THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Mikell R. Scarborough
Master in Equity for Charleston County

Case No. 2010-CP-10-6060

Appellate Case No. 2023-000819

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, Respondent,

v.

Johnson D. Koola, First Citizens Bank and Trust Company, Inc. f/k/a/ First Citizens Bank and Trust Company of South Carolina, and Cambridge Lakes Condominium Homeowners Association, Inc., f/k/a Cambridge Lakes Horizontal Property Regime, Defendants,

Of whom Johnson D. Koola is the appellant.

PETITION FOR RECONSIDERATION

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Pro se

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PETITION FOR RECONSIDERATION

Appellant Johnson D. Koola, ("Koola"), files Petition for Reconsideration of the Court of Appeals' June 11, 2025 Order affirming the Master in Equity's grant of Summary Judgment to respondent U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, ("USBNA") in the foreclosure case against Koola.

ARGUMENTS

I. The Court of Appeals erred: (i) in failing to review Koola's arguments that the Master in Equity lacked *in personam jurisdiction* over USBNA and *in rem jurisdiction* over USBNA's claims against Koola; (ii) in affirming the Master in Equity's Summary Judgment Order claiming that the Master in Equity had subject matter jurisdiction to hear and determine cases of the general class to which the proceedings in question belong under Rule 71, SCRCP and (ii) in finding that Koola waived his jurisdictional claims in the Master in Equity's Court.

A. Koola's claims in the Master in Equity's Court

B. Koola presented his jurisdictional arguments to the Master in Equity and did not waive his jurisdictional claims.

C. The Master in Equity lacked jurisdiction ab initio, and the Court's Summary Motion Judgment is void ab initio.

A. Koola's claims in the Master in Equity's Court

On February 15, 2023, USBNA filed Motion for Summary Judgment, (R. p. 086), in its foreclosure case against Koola. In support of the Motion, it filed, *inter alia*, an "Affidavit of Indebtedness," [R. pp. 087-089], in which the affiant stated that on February 24, 2004, Koola obtained a mortgage loan from Countrywide Home Loans, Inc., ("Countrywide"), and signed a promissory note in the amount of $136,192.00. In support of its claim, it attached a true copy of the Note that was originally given to Countrywide. [R. pp. 090-091]. The said copy of the Note did not show indorsement, either to Order or in blank, by Countrywide to U.S. Bank Trust. In the

Affidavit, U.S. Bank Trust did not say that it had a claim against Koola; *it just confirmed that Countrywide had a claim against Koola.*

In the Affidavit of Koola filed on March 2, 2023, [R. p. 092], he stated that the Note contained, *inter alia*, a provision according to which only the noteholder is entitled to receive payment from the debtor. [R. p. 092, line 19-23].

In the Brief of Defendants against Summary Judgment of the Plaintiff filed on March 2, 2023 [R. p. 093-097], Koola stated that USBNA is not the person entitled to enforce the instrument. [R. pp. 093-095].

In the Supplemental Brief of Defendants against Summary Judgment of the Plaintiff filed on March 21, 2023, [R. pp. 098-111], Koola argued that the Master in Equity lacked jurisdiction over USBNA and its claims against Koola. [R. pp. 101-108].

Under South Carolina law:

> "Person entitled to enforce" an instrument means the holder of the Note, S.C. Code Ann. § 36-3-301(i);
>
> "Holder" means the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession,
> S.C. Code Ann. § 36-1-201(21).

In Bank of America v. Draper, 405 S.C. 214, 220-21; 746 S.E.2d 478, 481 (S.C. Ct. App. 2013), the Court of Appeals of South Carolina has ruled who can institute a foreclosure action: "A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." *Draper* also interpreted the statutory provisions of S.C. Code Ann. § 36-3-301(i): "A holder is a person in possession of instrument drawn, issued, transferred or indorsed to him. S.C. Code Ann. § 36-3-201(2003)." *Id.,* 405 S.C. at 223; 746 S.E.2d at 482. In *Draper*, this Court has found, "Draper originally executed the note to America's Wholesale Lender. Through a

series of transactions and mergers, the Bank became the holder of the note...*Because the evidence indicates the Bank did hold the note, the master did not err in granting summary judgment on this issue.*" *Id.*, 405 S.C. at 223-24; 746 S.E.2d at 483 (Emphasis in italics added).

In *Bank of N.Y. Mellon v. Lanier*, 2019 S.C. App. Unpub. LEXIS 288, *5-*6, 2019 WL 3714838 (S.C. Ct.App. 2019), this Court has found, "In support of its motion for summary judgment, Bank submitted copies of the original note and mortgage, copies of allonges to the note and assignments of the mortgage, and the affidavit of Joseph G. Devine, Jr.,...Accordingly, we find Bank established that it is a holder of the note and mortgage...."

