the cases listed in the table of authorities.

Id. As such, the Court noted it "would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules."[1] *Id.* Appellants' initial brief in this matter is similarly deficient, and dismissal is warranted. Appellants have failed to comply with Rule 208(b)(1) in numerous ways. For instance, subsection (A) of that rule requires "[a] table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the

[1] Ultimately, the Court declined to dismiss the appeal in that case; however, in the present instance, Appellants' brief demonstrates a low likelihood that they will be able to cure any of the deficiencies discussed herein. *See* Appellants' Init. Br.

pages of the brief where they are cited." 208(b)(1)(A), SCACR. Though Appellants have included a table of authorities, the cases listed are not in alphabetical order, and many of them contain incorrect and incomplete citations for the cases listed. *See* Appellants' Am. Init. Br. at II – VII.

Likewise, subsection (C) of that rule requires that the Statement of the case in Appellants' initial brief "contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal." It further requires, at a minimum, that the statement of the case include:

> the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or response; the action of the court[;] . . . the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment[,] or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions[,] and proceedings of the lower court . . . that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise.

Rule 208(b)(1)(C), SCACR. Appellants have not only failed to include a "*concise* history of the proceedings," they have failed to include nearly any of the information required by Rule 208(b)(1)(C), and to the extent they have included some of the information, they have failed to do so in a discernable, digestible manner. *See* Appellants' Init. Br. Likewise, the standard of review and statement of issues on appeal included by Appellants nonsensically reference Federal statutes, the Supremacy Clause of the United States Constitution, and a bizarre allegation that

Appellants were "menac[ed] . . . with a screwdriver[.]" *Id* at 6 – 7. Appellants do not explain how any of the cited law relates to any part of this case, only sporadically referencing it during Appellants' rambling, discursive factual background. *Id* at 7 – 9. Appellants continue this style of briefing throughout the remainder of their argument, failing to indicate or label which portions of the brief are pertinent to which issues, instead citing to irrelevant rules regarding the referral of matters to a Master-in-Equity and various Federal statutes, primarily regarding the referral of cases to a Magistrate Judge in Federal Court, despite the cases at issue being heard by Circuit Court Judge Daniel Coble, who is neither a Master-in-Equity nor a Federal Magistrate Judge. *Id* at 9 – 39. These incoherent sections of Appellants' brief fall far short of including the appropriate standard of review and argument required by subsections (D) and (E) of Rule 208(b)(1), SCACR. In sum, Appellants' brief is rife with unorganized, irrelevant, and nonsensical information. As such, Appellants' brief ought to be dismissed for failure to comport with the requirements of Rule 208(b)(1).

III. Appellants have failed to comply with the requirements of Rule 209 of the South Carolina Appellate Court Rules.

Further, the designation of matter filed by Appellants is insufficient pursuant to Rule 209, SCACR. That rule states that a party must "serve on all parties to the appeal a Designation of Matter to be included in the Record on Appeal." *Id.* Furthermore, the designation of matter "shall set forth with specificity those parts of

the transcript, pleadings, orders, exhibits, or other materials which which he proposes to include in the record on appeal." *Id*. Finally, the rule specifies that "[t]he Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal." *Id*. Appellants have failed to comply with these provisions.

As previously mentioned, these Respondents are only party to Circuit Court Case 2024-CP-40-05681. *See* Ex. A and B. Appellants moved to amend their notice of appeal to include the order dismissing that case, which was granted on March 25, 2025. Order, March 25, 2025. Thereafter, Appellants were directed to file their designation of matter, which was filed on May 12, 2025. *Id*. The designation of matter only references the civil action number 2024-CP-40-04715, to which these Respondents were not a party, and states:

> Appellant proposes the following be included in the record on Appeal:
> 1. Order of November 15, 2024
> 2. Order of Dismissal 12, 03, 2024
> 3. Summons 8 2, 2024
> 4. Complaint. 8 2, 2024
> 5. Answer 10 11, 2024
> 6. Defendant's Motion to Dismiss 08/28/2024
> 7. Transcript of Proceedings
> 8. Defendant's Exhibits 08/29/2024
>
> I certify that this designation contains matter which is relevant tot his appeal.

