THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Benjamin C.P. Sapp, Special Referee

Case No. 2023-001394

Deutsche Bank National Trust Company as Trustee
for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5,

Respondent,

v.

Terry Lennette Grant,

Appellant,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

On June 29, 2016, Respondent, Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 ("Deutsche Bank" or "Respondent"), filed the action that is the subject of this appeal seeking foreclosure of property located in Beaufort County and owned by Appellant, Terry Lennette Grant ("Grant" or "Appellant"). The foreclosure is based upon Appellant's failure to make payments required by the terms of her note and mortgage since January 1, 2008. (R. pp. 353-358 and R. pp. 387-393).

On September 18, 2006, Appellant made, executed and delivered a note promising to pay NovaStar Mortgage, Inc., the sum of $680,000.00 with an interest rate of 7.75% per annum (the "Note"). (R. pp. 877-885). To secure payment of the Note, Appellant made, executed, and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., encumbering the subject real property located in Beaufort County (the "Mortgage"). (R. pp. 886-905). The Mortgage was recorded on September 26, 2006, in the Beaufort County Registry in Book 2448 at Page 823. (Id.). Thereafter, the Mortgage was assigned to Respondent by assignment recorded on December 10, 2009, in Book 2915 at Page 902. (R. p. 906). Respondent is the current holder of the Note and Mortgage. (R. pp. 175-177, R. p. 62, ¶26).

As a result of Appellant's default, foreclosure efforts were initiated and have been ongoing since 2009.

The initial foreclosure action was filed on December 1, 2009. *See* SC Civil Action Number 2009-CP-07-05612. The 2009 foreclosure was voluntarily dismissed on February 12, 2010, without apparent service of process on Appellant. The second foreclosure action was filed on April 12, 2010. *See* SC Civil Action Number 2010-CP-07-01690. That case was referred to The Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County, on June 15, 2010. Appellant appeared in the 2010 foreclosure *pro se* and no counterclaims were asserted. As a part of the 2010 foreclosure, Respondent sought to reform the Mortgage and sought an easement for ingress and egress for itself and its successors and/or assigns. (R. pp. 1109-1120). On February 7, 2014, Judge Dukes entered an order granting Respondent's motion for partial summary judgment as to the reformation and easement causes of action. (R. pp. 175-186). The February 7, 2014, Master's Order established: (1) that Grant, for value received, entered into the subject Note and Mortgage; (2) that Deutsche Bank was the present lienholder at the time the order was entered thereby establishing standing to enforce the subject Note and Mortgage; (3) that Deutsche Bank was entitled to judgment as to its causes of action for reformation of the mortgage based upon mutual mistake; and, (4) that Deutsche Bank and its successors were entitled to an easement for the purposes of ingress and egress. (Id.). The February 7, 2014, Master's Order has never been appealed or vacated.

Deutsche Bank was granted judgment as to its remaining cause of action for foreclosure in an order entered May 28, 2014. (R. pp. 147-155). The May 28, 2014, Foreclosure Order was subsequently vacated and the cause of action for foreclosure was dismissed **without prejudice** pursuant to SCRCP Rule 60(b) on January 14, 2016. (R. pp. 142-143). As stated above, the

February 7, 2014, Master's Order remains in full force and effect as it was not affected by the vacating of the May 28, 2014, Foreclosure Order.

This foreclosure action was initiated on June 29, 2016. (R. P.p 353-358). Appellant initially answered on October 28, 2016. (R. pp. 800-802). The case was administratively referred to The Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County, on March 15, 2017. (R. pp. 138-139). Respondent filed its first Motion for Summary Judgment on June 22, 2017. (R. pp. 740-773). Appellant requested leave of the court to amend her answer on July 21, 2017, and a copy of the proposed answer was attached to the motion. (R. pp. 806-810). On October 10, 2017, Respondent sought to amend its Complaint. (R. p. 811). The Master held a hearing on November 6, 2017, on Respondent's motion and entered an order granting the relief requested on that same date. (R. pp. 136-137). Appellant filed a motion to reconsider the November 6, 2017, Order to Amend Complaint on November 7, 2017. (R. pp. 812-813). Respondent amended its Complaint on November 9, 2017. (R. pp. 387-393).