The Supreme Court of South Carolina has determined, "[J]urisdiction is composed of three elements: (1) personal jurisdiction, (2) subject matter jurisdiction, and (3) the court's power to render the particular judgment requested." *Limehouse v. Hulsey*, 404 S.C. 93, 104; 744 S.E.2d 566, 572. (S.C. 2013). (Internal citation omitted). Koola did not question the Master in Equity's jurisdiction over the general class of foreclosure proceedings, judgments, and sales under Rule 71, SCRCP. Koola questioned whether the Master in Equity had personal jurisdiction over USBNA (*in personam jurisdiction*) and jurisdiction over the subject matter of USBNA'S claims against Koola (*in rem jurisdiction*) in its foreclosure case, i.e. the Master in Equity's power to render the particular judgment requested by USBNA.

The Master in Equity's Court lacked *in rem jurisdiction* because USBNA did not prove that it has a claim against Koola and right to payment from Koola. That right to payment belonged to Countrywide. The Master in Equity did not have the power to render the particular judgment requested by USBNA.

Further, USBNA is prosecuting Countrywide's claim rather than its own claim against Koola; therefore, the Master in Equity's Court lacked *in personam* jurisdiction over U.S. Bank

Trust. Here, *the question is whether the Master in Equity had jurisdiction to hear U.S. Bank Trust's foreclosure case against Koola.*

In the April 13, 2023 Order, (R. p. 008, lines 12-18), the Master in Equity *acknowledged* Koola's arguments that (i) U.S. Bank Trust and Fay Servicing "lack standing in Koola's foreclosure case; (ii) they have not established that they have clams against Koola and have a right to enforce the claim against Koola in the foreclosure case under substantive law of South Carolina;" (iii) they are not the real party in interest under South Carolina Rule of Civil Procedure; (iv) Koola cited "Lack of an indorsement on the promissory note conveying the promissory note to the U.S. Bank Trust." At that point, the Court should have decided that USBNA was not the holder of the Note, and the Court had no in in *personam jurisdiction* over USBNA and no *rem jurisdiction* over USBNA's claims against Koola. For that reason, the Master in Equity should have denied the Motion of Summary Judgment. Instead, the Master in Equity granted Summary Judgment to USBNA. The Court of Appeals erred because the Court did not inquire whether USBNA was the holder of Koola's Note and Mortgage and did not determine whether USBNA had a claim against Koola.

B. Koola presented his jurisdictional arguments to the Master in Equity and did not waive his jurisdictional claims.

While affirming the Master in Equity's Order granting Summary Judgment to USBNA in Koola's foreclosure case, the Court of Appeals ruled: (i) Koola waived any complaints he may have regarding personal jurisdiction and (ii) the Master in Equity had subject matter jurisdiction to hear and determine cases of the general class to which the proceedings in question belong under Rule 71, SCRCP. The Court of Appeals erred in making those determinations because Koola presented his jurisdictional arguments to the Master in Equity as detailed under Section I. A of this Petition. Koola categorically denies the Court of Appeals' argument that he waived his

jurisdictional arguments to the Master in Equity. Koola never questioned the Master in Equity's subject matter jurisdiction to hear and determine cases of the general class to which the proceedings belong under Rule 71, SCRCP. The Supreme Court of South Carolina has determined, "[J]urisdiction is composed of three elements: (1) personal jurisdiction, (2) subject matter jurisdiction, and (3) the court's power to render the particular judgment requested." In *Limehouse v. Hulsey*, 404 S.C. at 104; 744 S.E.2d at 572. The Court of Appeals erred because the Court did not determine whether the Master in Equity had the power to render the particular judgment requested by USBNA. Koola's jurisdictional arguments were confined to personal jurisdiction and the court's power to render *the particular judgment* requested by USBNA while the Master in Equity's jurisdiction is confined to subject matter jurisdiction to hear the *general class of foreclosure cases* under Rule 71, SCRCP. The Court of Appeals failed to differentiate between these three types of jurisdictions and erred in Koola's review of Appeal.

C. The Master in Equity lacked jurisdiction ab initio, and the Court's Summary Motion Judgment was void ab initio.

In the preceding paragraphs, Koola have explained that the Master in Equity had no *in personam jurisdiction* over USBNA and no *in rem jurisdiction* over USBNA's claims against Koola. In *Limehouse v. Hulsey*, 404 S.C. at 104; 744 S.E.2d at 572, the Supreme Court of South Carolina has ruled: "Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." "'A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4.)...A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable." *Gainey v. Gainey*, 382 S.C. 414, 424; 675 S.E.2d 792, 797 (Ct. App. S.C. 2009). (Internal citations

omitted). "A judgment is void if a court acts without personal jurisdiction." *BB&T v. Taylor*, 369 S.C.548, 551; 633 S.E.2d 501, 503 (S.C. 2006). (Internal citations omitted).