Desig. of Matter at 1 (original grammar, capitalization, and spelling left intact). Notably, the Designation does not reference Circuit Court Case 2024-CP-40-05681, nor does it reference any order, transcript, or documents from Circuit Court Case 2024-CP-40-05681. *Id*. In other words, Appellants have included no portions of the "transcript, pleadings, orders, exhibits, or other materials" from the case which actually involved these Respondents. Rule 209, SCACR. Given this, Appellants have failed to comply with Rule 209 of the South Carolina Appellate Court Rules as to these Respondents. Accordingly, these Respondents must be dismissed from this Appeal.

IV. Appellants' brief demonstrates that Appellants have abandoned any viable argument for appeal.

In effect, Appellants have failed to put forth any arguments which may be considered in this Appeal. As previously discussed, Appellants' brief fails to put forth a coherent argument, instead alternating between irrelevant Federal statutes and factual allegations, only conclusively stating the Circuit Court somehow lacked subject matter jurisdiction when dismissing Appellant's case. Appellants' Am. Init. Br. at 7 – 39. South Carolina Courts have held that "where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) Besides the facially contradictory nature of Appellants arguing that the Circuit

Court lacked subject matter jurisdiction in a case they themselves brought, the entirety of Appellants' argument section of their brief consists only of confusing and conclusory statements. Appellants' Am. Init. Br. at 7 – 39. Therefore, Appellants have effectively abandoned any argument cited in their brief, and this Appeal must be dismissed.

CONCLUSION

In conclusion, Appellants have failed to comply with numerous provisions of the South Carolina Appellate Court Rules. Additionally, the matter which Appellants seek to litigate in this appeal is moot. Finally, Appellants have otherwise abandoned any viable argument for appeal. Therefore, the instant appeal must be dismissed.

[Signature page to follow.]

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Columbia, South Carolina
June 20, 2025

EXHBIT A

Order of Dismissal from 2024-CP-40-05681

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND John C. Nelums and Delmarshi Nelums, Plaintiffs, v. Deutsche Bank National Trust Company as Trustee for agent, John Kay, William Shepro and Altisource Solutions, Inc.; Hutchens Law Firm, LLP a S.C. professional association; John S. Kay, an individual; Alan Martin Stewart, an individual; Jeanette McBride, an individual: Joseph Strickland an individual; Richland County, Sheriff Leon Lott in his official capacity as the Sheriff of Richland County; and Sgt. Kyle Kovalchek, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2024-CP-40-05681 **ORDER DISMISSING CASE AND FOR SANCTIONS AGAINST PLAINTIFFS**

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

I. INTRODUCTION

The Plaintiffs' pleading, styled as "Plaintiffs' "Notice to Quit" and "Complaint for Damages" (hereafter the "Nelums Pleading") is the second case[1] the Nelums have filed in 2024 in what is an attempt to overturn the results of a foreclosure judgment obtained against them in a previous case filed by Deutsche Bank in the Court of Common Pleas for Richland County under case number 2021-CP-40-00895 (the "Foreclosure Case"). The complaint in the within case seeks to undo the foreclosure judgment granted to Deutsche Bank in Foreclosure Case concerning real property located at 315 Bentwood Lane, Columbia, South Carolina 29229 (the "Property") that was once owned by the Plaintiffs and is now owned by Deutsche Bank. The Nelums Pleading fails to meet the most basic requirements for these types of pleadings. Generally, the Plaintiffs' complaint fails to list causes of action and seeks relief under various federal statutes, which are not applicable to the case at hand. Thus, pursuant to Rules 8, and12(b)(6) of the SCRCP, the Nelums Complaint should be stricken and the case dismissed with prejudice for failure to state a sufficient claim.