On December 7, 2017, Appellant answered the Amended Complaint. (R. pp. 814-816). Appellant then sought to amend her answer on February 15, 2018. (R. pp. 817-821). Judge Dukes held a hearing on May 13, 2018, on both parties' pending motions and issued an order on May 22, 2018. (R. pp. 133-135). The Order relieved William Sloan as Appellant's attorney and continued the hearing on Respondent's Motion for Summary Judgment, Appellants' first and second motions to amend her answer, and Appellant's Motion to Reconsider. (Id.). Judge Dukes heard Appellants' pending motions on June 13, 2018, and denied Appellant's First Motion to Amend Answer as moot, denied Appellant's Motion to Reconsider, and granted Appellant's Second Motion to Amend Answer allowing her 15 days to file the amended answer. (R. pp. 128-130). Judge Dukes then held a hearing on Respondent's Motion for Summary Judgment on August 1, 2018, where he

requested the parties submit memoranda regarding whether the February 7, 2014, Master's Order remained in full force and effect in light of the subsequent January 14, 2016, Order Vacating Foreclosure and Dismissing Action. Respondent submitted a Supplemental Memorandum addressing this issue on August 15, 2018. (R. pp. 822-857). Appellant responded by filing a Chapter 13 Bankruptcy petition. Respondent filed a Motion to Stay due to Bankruptcy on September 14, 2018, and an Order of Stay was entered on September 20, 2018. (R. pp. 774-777, pp. 131-132).

Respondent moved to restore this action after Appellant's Bankruptcy was dismissed, and an Order Restoring the Case was filed on May 21, 2020. (R. pp. 858-862, pp. 125-127). In furtherance of its previously filed Motion for Summary Judgment, Respondent filed an Affidavit in Support of Judgment on April 2, 2021. (R. pp. 863-970). Due to the passage of time, Respondent later filed a second Motion for Summary Judgment on July 15, 2021. (R. pp. 971-1075). Respondent's motion was heard on August 3, 2021, and granted August 6, 2021, with a foreclosure sale scheduled for September 7, 2021. (R. pp. 107-124).

Appellant submitted a document purporting to be a Notice of Appeal to the South Carolina Supreme Court on September 3, 2021, and an appeal was initiated in this Court. (R. p. 733). On October 13, 2021, Appellant was granted remand to the Master in Equity for consideration of a motion for relief from judgment. (R. pp. 797-798). Appellant, through newly retained counsel, Charles Houston, filed a Motion for Relief from Judgment on January 18, 2022. (R. pp. 635-643). The parties entered into a Consent Order to Vacate Judgment on May 6, 2022, which returned the case to pending status before the Master in Equity and rendered Appellant's appeal moot. (R. pp. 101-102). Respondent submitted an Affidavit of Amount Due on August 25, 2022. (R. pp. 1076-1078). A formal remittitur was entered on August 29, 2022. (R. pp. 99-100).

Following remittitur, Respondent renewed its Motion for Summary Judgment. (R. pp. 405-410). Though represented by counsel, Appellant filed a pro se Response in Opposition to Respondent's Motion for Summary Judgment on October 6, 2022. (R. pp. 411-421). Appellant also filed a pro se Motion and Order to Relieve Counsel on October 11, 2022. (R. pp. 97-98). Judge Dukes formally relieved Charles Houston as Appellant's Counsel on October 13, 2022. (R. pp. 1079-1082).

Appellant filed a pro se Motion for Summary Judgment and to Dismiss on October 21, 2022. (R. pp. 422-516). The gravamen of Appellant's motion, which essentially mirrors Respondent's motions for summary judgment, was the unsubstantiated assertion that Appellant never entered into the loan transaction that resulted in the Note and Mortgage and that Respondent lacked standing to bring a foreclosure action. (Id.). Respondent submitted a Memorandum in Opposition to Appellant's Motion for Summary Judgment on October 26, 2022. (R. pp. 519-548). Respondent also filed copies of Appellant's Responses to Respondent's Requests for Admissions issued while Appellant was represented by William Sloan. (R. pp. 1083-1087). Appellant filed a document entitled "Return to Plaintiff's Opposition to Defendant's Summary Judgment and to Dismiss" on October 28, 2022. (R. pp. 549-555). Notably, this document is signed by "Vivian M. Woods as POA" for Appellant. (R. p. 554). Ms. Woods is not a South Carolina licensed attorney with authority to appear on behalf of Appellant in any court.