II. The Court of Appeals erred in affirming the Master in Equity's grant of summary judgment to USBNA in the foreclosure case against appellant because respondent was not the holder of the appellant's Note and Mortgage, and the person entitled to enforce the instrument under South Carolina laws in the foreclosure case.

In the Motion for Summary Judgment in the foreclosure case, respondent USBNA produced a copy of the Note executed by Koola in favor of the original lender Countrywide Home Loans, Inc., which was not indorsed to USBNA or any other party. [R. pp. 090-091]. Under the provisions of the Note, only the Noteholder is entitled to receive payments. (R. p. 090, lines 12-13).

In Bank of America v. Draper, the Court of Appeals of South Carolina has ruled who can institute a foreclosure action: "A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." 405 S.C. 214, 220-21; 746 S.E.2d 478, 481 (S.C. Ct. App. 2013). *Draper* also interpreted the statutory provisions of S.C. Code Ann. § 36-3-201: "A holder is a person in possession of instrument drawn, issued, transferred or indorsed to him. S.C. Code Ann. § 36-3-201(2003)." *Id.,* 405 S.C. 214, 220-21; 746 S.E.2d 478, 481.

Under South Carolina law:

> "Person entitled to enforce" an instrument means the holder of the Note, S.C. Code Ann. § 36-3-301(i);
>
> "Holder" means the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession,
> S.C. Code Ann. § 36-1-201(21);
>
> *"Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder,* S.C. Code Ann. § 36-3-201(a); (Emphasis added).

An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument, S.C. Code Ann. § 36-3-203(a);

Negotiation of the instrument does not occur until the indorsement is made, S.C. Code Ann. § 36-3-203(c).

In *Draper*, this Court has found, "Draper originally executed the note to America's Wholesale Lender. Through a series of transactions and mergers, the Bank became the holder of the note...*Because the evidence indicates the Bank did hold the note, the master did not err in granting summary judgment on this issue.*" *Id.*, 405 S.C. at 223-24; 746 S.E.2d at 483 (Emphasis in italics added).

In *Bank of N.Y. Mellon v. Lanier*, 2019 S.C. App. Unpub. LEXIS 288, *5-*6, 2019 WL 3714838 (S.C. Ct.App. 2019), this Court has found, "In support of its motion for summary judgment, Bank submitted copies of the original note and mortgage, copies of allonges to the note and assignments of the mortgage, and the affidavit of Joseph G. Devine, Jr.,...Accordingly, we find Bank established that it is a holder of the note and mortgage...."

In the Order granting Summary Judgment to USBNA, the Master in Equity acknowledged, "Defendant Koola cites the lack of an indorsement on the promissory Note conveying the promissory Note to U.S. Bank...." [R. p. 008, l. 17-18]. For that reason, the Master in Equity should have denied the Motion of Summary Judgment. Instead, the Master in Equity granted Summary Judgment to USBNA. Nowhere in the June 11, 2025 Order affirming the Master in Equity's grant of Summary Judgment to USBNA, this Court has determined that USBNA was the holder of Koola's Note and Mortgage. As such, there is a genuine issue of material fact as to the noteholder, and USBNA was not entitled to Summary judgment as a matter of law.

Under Rule 56 C, SCRCP, "The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' Without addressing whether USBNA was the holder of Koola's Note and Mortgage and the person entitled to enforce the instrument under the laws of South Carolina, this Court affirmed the Master in Equity's Order granting Summary Judgment to USBNA, which should be reversed.

III. In the Appeal, Koola argued that the Master in Equity fraudulently altered the Bankruptcy Court's September 28, 2018 Order from *Ditech was the servicer of the owner of the debt Fannie Mae to Ditech was the holder of the Note and Mortgage and was the proper party authorized to enforce the debt.* The Court of Appeals dismissed Koola's fraud on the court claims stating that Koola's argument was unpreserved for review for failure to raise this argument to the master.