BACKGROUND

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

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

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

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

A. <u>The 2020 Litigation</u>

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

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

B. <u>The 2021 Litigation</u>

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

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

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

IV. STANDARD OF REVIEW

A. Motion to Dismiss

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Allegations of fraud must be stated with particularity. *See* Rule 9(b), SCRCP. Here, the Plaintiffs failed to establish fraud at all, let alone with the requisite degree of particularity, because the Plaintiffs fail to plead any plausible facts that could establish fraud against the Defendants. To support the fraud claim, the Plaintiffs state that the Defendants 'without a warrant of eviction illegal Evictions and Lockouts against the Nelums Family without probable cause to do so, that cause an unlawfully eviction at 315 Bentwood Lane Columbia, S.C." (Complaint Para. 8). Further, the Complaint alleges that "The Court take judicial notice that Plaintiffs John C. Nelums and Delmarshi Nelums Mortgage Satisfaction states that on 5-4-15, paid in full and the lien or the foregoing instrument has been released." (Complaint Para. 9 and Exhibit A to the Complaint). As shown in Exhibit C to the motion to dismiss, Deutsche Bank had the right to evict the Plaintiffs from the Property by virtue of the Writ of Assistance. Further, the Mortgage Satisfaction Plaintiff's cite in their complaint was for the satisfaction of a mortgage recorded in Book 1232 Page756. The mortgage foreclosed by the Plaintiff in the 2021 foreclosure action was an entirely different mortgage recorded in Book 755 Page 615. The Plaintiffs allegations are am attempt to re-visit the completed foreclosure action. No plausible facts are pled that could establish that the Defendants engaged in any wrongdoing and the Plaintiffs have failed to establish a proximate injury resulting from the alleged falsity. Thus, the Plaintiffs' complaint claim should be dismissed.

B. Motion for sanctions

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

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

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

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

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

JUDGE, DANIEL COBLE'S SIGNATURE PAGE TO FOLLOW

Richland Common Pleas

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

Case Number: 2024CP4005681

Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774

EXHBIT B

Order of Dismissal from 2024-CP-40-04715

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND John C. Nelums and Delmarshi Nelums, Plaintiffs, v. William Shepro and Altisource Solutions, Inc., Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2024-CP-40-04715 **ORDER DISMISSING CASE WITH PREJUDICE**

This matter came before me for hearing via Webex on November 14, 2024 on the motion to dismiss Plaintiff's complaint filed by Altisource Solutions, Inc., and William Shepro, ("Defendants"). Appearing at the hearing were the Defendants counsel, John S. Kay, and the Plaintiff, John C. Nelums ("Nelums").

I. INTRODUCTION

The Plaintiffs initiated this case on August 5, 2024, by filing what is titled as a "Motion and Memorandum in Support of Temporary Injunction and Complaints for Ejectment". On August 28, 2024, The Defendants filed a Motion to Dismiss the Plaintiff's Complaint. Thereafter on September 30, 2024, without leave of Court, the Plaintiffs filed an additional pleading, styled as "Plaintiffs' "Notice to Quit" and "Complaint for Damages" (the August 5, 2024 and September 30, 2024 pleadings are hereafter designated as the "Nelums Pleading". This case is the second case[1] the Nelums have filed in 2024 in what is an attempt to overturn the results of a foreclosure

[1] The other case filed by the Nelums in 2024 was filed under case number 2024-CP-40-5681 and there is an Order dismissing that case as well.).

judgment obtained against them in a previous case filed by Deutsche Bank in the Court of Common Pleas for Richland County under case number 2021-CP-40-00895 (the "Foreclosure Case"). The complaint in the within case seeks to undo the foreclosure judgment granted to Deutsche Bank in Foreclosure Case concerning real property located at 315 Bentwood Lane, Columbia, South Carolina 29229 (the "Property") that was once owned by the Plaintiffs and is now owned by Deutsche Bank. The Nelums Pleading fails to meet the most basic requirements for these types of pleadings. Generally, the Plaintiffs' complaint fails to list causes of action and seeks relief under various federal statutes, which are not applicable to the case at hand. Thus, pursuant to Rules 8, and12(b)(6) of the SCRCP, the Nelums Complaint should be stricken and the case dismissed with prejudice for failure to state a sufficient claim.