A hearing on the parties' cross-motions for summary judgment was scheduled for November 30, 2022. Two days before the scheduled hearing, Appellant filed an action in the United States District Court for the District of South Carolina as an improper collateral attack on the foreclosure. *See* Terry Lennette Grant v. Peter Wolf & Associates, PC, et al., USDC Number 9:22-cv-04262-DCN-MGB (the "Federal Action"). The Federal Action was wholly comprised of

spurious allegations against 55 individuals and entities Appellant contends are involved in a massive conspiracy to foreclose on her home. The defendants in the Federal Action include Appellant's closing attorney for the subject loan, the closing law firm, Appellant's prior foreclosure counsel, William Sloan, an entity that previously held a mortgage on Appellant's property, law firms (and individual employees) that represent or previously represented Respondent, and Judge Dukes. Even the Beaufort County Administrator and Register of Deeds were not spared. Based upon his inclusion as a defendant in the Federal Action, Judge Dukes issued an Order Vacating Order of Reference and Order of Recusal on December 1, 2022. (R. pp. 103-104). Respondent immediately requested reconsideration of Judge Dukes' recusal based upon the Federal Action being a sham pleading - frivolous on its face and containing no allegations that could be construed as grounds for Judge Dukes' recusal. (R. pp. 556-559). Judge Dukes denied Respondent's Motion on December 7, 2022. (R. pp. 105-106). Based upon the allegations contained in the Federal Action, counsel for Respondent deposed Appellant's prior counsel, William Sloan, to confirm the veracity of Appellant's pleadings and responses to discovery submitted in this action. (R. pp. 199-312, 1123-1337). During his deposition, Mr. Sloan verified his prior representation of Appellant in this action from mid-2016 to spring 2018 and confirmed the authenticity of copies of each of Appellant's pleadings and discovery responses he had submitted on her behalf. (Id).

United States Magistrate Judge Mary Gordon Baker issued a Report and Recommendation to dismiss Judge Dukes as a party to the Federal Action on December 22, 2024, and Judge Dukes was formally dismissed on February 9, 2023. On September 28, 2023, the Federal Action was dismissed with prejudice upon adopting the Magistrate's Report and Recommendation to grant motions to dismiss filed by nearly all the named defendants. Notably, part of the reasoning for

granting the respective motions to dismiss involved the res judicata effect of the February 7, 2014, Master's Order.

Based upon the equitable nature of Respondent's foreclosure, Respondent submitted a proposed order to refer the action to Benjamin C.P. Sapp, as Special Referee, on February 14, 2023, and Judge Mullen entered the Order of Reference on February 21, 2023. (R. pp. 94-96). Appellant filed a Supplemental Memorandum to support her Motion for Summary Judgment on March 3, 2023. (R. pp. 680-692). Appellant's Supplemental Memorandum largely restates her unfounded allegations that she did not complete the closing of the loan transaction that resulted in the Note and Mortgage and her challenge to Respondent's standing to foreclose. (Id.). Appellant filed a document entitled "Opposition/Reconsideration and/or Appeal of Special Referee Appointment on March 9, 2023. (R. pp. 704-731). Appellant's opposition to the Order of Reference was not in the form of a motion or legally cognizable request for court action; however, out of an abundance of caution, Respondent filed a Memorandum in Opposition to Appellant's March 9, 2023, filing in the event the Court treated the filing as a formal motion. (R. pp. 1088-1101). The Court took no action on Appellant's March 9, 2023, filing, and the validity of the Order of Reference has not been raised as an issue on appeal.