A. Bankruptcy Court's September 28, 2018 Order in favor of Ditech

B. The Master in Equity's April 13, Order

C. The Master in Equity fraudulently altered the Bankruptcy Court's Order for the benefit of USBNA.

A. Bankruptcy Court's September 28, 2018 Order in favor of Ditech

In Koola's 2018 Bankruptcy, (i) Ditech lacked standing in Koola's Bankruptcy, and consequently, the Bankruptcy Court had no jurisdiction over Ditech and its alleged claims; (ii) Ditech was not entitled to file the Lost Note affidavit; and (iii) Ditech became a moot party in Koola's Bankruptcy after it transferred a claim other than for security to U.S. Bank Trust on June 8, 2018 and sold ownership of the loan to U.S. Bank Trust on July 25, 2018. *The Bankruptcy Court's Order is a moot Order and is jurisdictionally void.* Nevertheless, the Bankruptcy Court issued an Order in favor of Ditech on September 2018 in which the Court concluded as law: (i) *Ditech was the servicer of Fannie Mae*; (ii) Ditech, which was allowed a 'secured claim' in the

amount of $173,580.30, shall administer any funds paid on the debt for the benefit of the owner of the debt, Fannie Mae.

B. The Master in Equity's April 13, Order

In the Master in Equity's Order filed on April 13, 2023, [R. p. 3, lines 27-29], the Court concluded as law: "*The United States Bankruptcy Court issued an Order filed on September 28, 2018, making a finding that Ditech was the holder of the Note and Mortgage and was the proper party authorized to enforce the debt,*" and granted Summary Judgment in favor of U. S. Bank Trust.

The Master in Equity *fraudulently altered* Bankruptcy Court's Order from *Ditech was the servicer of the owner of the debt Fannie Mae to Ditech was the holder of the Note and Mortgage and was the proper party authorized to enforce the debt.* In the Appeal, Koola alleged that this alteration in the Bankruptcy Court's Order was the result of Fraud upon the Court. Fraud upon the Court is "fraud which...subvert[s] the integrity of 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." *Chewing v. Ford Motor Co.*, 346 S.C. 28, 34; 550 S.E.2d 584, 587 (S.C. Ct.App. 2001). USBNA initially dismissed Koola's allegation but later conceded, "Koola is correct that the Bankruptcy Court did not find that Ditech was the holder of the Note." [Appellee's Brief, p. 14, lines 20-21].

C. The Master in Equity fraudulently altered the Bankruptcy Court's Order for the benefit of USBNA.

The Court of Appeals dismissed Koola's allegation stating that Koola's argument was unpreserved for review because Koola failed to raise this argument to the master. This is not a true statement. Koola noticed the Master in Equity's alteration of the Bankruptcy Court's Order but could not conclude whether it was a mistake or fraud upon the Court. In the Motion for

Reconsideration of the Master in Equity's April 13,2023 Order, Koola alerted the Master in Equity to two of his Conclusions of law in his April 13, 2023 Order, [R. p. 117, lines 12-23]:

"*The United States Bankruptcy Court issued an Order filed on September 28, 2018, making a finding that Ditech was the holder of the Note and Mortgage and was the proper party authorized to enforce the debt,*" [R. p. 117, 114-18] and " By Order filed on January 15, 2019, the United States Bankruptcy Court...made a specific finding that U.S. Bank was the owner of the Note and mortgage and proper party to enforce the debt and expressly approved the proof of claim filed by U.S. Bank Trust." [R. p. 117, lines 18-25]. These two Orders conflict with each other. Koola sincerely hoped that the Master in Equity will review the Bankruptcy Court's two Orders and will make any corrections if necessary. In the May 8, 2023 Order, the Master in Equity denied Koola's Motion for Reconsideration stating that the Court adopted the Plaintiff's Return to Koola's Motion for Reconsideration.as its basis for the denial of Motion for Reconsideration. [R. p.003]. At this point, Koola concluded that the alteration of the Bankruptcy Court's Order was not a genuine mistake, and the Master in Equity fraudulently altered the Bankruptcy Court's Order to benefit USBNA.

Conclusion: The Court of Appeals should have reversed the affirmation of the Master in Equity's grant of Summary Judgment on the ground that the Master in Equity committed fraud.

IV. The Court of Appeals denied Koola's Motion for Homestead Exemption on the following grounds: (i) Koola's arguments in support of his Motion for Homestead Exemption are "unpreserved for review because Koola failed to raise these arguments to the master;" (ii) Homestead exemption under section 15-41-30(A)(1)(a) of the South Carolina Code is not applicable to foreclosure of mortgage liens.

A. *Koola's arguments in support of his Motion for Homestead Exemption were duly presented to the Master in Equity and the Master had ruled on them through two Form 4 Orders.*

B. Koola also presented his argument that the provision in the Mortgage barring Homestead Exemption to condominium buyers is barred by the Constitutional mandate present in S.C. Const. art. III § 28 to the Master in Equity for his consideration.