BACKGROUND

On or about January 27, 2003, the Nelums obtained a home mortgage loan for the original principal amount of $270,900.00 (the "Loan"). To secure the Loan, the Nelums executed a mortgage in favor of IndyMac Bank, F.S.B., which granted the lender a first lien on the real property located at 315 Bentwood Lane, Columbia, SC 29229. The transaction is memorialized by a recorded mortgage executed by the Plaintiffs (the "Mortgage"). The Mortgage was recorded on November 27, 2002 in Book 729 at Page 3951, in the Office of the Register of Deeds for Richland County, South Carolina. Thereafter, in an assignment dated December 2, 2020, recorded December 14, 2020, in Mortgage Book 2564 at Page 1571, Federal Deposit Insurance Corporation as receiver for IndyMac Federal Bank, assigned the Mortgage to Deutsche Bank National Trust Company as Trustee for Residential Asset Securitization Trust 2005-A8CB Mortgage Pass-Through Certificates Series 2005-H ("Deutsche Bank"). The monthly payments due on said note and mortgage had not been made since April 1, 2020. Deutsche Bank filed a foreclosure action in case

2021-CP-40-00895 and received an Order for Foreclosure issued by the Master in Equity for Richland, County, The Hon. Joseph M. Strickland (also a Defendant in this case). The property was sold at public auction back to the Plaintiff as the highest bidder and Judge Strickland conveyed the property to Deutsche Bank by Master's deed recorded December 21, 2023 in Book 2803 Page 3870 in the Office of the Register of Deeds for Richland County. After the Plaintiffs failed to vacate the property, Deutsche Bank proceeded to have the Court issue an eviction order with a Writ of Assistance issued by Judge Strickland to have the Plaintiffs evicted from the Property.

The within case is one of a series of attempts by the Plaintiffs to undo, or re-litigate the Foreclosure Case Additionally, counsel for the Defendants advised the Court at the hearing that the Plaintiffs have moved back into the property at 315 Bentwood Lane in Columbia without the permission of the Defendants. The Nelums Pleadings seeks to unwind the previous decision by the Master in Equity for Richland County who granted the order evicting the Nelums from the Bentwood Lane property, In fact, page five (5) of the Motion for Temporary Injunction states that "Once the locks are changed back after the Plaintiff's complaint is filed IN THE COURT OF COMMON PLEAS FOR COUNTY OF RICHLAND, the Plaintiff John C. Nelums and Delmarshi Nelums would allege unto this Honorable Court and allege as follows:". True to his word, if not the orders of the Court, the Nelums have changed the locks on the Bentwood Lane property that is owned by Deutsche Bank, and moved back in.

A. <u>The 2020 Litigation</u>

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

a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). On November 18, 2020, the assigned magistrate judge issued a Report and Recommendation that the motion to dismiss be granted. In the Report and Recommendation, the magistrate judge states that, "The undisputed facts show that Deutsche Bank possesses the note and has a right to enforce it." The court stated that fact clearly precluded the Nelums' causes of action where they asserted Deutsche Bank did not have the right to enforce the promissory note which included the causes of slander of title, quiet title, declaratory relief, and lack of standing. Furthermore, the Court held that the Nelums failed to plausibly allege facts that could support intentional infliction of emotional distress, failed to meet the pleading standards required to allege fraud, and claims pursuant to the Truth in Lending Act and Real Estate Settlement Procedures Act were barred by the statute of limitations. The Nelums objected to the magistrate's report and recommendation. On December 9, 2020, the District Court adopted the magistrate's report and recommendation and entered a final order and judgment dismissing the 2020 Litigation, which granted the defendants' Rule 12(b)(6) Motion to Dismiss.[2] The Nelums did not appeal.