Respondent filed an Affidavit of Amount Due in support of its request for summary judgment on April 3, 2023. (R. pp. 1102-1104). The Special Referee heard the parties' respective motions for summary judgment on May 4, 2023. (R. pp. 1338-1339). Appellant did not attend the hearing. (R. pp. 313-345). Vivian Michelle Woods appeared at the hearing on Appellant's behalf. As Ms. Woods was not a licensed South Carolina attorney, she was not allowed to make arguments for Appellant. Counsel for Respondent argued the pending motions, and the Special Referee examined the original Note, which included original endorsements and stamps from the

Court applied when the Note was previously produced for Judge Dukes' inspection at prior hearings, and original Mortgage. (R. pp. 334-335). The Special Referee took the pending motions under advisement and requested the parties submit proposed orders. In an Order entered on June 28, 2023, the Special Referee granted Respondent's request for summary judgment and denied Appellant's requests. (R. pp. 54-73). Appellant requested reconsideration of the Order of Foreclosure on July 7, 2023, asserting that the Special Referee did not read Appellant's various filings. (R. pp. 738-739). The Special Referee denied Appellant's Motion to Reconsider on September 1, 2023. (R. pp. 11-17). The foreclosure sale was scheduled for November 3, 2023. (R. pp. 8-10). This appeal followed.

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). When an action in equity is appealed, the appellate court "may find facts in accordance with its own view of the preponderance of the evidence." *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2007). Nevertheless, "the appellant is not relieved of his burden of convincing the appellate court [that] the trial judge committed error in his findings." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (quoting *Pinkney v. Warren*, 344 S.C. 382, 387–88, 544 S.E.2d 620, 623 (2001)). The Appellate Court may affirm the trial court's ruling for any ground appearing in the record. Rule 220(c), SCRAP; *see also I'On, L.C.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

The South Carolina Supreme Court recently issued its opinion in the case of *Williams v. Jeffcoat,* 2024 WL 4234721 (2024). *Williams* involved the Master in Equity's granting of a motion

for summary judgment in an equitable partition action similar to Respondent's foreclosure action.

In *Williams*, the Supreme Court spelled out the standard of review applicable to this case:

> Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. *Knight v. Austin*, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012). Summary judgment is proper when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. See Rule 56(c), SCRCP; *Knight*, 396 S.C. at 521-22, 722 S.E.2d at 804; *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (eliminating the "mere scintilla" standard and holding the proper standard is the "genuine issue of material fact" standard set forth in the text of Rule 56(c), SCRCP). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Summary judgment is not proper when further inquiry into the facts is necessary "to clarify the application of the law." Id.

ARGUMENT

1. RES JUDICATA AS A BAR TO RESPONDENT'S ACTION WAS NOT PROPERLY PLED OR PRESERVED FOR APPELLATE REVIEW AND THE DOCTRINE DOES NOT BAR RESPONDENT'S FORECLOSURE.

Appellant asserts that the Special Referee erred in "failing to find this action barred by res judicata". (Appellant's initial brief, P.2). Though referenced in her voluminous filings subsequent to her responsive pleadings in this action, Appellant has never pled the doctrine of res judicata as a bar to Respondent's foreclosure. On June 13, 2018, Judge Dukes heard three motions filed by Appellant related to amendment of the pleadings. In his June 25, 2018, Order, Judge Dukes expressly allowed Appellant 15 days to amend her answer specifically to add the equitable defenses of laches and res judicata. (R. pp. 128-130). Despite being granted leave to do so,

Appellant never filed an amended answer asserting res judicata, thereby waiving the same as an affirmative defense.

> A party, in replying to a preceding pleading, shall affirmatively set forth his defenses to the opposing party's complaint. Rule 8(c), SCRCP. "Every defense, in law or fact, to a cause of action in any pleading ... shall be asserted in the responsive pleading thereto...." Rule 12(b), SCRCP. Generally, affirmative defenses to a cause of action in any pleading must be asserted in a party's responsive pleading. *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007) (citing *Wright v. Craft*, 372 S.C. 1, 20–21, 640 S.E.2d 486, 497 (Ct.App.2006)). Statutory prohibition is in the nature of an affirmative defense precluding enforcement of a contract and should be pled. *Costa and Sons Const. Co. v. Long*, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct.App.1991) (citing Rule 8(c), SCRCP).

Madren v. Bradford, 378 S.C. 187, 192-193, 661 S.E.2d 390, 393 (Ct.App.2008).