C. Homestead Exemption under S.C. Code Ann. § 15-41-30(A)(1)(a) (2017) arises from the Mandate in S.C. Const. art. III § 28.

D. South Carolina Supreme Court has upheld the validity of homestead exemption in foreclosure of mortgage liens in *Carolina Production Credit Asso. v. Rogers*, 282 S.C. 184 (S.C. 184).

Koola respectfully disagrees with this Court's reasoning in denying Koola's Motion for Homestead exemption.

A. Koola's arguments in support of his Motion for Homestead Exemption were duly presented to the Master in Equity and the Master had ruled on them through two Form 4 Orders.

Koola presented his arguments in support of his Motion for Homestead Exemption to the Master in Equity. Koola attached copies of those Motions to the "Motion to Grant Homestead Exemption" filed in the Court of Appeals on September 18, 2023; pp.12-13, pp. 16-19).

In Koola's Motion to grant Homestead Exemption duly filed in the Court below on April 24, 2023, he cited the South Carolina law, S.C. Code Ann. § 15-41-30(A)(1)(a) (2017):"

> "Property exempted from attachment, levy, and sale," which has presented in pertinent parts: (A) The following real and personal property of a debtor domiciled in this state is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding: (1)(a) The debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property that the debtor or dependent of the debtor uses as a residence, ..., or in a burial plot for the debtor or a dependent of the debtor...." (Motion for Homestead Exemption filed in the Court of Appeals on Sep. 18, 2023, pp. 12-13).
> Motion to Grant Homestead Exemption" filed in the Court of Appeals on September 18, 2023, p.12.

S.C. Const. art. III § 28 is embedded in S.C. Code Ann. § 15-41-30(A)(1)(a) (2017) because the General Assembly enacted this Code based on the Constitutional mandate: "'General

Assembly" shall enact such laws as will exempt real and personal property of a debtor." The Master in Equity denied the Motion for Homestead Exemption through a Form 4 Order Motion to grant Homestead Exemption filed in the Court of Appeals on September 18, 202, p. 24.

B. Koola also presented his argument that the provision in the Mortgage barring Homestead Exemption to condominium buyers is barred by the Constitutional mandate present in S.C. Const. art. III § 28 to the Master in Equity for his consideration.

In Defendant's Reply to Plaintiff's Return to Defendant's Motion to grant Homestead Exemption, Koola argued in the Master in Equity' Court, "[A]ny provision in the Mortgage [which disallows Homestead Exemption] is inoperable if that provision is overridden by statute or South Carolina Constitution. In *Scholtec v. Estate of Reeves*, 327 S.C. 551, 553-54 490 S.E.2d 603, 604 (S.C. Ct.App. 1997), Court of Appeals stated,

> "Homestead rights do not exist under the common law, but are a unique American Institution, having their origins in the greatest debtor revolution of the era of "Jackson Democracy."40 C.J.S. Homesteads 3 at 175-176 (1991). The Homestead interest depends entirely upon constitutional and statutory provisions. *Dorn c. Stidham*, 139 S.C. 66, 76: 137 S.E. 331, 334-35 ((1927); 40 Am. Jur.2d Homestead 3 at117 (1968). "The South Carolina Constitution's homestead provision provides that the "general Assembly" shall enact such laws as will exempt real and personal property of a debtor." S.C. Const. art. III § 28. The legislature carried out this constitutional mandate under "Homestead and Other Exemptions" statute, S.C. Code Ann. § § 15-41-10 to 35 (1976 & Supp. 1966), which provide in pertinent part, that certain "real and personal property of a debtor domiciled in the this State is exempt from attachment, levy, and sale under any mesne or final process issued by any Court or bankruptcy proceeding." S.C. Code Ann. 15-41-30 (Supp. 1996)." [Motion to Grant Homestead Exemption" filed in the Court of Appeals on September 18, 2023; pp. 21-22].

The Master in Equity denied the Motion for Homestead Exemption through a Form 4 Order. [Motion to Grant Homestead Exemption" filed in the Court of Appeals on September 18, 2023; p. 24].

C. Homestead Exemption under S.C. Code Ann. § 15-41-30(A)(1)(a) (2017) arises from the Mandate in S.C. Const. art. III § 28

The mandates in S.C. Const. art. III § 28, "General Assembly *shall* enact such laws as will exempt real and personal property of a *debtor*" and S.C. Code Ann. § 15-41-30(A)(1)(a) (2017) are nonnegotiable by a provision in the Mortgage. *Constitutional mandates are nonnegotiable.*

The *key mandates* in S.C. Code Ann. § 15-41-30(A)(1)(a) (2017) are applicable only when the following conditions are met: 1. The exemption is applicable only to debtors who are domiciled in South Carolina; 2. The debtor should own the property; 3. Real property of the debtor is exempted under the Code only after a mesne or final process in a court or Bankruptcy; 4. the debtor's aggregate interest shall not exceed fifty thousand dollars in value as of 2017. Koola is a citizen of South Carolina, owns the property and has equity in the real property. Koola's foreclosure case unless reversed by the appellate courts is final.

