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Reply to:

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SC Court of Appeals

November 22, 2013

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211

RE: EDWARD J. RIVERA; MICHELE L. RIVERA v. BAC HOME LOANS SERVICING,
L.P.
Appellate Case No.: 2012-212893
Our File No.: 328804

Dear Ms. Kitchings:

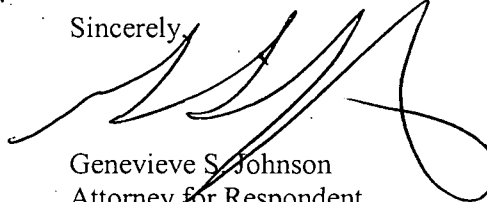
The recent Court of Appeals Opinion No. 5140 in *Bank of America v. Draper* has significant bearing on this case, which is currently scheduled for oral arguments on December 11, 2013. By way of a brief background, BAC Home Loans Servicing, L.P. brought a foreclosure action on August 20, 2009. The borrowers were personally served and did not make an appearance in the action. Judgment was entered by Judge Simmons on September 3, 2010. The borrowers missed the time to Appeal the foreclosure and instead filed an Action to Quiet Title on March 23, 2012, seeking to overturn the prior foreclosure based on an alleged lack of standing of the Plaintiff. This argument was premised on the fact that the assignment of mortgage into BAC Home Loans Servicing was dated August 27, 2009 and not recorded until September 1, 2009, after the action was filed. In the Quiet Title Action, the Respondent filed a Motion to Dismiss, and an Order granting the Respondent's Motion was entered August 8, 2012. Subsequently the Appellants filed this appeal.

On June 5, 2013, after the submission of the final brief in this matter, The Court of Appeals filed their opinion in *Bank of America v. Draper*. The central issue of the present case falls squarely within the holding of *Bank of America v. Draper*. In *Draper*, the Court of Appeals held that the servicer of a loan has standing to bring a lawsuit. Specifically, the court stated "[s]everal bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of the loan to be a real party in interest and able to initiate a foreclosure. We agree with this view." In the present case it is never disputed that the Plaintiff in the original foreclosure action (BAC Home Loans Servicing L.P.) was also the servicer of the loan. In fact, the Appellant specifically draws attention to the fact that BAC Homes Loans Servicing, L.P. is the servicer in their Complaint in the Quite Title Action. The Appellants put forth three arguments in their Final Brief. All three arguments are geared to persuade the Court that standing is a subject matter jurisdictional issue that cannot be waived and that the Respondent did not have standing because the assignment was filed after the filing of the foreclosure action. However, even if some merit were to be given to these arguments, the issue becomes irrelevant

in light of the recent holding in *Bank of America v. Draper*. Even if we were to assume that the date of the assignment was relevant to establishing the Plaintiff's ownership and, thus, standing and even that standing did relate to subject matter jurisdiction, this issue is of no consequence in this case as the Appellant is undisputedly, at minimum, the servicer of the loan.

Therefore, Respondent respectfully requests that this case be reevaluated in light of the recent Court of Appeals holding in *Draper*. Since the issue under appeal has been rendered moot, we would request that the Appeal be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Genevieve S. Johnson', written over the typed name and title.

Genevieve S. Johnson
Attorney for Respondent

cc: Bridget Davis Swing, Esq.