Because Appellant never pled res judicata as an affirmative defense to Respondent's foreclosure action, it was never ruled upon by the Special Referee. Therefore, the issue is not preserved for appellate review.

> It is well settled that an issue may not be raised for the first time in a post-trial motion. *McGee v. Bruce Hosp. Syst.*, 321 S.C. 340, 347, 468 S.E.2d 633, 637 (1996). Further, it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965). Additionally, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002).

South Carolina Dept. of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301-302, 641 S.E.2d 903, 907 (2007).

Even if Appellant had properly pled res judicata as an affirmative defense, and the issue preserved for appellate review – neither of which occurred – res judicata does not bar Respondent's

foreclosure as a matter of law. The Special Referee addressed res judicata and the "law of the case doctrine" in relation to Appellant's unsupported assertions that she never entered into the subject loan transaction and that Respondent lacked standing to bring a foreclosure, ruling that these doctrines actually bar Appellant's challenges as Judge Dukes' February 7, 2014, Order was never appealed or vacated. (R. pp. 57-60)

Regarding res judicata, the Special Referee correctly noted:

> 16. "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. Under the doctrine of res judicata, "[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." *Plum Creek Dec. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (internal citations omitted). See also *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164 (1986) (under the doctrine of collateral estoppel, once final judgment has been reached in prior claim, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim).

(R. pp. 57-58). The 2010 foreclosure was ended by an Order that expressly vacated the May 28, 2014, Foreclosure Order, and dismissed the prior foreclosure **without prejudice**. (R. p. 143). Dismissal of the prior foreclosure "without prejudice" preserved Respondent's ability to file a new foreclosure action in the future, which is the only logical outcome of the prior case because Appellant had an ongoing obligation to make the monthly payments due under the terms of the Note and Mortgage through the loan's maturity in 2036. If Appellant failed to uphold that obligation, Respondent would be entitled to enforce the Note and Mortgage by a future foreclosure action – which is precisely what occurred. It is difficult to fathom how Appellant arrived at the conclusion that the vacated foreclosure judgment somehow prevents this action.

2. FRAUD WAS NOT PROPERLY PLED OR PRESERVED FOR APPELLATE REVIEW AND APPELLANT'S LAST-DITCH ARGUMENTS REGARDING FRAUD DO NOT CREATE A GENUINE ISSUE OF MATERIAL FACT.

Appellant's brief suggests that Respondent, through counsel, has fraudulently misrepresented facts to the Court and committed fraud by creating and introducing false and fraudulent documents to the Court in the course the foreclosure action – and by doing so established that Respondent is the holder of the Note and Mortgage. Respondent and its counsel vehemently deny that any false or fraudulent facts or documents have been created or introduced, and this denial is supported by Appellant's own pleadings and discovery responses. In her October 28, 2016, Answer, Appellant admits to signing the Note and Mortgage. (R. p. 800, ¶4, 5). In the Proposed Amended Answer filed with the July 21, 2017 Appellant's First Motion to Amend Answer, Appellant again admits to signing the Note and Mortgage. (R. p. 808, ¶4, 5). In the December 7, 2017, Answer to Amended Complaint, Appellant again admits to signing the Note and Mortgage. (R. p. 814, ¶4, 5). In the Proposed Amended Answer filed with the February 15, 2018 Appellant's Second Motion to Amend Answer, Appellant again admits to signing the Note and Mortgage. (R. p. 817, ¶4, 5). In Appellant's Responses to Respondent's Requests for Admissions dated April 10, 2017, Appellant again admits to signing the Note and Mortgage. (R. p. 1083). Appellant's prior counsel confirmed the veracity of these pleadings and discovery responses prepared and submitted on Appellant's behalf. (R. pp. 220-230).