D. South Carolina Supreme Court has upheld the validity of homestead exemption in foreclosure of mortgage liens in *Carolina Production Credit Asso. V. Rogers*, 282 S.C. 184 (S.C. 184).

In *Carolina Production Credit Asso. V. Rogers*, 282 S.C. 184 (S.C. 184), *which was a foreclosure case, plaintiff bank commenced an action against a mortgagor and executors of a testator's estate to collect the unpaid balance of certain promissory notes.* The trial court granted homestead exemption in real property to the wife of the testator. On Appeal, the Bank argued that the trial court erred in allowing Mrs. Shelley, the dead testator's wife, a homestead exemption pursuant to S.C. Code Ann. § 15-41-10 (1976) in real property owned by O.J. Rogers [testator] claiming her remarriage prior to the commencement of this action extinguished this right. South Carolina Supreme Court agreed with the mortgagee bank and reversed the trial court. However, the Supreme Court added, "Upon the death of a head of a family who owes debts, and to whom no homestead has been assigned in his or her lifetime, the right to interpose

the claim of homestead exemption... against the debts of the deceased ... is transferred to the widow or children, or both." *Dorn v. Stidham*, 139 S.C. 66, 83 137 S.E. [***0 331,337 (1927); In re Shoddy's Estate 201 S.C. 14, 21 S.E. (2d) 198 (1942).

The Court ruled further, "While Mrs. Shelley was within the class of dependents entitled to the homestead exemption at the time of Rogers' death, we hold her remarriage prior to the commencement of this foreclosure action removed her from this class, and the trial court properly denied her homestead exemption." This caselaw clearly shows that homestead exemption is allowed in the foreclosure of mortgage lien.

For the reasons stated, this Court should reverse the denial of Koola's Motion for Homestead Exemption.

V. Because the Bankruptcy Court's Order that res judicata barred Koola rom raising USBNA's standing in Koola's Bankruptcy was an order without merit and rendered by a court which had no jurisdiction, summary judgment in favor of USBNA was not appropriate.

In Koola's 2018 and 2021 Bankruptcy cases, USBNA did not prove that it had a claim against Koola. [Record]. During the Confirmation Hearing on July 29, 2021, Koola raised U.S. Bank Trust's lack of standing in Koola's 2021 as well as 2018 Bankruptcies. Spontaneously, the Bankruptcy Court ruled *sua sponte* from the Bench and in its August 17, 2021 Order, p. 13, [R. p. 42 lines 8-10] that: (i) In the 2018 case, Koola could have – but did not – objected to the Transfer of Claim other than for Security pursuant to Fed. R. Bankr. P. 3001(e)(2); and res judicata barred Koola from raising the issue of standing in the 2021 case. In the April 13, 2023 Order, [R. p. 42, lines 3-6], the Master in Equity ruled that Koola cannot raise U.S. Bank trust's standing in the foreclosure case.

Res judicata applies where three conditions are met: (1) *there is a prior judgment which was final, on the merits, "and rendered by a Court of competent jurisdiction in accordance with*

the requirements of due process;" (2) the parties to the second matter are identical to, or in privity with, the parties in the first action; and (3) "the claims in the second matter are based upon the same cause of action involved in the earlier proceeding." *LVNV Funding, LLC v. Harling*, 852 F.3d 367, 371 (4th Cir. 2017). (Emphasis added).

U.S. Bank Trust's Proof of Claim in Koola's 2021 Bankruptcy did not establish that it was Koola's creditor which had a claim against Koola that arose on or before the day the Bankruptcy Petition was filed as mandated by 11 U.S.C. §§ 101(10)(A), (5)(A), and it was not the holder of Koola's Note and was not the person entitled to enforce the instrument under South Carolina law, S.C. Code Ann. § 36-3-301(1) (2018). "[A] "person entitled to enforce the note," as defined in U.C.C. 3-301 [corresponding to S.C. Code Ann. § 36-3-301] has the requisite standing to file a proof of claim in a bankruptcy case." *Allen v. U.S. Bank, N.A. (In re Allen)*, 472 B.R. 559, 565 (BAP, 9th Cir. 2012). Therefore, U.S. Bank trust lacked standing in Koola's 2021 Bankruptcy.