B. <u>The 2021 Litigation</u>

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

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

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

IV. STANDARD OF REVIEW

A. Motion to Dismiss

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

The Plaintiffs' pleading is subject to the pleading requirements outlined in Rule 8 which require the Plaintiff to stick to "fact" pleading." Rule 8, SCRCP. Where Plaintiffs have failed to

allege sufficient facts to provide Defendants with fair notice of the claims in question, courts have held time and time again that stringing together a long list of claims is not sufficient to satisfy Rule 8(a)'s short and plain statement requirement.

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

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

All of the elements of res judicata are easily met by reference to the 2020 and 2021 Litigation. First, the parties are identical in that the Nelums were parties to the Foreclosure Case and were parties to the 2020 and 2021 litigation as well. The Defendants are standing in the shoes of Deutsche Bank as they are the company hired by Deutsche Bank to complete the eviction of the Plaintiffs from the Bentwood Lane property pursuant to the Writ of Assistance issued by Judge Strickland in the 2021 foreclosure case. The Defendants are the agents of Deutsche Bank, the current owner of the Bentwood Lane property.

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

In the 2020 Litigation the Nelums asserted at least ten causes of action against Deutsche Bank and others related to the same mortgage loan at issue in the Current Lawsuit, asserting claims for (1) lack of standing to foreclose, (2) fraud in the concealment, (3) fraud in the inducement, (4) intentional infliction of emotional distress, (5) quiet title, (6) slander of title, (7) declaratory relief, (8) violations of the federal Truth in Lending Act (TILA), (9) violations of the Real Estate Settlement Procedures Act (RESPA) and (10) rescission. The "new" allegations of the Plaintiffs' complaint seek to attack the standing or the prosecution of the court's order granting the eviction. The Plaintiffs were unable to attack Deutsche Bank's standing to foreclose, so they are now attempting to attack the eviction stemming from the foreclosure by attacking the Defendants who

represented Deutsche Bank and carried out the eviction itself. These claims and allegations are fundamentally an attack on the 2021 foreclosure action upon which the eviction was based. In sum, claims contesting the eviction and the foreclosure deed are another attempt to contest Deutsche Bank's right to foreclose upon this defaulted mortgage. These matters could have been raised, and in fact *were* raised, in the 2020 and 2021 Litigation. Accordingly, these two cases involve the same transaction or occurrence, meeting the second element of res judicata.

The third element, adjudication in the former suit, is also met here. The 2020 Litigation resulted in a dismissal of the Nelums' claims after Deutsche Bank and other defendants filed a motion to dismiss. That dismissal order operated as an "adjudication on the merits." *See* Fed. R. Civ. P. 41(b).[3] Accordingly, the Nelums have already had a full and fair opportunity to dispute any issues arising from their mortgage loan default, including Deutsche Bank's right to foreclose. In addition, the Master's Order and Judgment of Foreclosure and Sale issued by Judge Strickland also operates as an adjudication on these same matters.

The doctrine of collateral estoppel also applies here. Collateral estoppel, also known as issue preclusion, prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action. *Shelton v. Oscar Mayer Foods Corp*., 325 S.C. 248, 251, 481 S.E.2d 706, 707 (S.C. 1997). Collateral estoppel bars re-litigation if the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Carolina Renewal, Inc*. v. S.C. DOT, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "Collateral estoppel applies to specific

[3] Rule 41(b), SCRCP contains identical language.

issues, regardless of whether the claims in the first and subsequent suits are the same." *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009).

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

The U.S. District Court already held, in dismissing the 2021 federal court lawsuit filed by the Plaintiffs, the claims asserted therein against Deutsche Bank and others were barred by principles of *res judicata* and claim preclusion by virtue of the 2020 Litigation. If those claims were barred in the 2021 Litigation, they should also be barred again here. Ultimately – as the District Court correctly recognized – the 2020 Litigation was the Nelums' opportunity to assert claims against Deutsche Bank to avoid foreclosure. It was not successful, and the Nelums are now bound by that judgment. As a result, the Nelums Pleading – which simply repeats those already-rejected claims or claims that could have been raised previously – should be dismissed based on well-settled principles of res judicata and collateral estoppel.