Although Appellant uses the word "fraud" in her voluminous filings, the nine elements of the cause of action for fraud and evidence to support those elements are nowhere to be found. Indeed, Appellant's arguments regarding fraud are merely a last-ditch effort to avoid the inevitable outcome of foreclosure. Bare accusations, unsupported by any evidence, fall far short of creating a genuine issue of material fact. Rule 9(b), SCRCP, requires that "the circumstances constituting fraud or mistake **shall be stated with particularity.**" (emphasis added). "Fraud is not presumed,

but must be shown by clear, cogent, and convincing evidence." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). While ample evidence of the existence and authenticity of the loan documents is provided by Appellant's own admissions and bolstered by overwhelming evidentiary support found in the public record to establish that Appellant entered into the subject loan transaction, Appellant's pleading of fraud and/or fraudulent misrepresentation pertaining to these documents and "... clear, cogent, and convincing evidence" of this fraud is utterly absent. (Id.). As stated above, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Appellant's failure to plead fraud in her filings with the Court or to raise the issue at the hearing on Appellant's Motion for Summary Judgment – which Appellant did not even attend – bars Appellant from raising the issue as a matter of first impression now. Furthermore, Appellant's failure to raise fraud to the trial judge(s) means that neither Judge Dukes nor Judge Sapp has ever ruled upon this supposed fraud, and the issue is not preserved for appeal.

3. RESPONDENT IS THE REAL PARTY IN INTEREST WITH STANDING TO BRING THIS FORECLOSURE.

Appellant challenges Respondent's standing to bring this foreclosure action. As discussed earlier, the Special Referee correctly ruled that Appellant's challenge to Respondent's standing is barred by the doctrines of res judicata and "law of the case" based upon the February 7, 2014, Master's Order which has never been appealed or vacated. (R. pp. 57-62). The Special Referee found that, "[t]he Master's Order established: (1) that Grant, for value received, entered into the subject Note and Mortgage; (2) that Deutsche Bank was the present lienholder at the time the Order was entered thereby establishing standing to enforce the subject Note and Mortgage; (3) that

Deutsche Bank was entitled to judgment as to its causes of action for reformation of the mortgage based upon mutual mistake; and, (4) entitlement to an easement for the purposes of ingress and egress." (R. pp. 56-57, ¶14).

Further, Respondent is the holder and has possession of the original Note, which bears both a stamp indorsing the Note to Respondent as well as an Allonge indorsing the Note to Respondent. Respondent is the holder and has possession of the original Mortgage, which has been assigned to Respondent by an assignment recorded in the Beaufort County Registry.

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage" *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note."). Id. at 220. Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action.

Respondent, through previous counsel, provided the original Note for the Court – and Appellant's – inspection at the foreclosure hearing on May 28, 2014, and it bears the Court's stamp. Respondent again provided the original Note to the Court at the August 3, 2021, hearing on Respondent's Motion for Summary Judgment. Respondent also provided the original Note and Mortgage for the Court's inspection at the May 4, 2023, hearing. The June 28, 2023, Special Referee's Order of Foreclosure takes special care to acknowledge the significance of the possession of the original Note as it pertains to standing:

> 26. The Plaintiff produced the original Note for this Court's inspection at the May 4, 2023 hearing. As evidenced by the stamps placed on the face of the

document, Plaintiff previously produced the Note for Judge Dukes' inspection in the 2010 Foreclosure Action on May 28, 2014 in conjunction with entry of foreclosure judgment in that case. The original Note was again produced for the Court's inspection in connection with a prior hearing in this action on August 3, 2021. On its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

27. Further, the Defendant lacks standing to challenge the transfer of the subject Note and Mortgage because she was not a party to said transfer. *In Re McFadden*, 471 BR 136 (2012); see also *Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012)("Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity"); see also *Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). ("Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.").

28. Based upon the foregoing, I find the Plaintiff has standing to bring the instant foreclosure action as a matter of law.

(R. p. 62). Respondent, as the holder of the specifically indorsed Note and assignee of the Mortgage, clearly has standing to bring the foreclosure action. Appellant's baseless arguments to the contrary fly in the face of well-established case law and statutory authority. There is no genuine issue of material fact related to Respondent's standing to bring this foreclosure and the Special Referee properly granted Respondent summary judgment as to this issue.

CONCLUSION

For the reasons stated above, this Court should affirm the judgment of the Circuit Court.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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Date: September 17, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that, on September 17, 2025, Respondent's Final Brief was served on Appellant by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

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Sep 17 2025
SC Court of Appeals

SCACR RULE 211(b) CERTIFICATE OF COMPLIANCE

The undersigned counsel for Respondent hereby certifies that Respondent's Final Brief complies with SCACR Rule 211(b).

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