During the Confirmation Hearing on July 29, 2021, Koola raised U.S. Bank Trust's lack of standing in Koola's 2021 as well as 2018 Bankruptcies. Spontaneously, the Bankruptcy Court ruled *sua sponte* from the Bench and in its August 17, 2021 Order that: (i) In the 2018 case, Koola could have – but did not – objected to the Transfer of Claim other than for Security pursuant to Fed. R. Bankr. P. 3001(e)(2), and res judicata barred Koola from raising the issue of standing in the 2021 case.

Fed. R. Bankr. P. 3001(e)(2) has provided:

> Transfer of Claim other than for Security after Proof filed. If a claim other than the one based on publicly traded note…has been transferred other than for security after the proof of claim has been filed, *evidence of the transfer shall be filed by the transferee.* The clerk shall immediately notify the affected transferor by mail of the filing of evidence of transfer and *objection thereto, if any, must be field within 21 days of the mailing of the*

notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. *If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.*" (Emphasis by italics added).

First, Fed. R. Bankr. P. 3001(e)(2) has emphatically stated that the transferor must object to the transfer of claim filed by the transferee. Second, Courts, which have interpreted R. 3001(e)(2), have ruled that only the transferor of the claim has standing to object to the transfer of a claim. *In re Moehring*, 485 B.R. 571, 577 (Bankr. S.D. Ohio, 2013).

The Bankruptcy Court's assertion that "Debtor could have – but did not – object to the transfer of the claim in the 2018 case" is an egregious misrepresentation of the Rule. Further, it was shown above that the Bankruptcy Court lacked jurisdiction over U.S. Bank trust and its claims. *Res judicata* applies only to Orders with Merit issued by a Court of competent jurisdiction. Therefore, res judicata did not bar Koola from raising U.S. Bank Trust's standing in the 2021 Bankruptcy. In the April 13, 2023 Order, [R. p. 9, 2-7], the Master in Equity defined res judicata incorrectly by omitting the key provision of the doctrine: "*Orders with merit issued by courts of competent jurisdiction.*"

In the April 13, 2023 Order, [R. p. 9-lines 2-7], the Master in Equity also ruled that res judicata barred Koola from raising U.S. Bank Trust's standing in the foreclosure case. The Master in Equity grossly misunderstood the concept of standing. As a defendant, Koola has no burden of establishing standing in the foreclosure "A plaintiff must have standing to institute an action." *Murray v. Estate of Murray*, 436 S.C. at 111; 871 S.E.2d at 179. "Plaintiffs bear the burden of establishing standing." *S. Walk at Broadlands Homeowners's Ass'n v. Openband at Broadlands, LLC*, 713 F.3d 175, 181 (4th Cir. 2013) citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992).

In summary, upon Appellate Review, this Court should reverse the Master in Equity's grant of Summary Judgment to U.S. bank Trust on the ground that: (i) as a defendant, Koola had no burden of establishing plaintiff U.S. Bank Trust's standing in the foreclosure case and (ii) *Res judicata did not* apply to Koola because the Bankruptcy Court's August 17, 2021 Order was without Merit, and the Court had no jurisdiction in he foreclosure case.

CONCLUSION

For the reasons stated, this Court should reverse the Order filed on June 11, 2025 affirming the Master in Equity's grant of Summary judgment to USBNA.

Respectfully submitted,

June 25, 2025

Signature J. D. Koola

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Appellant, *pro se*

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Mikell R. Scarborough
Master in Equity for Charleston County

Case No. 2010-CP-10-6060

Appellate Case No. 2023-000819

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, Respondent,

v.

Johnson D. Koola, First Citizens Bank and Trust Company, Inc. f/k/a/ First Citizens Bank and Trust Company of South Carolina, and Cambridge Lakes Condominium Homeowners Association, Inc., f/k/a Cambridge Lakes Horizontal Property Regime, Defendants,

Of whom Johnson D. Koola is the appellant.

Proof of Service

I certify that I have served Appellant's "Petition for Recpnsideration" on the counsels of record for the respondent, addressed below, by depositing a copy of the same in the United States Mail, postage prepaid, on June 25, 2025:

Attorney Jessica O'Brien Peretz, Esquire, McGuire Woods, LLP, 201, North Tyron St., #300, Charlotte, NC 82202 and

Scott and Corley, P.A., Attention Kevin T Brown, Esq., Allison E. Heffernan, Esq., Henry G. Murrell, Esq. and Nicole M. Arcodia, Esq.