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

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

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

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

With regards to the Plaintiff's complaint, it also fails to meet the requirements to a Rule 12(b)(6) motion. Plaintiffs' conflate federal law and South Carolina state law as though they are

the same thing, a deficiency which, in itself, warrants dismissing the Plaintiffs' Complaint in its entirety. However, the Plaintiff's arguments are not viable regardless of how they are presented. Therefore, the complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP.

The Plaintiffs have sought a cause of action for what appears to be fraud on the part of the Defendants. Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to her or to surrender a legal right. Black's Law Dictionary 660 (6th ed. 1990). To prevail on a cause of action for fraud, a Plaintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010). The right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him. *Florentine Corp., Inc. v. PEDA I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (S.C. 1985). Moreover, there is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. *Id.* This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests. *Id.*

Allegations of fraud must be stated with particularity. *See* Rule 9(b), SCRCP. Here, the Plaintiffs failed to establish fraud at all, let alone with the requisite degree of particularity, because the Plaintiffs fail to plead any plausible facts that could establish fraud against the Defendants. To support the fraud claim, the Plaintiffs state that the Defendants 'without a warrant of eviction

illegal Evictions and Lockouts against the Nelums Family without probable cause to do so, that cause an unlawfully eviction at 315 Bentwood Lane Columbia, S.C." (Complaint Para. 8). Further, the Complaint alleges that "The Court take judicial notice that Plaintiffs John C. Nelums and Delmarshi Nelums Mortgage Satisfaction states that on 5-4-15, paid in full and the lien or the foregoing instrument has been released." (Complaint Para. 9 and Exhibit A to the Complaint). As shown in Exhibit C to the motion to dismiss, Deutsche Bank had the right to evict the Plaintiffs from the Property by virtue of the Writ of Assistance. Further, the Mortgage Satisfaction Plaintiff's cite in their complaint was for the satisfaction of a mortgage recorded in Book 1232 Page756. The mortgage foreclosed by the Plaintiff in the 2021 foreclosure action was an entirely different mortgage recorded in Book 755 Page 615. The Plaintiffs allegations are am attempt to re-visit the completed foreclosure action. No plausible facts are pled that could establish that the Defendants engaged in any wrongdoing and the Plaintiffs have failed to establish a proximate injury resulting from the alleged falsity. Thus, the Plaintiffs' complaint claim should be dismissed with prejudice.

It is therefore ORDERED that the Plaintiffs' case is dismissed with prejudice.

JUDGE, DANIEL COBLE'S SIGNATURE PAGE TO FOLLOW

Richland Common Pleas

Case Caption: John C Nelums , plaintiff, et al vs Altisource Solutions Inc , defendant, et al

Case Number: 2024CP4004715

Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Daniel Coble, Circuit Court Judge

Case No. 2024-CP-40-05681

Appellate Case Number: 2024-002119

John C. Nelums and Delmarshi Nelums ……..... Appellants,

v.

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

PROOF OF SERVICE

The undersigned employee of Davidson & Wren, P.A., attorneys for Respondents McBride, Strickland, Richland County Sheriff Leon Lott, and Sgt. Kovalchek, does hereby certify that service of the **Motion to Dismiss Appeal** in the above-captioned action was made upon the *pro se* Plaintiff via U.S. Mail, postage prepaid, and via email upon Counsel on **June 20, 2025,** addressed as follows:

John C. Nelums
Delmarshi Nelums
315 Bentwood Lane
Columbia, South Carolina 29229-8981

John S. Kay, Esquire
Hutchens Law Firm, LLP
Post Office Box 8237
Columbia, South Carolina 29202
john.kay@hutchenslawfirm.com

s/ John P. Grimes, Jr.