June 24, 2025

J. D. Koola
Signature

Johnson D. Koola
1587 Cambridge Lakes Dr
Mt Pleasant, SC 29464
June 24, 2025

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SC Court of Appeals

The Clerk of the Court

The South Carolina Court of Appeals

1220 Senate Street

Columbia, SC 29201

Subject: Petition for Reconsideration
Reference: Appellate Case No. 2023-000819

Honorable Clerk of the Court,

Appellant Johnson D. Koola files Petition for Reconsideration of the dismissal of appellant's appeal.

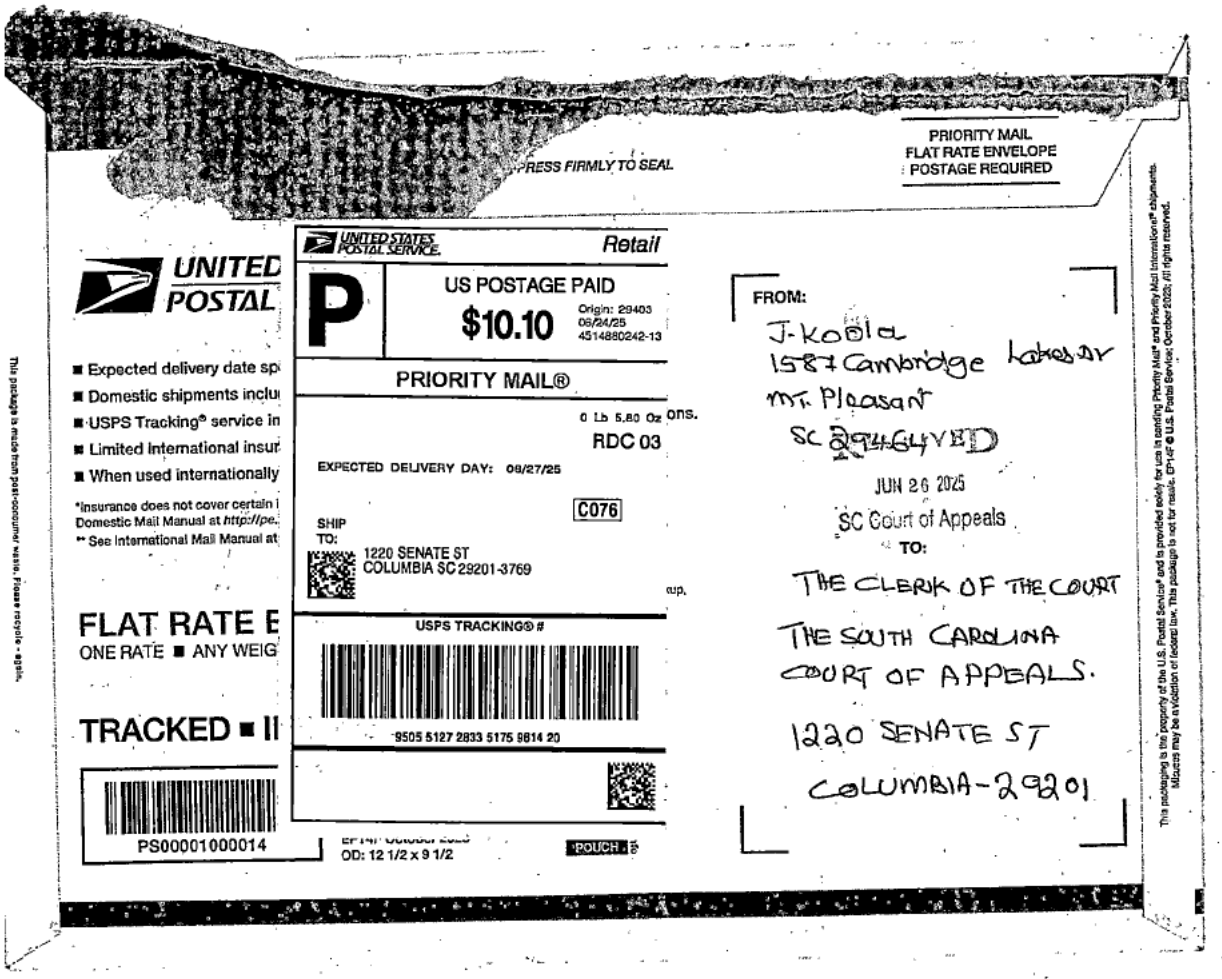
Kindly accept the same.

Respectfully submitted,

J. D. Koola
Johnson D. Koola

Cc:
Attorney Ms. Jessica O'Brien Peretz, Esquire, McGuire Woods,LLP.

Scott and Corley, P.A., Attention: Attorney Kevin Ted Brown, Esquire, Attorney Angela R. Grant, Esquire, Attorney Allison Earlin Heffernan, Esquire, and Attorney Henry Guyton Murrell Esquire



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