

APPELLANT(S)' OPENING BRIEF

IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA

Robert Barnett, as Trustee of the RH 401(k) Plan,
Respondent,

v.

Erica Lynn Davis,
Austin J. Davis,
and

Signature Gain Express Trust, DTE 06/22/2022
(An Irrevocable Express Trust Organization),
Harol Alezu Lozano Moran, Sole Trustee,
Defendants,

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SC Court of Appeals

of which **Erica Lynn Davis and Austin J. Davis** are the Appellants.

Appeal From the Greenville County Court of Common Pleas
Appellate Case No. **2025-002218**

Opening Brief

Presented by:
Austin J. Davis
EricaLynn Davis

Self Represented

Date: February 15, 2025

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JURISDICTIONAL STATEMENT

This appeal is taken from a Final Judgment of Foreclosure and Sale entered in the Greenville County Court of Common Pleas on September 24, 2025. This Court's jurisdiction is invoked pursuant to 1978 Act No. 587, § 2, 1985 Act No. 100, § 1 (codified at S.C. Code Ann. § 14-3-330), which grants the Court of Appeals jurisdiction to review final judgments. This appeal is timely filed in conjunction with a motion for permission to file Initial Brief and Designation of Matter outside the deadlines prescribed by Rules 208 and 240, SCACR.

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court violated Appellants' due process rights by entering a foreclosure judgment based on a series of unsupported judicial presumptions—including the admissibility of unauthenticated documents, the conclusive effect of a verified complaint, and the notion that a co-defendant's default cures a failure to prove standing—thereby depriving Appellants of a meaningful opportunity to be heard and to present a defense.
2. Whether the circuit court violated Appellants' equal protection rights by applying a dual system of evidentiary rules, accepting the plaintiff's pleadings and copies as conclusive proof while systematically excluding and refusing to adjudicate Appellants' evidence requests and subsequent defenses challenging authenticity, ownership, and consideration.

3. Whether the circuit court lacked subject matter jurisdiction to enter an Order of Reference and a final judgment where the plaintiff's standing to foreclose was properly challenged by the equitable titleholder of record and never proven with competent, admissible evidence.
4. Whether the trial Court erred in considering and ruling on a Motion for Summary Judgment before discovery enabled Appellant to acquire information to prove the Appellee's standing
5. Whether the trial Court erred in finding that Appellees had standing to foreclose.
6. Whether the trial Court erred in concluding there were no genuine issues of disputed fact.
7. Whether the trial Court erred in accepting hearsay testimony from opposing counsel via affidavit.
8. Whether Appellee is entitled to attorney fees and costs.
9. Whether the trial court erred in ordering and executing the subsequent auction, sale, and pending removal of Appellants and their property.

STATEMENT OF FACTS

1. Appellee is an alleged secondary mortgage servicer, who allegedly obtained the subject Note and Mortgage from the original servicer, Synovus.
2. Appellee was allegedly assigned this Note and Mortgage on May 15, 2025 with the alleged transfer becoming effective that same day. (R. at 38-42).

3. Appellee filed a foreclosure complaint in the Circuit Court on June 18, 2025. (R. at 6-10). Subsequently, Appellant's were served on June 26, 2025.
4. Appellants, trustees for the equitable titleholder of record, SIGNATURE GAIN EXPRESS TRUST, filed a Petition to Dismiss and a Verified Counterclaim on July 24, 2025 (R. at 56-63) and (R. at 49-55) respectively¹, challenging Appellee's standing and demanding an evidentiary hearing to authenticate documents and prove chain of title, and substantiate the assertions presented within the counterclaim. This filing was timely under applicable court rule 12(a) SCRCF.
5. The counterclaim directly preserves a defense that Plaintiff "negligently misrepresented the existence and enforceability of the note, its right to enforce, and the timing of the debt acquisition, causing confusion and legal injury." (R. at 7,8)(References added in respect to order mentioned).
6. The Petition to Dismiss contained a prayer for relief that requested the court hold a Rule 43 Hearing to validate the documents the Plaintiff presented into evidence by a competent and unbiased third party. (R. at 62-63).
7. The circuit court entered an Order of Reference on July 30, 2025, while these challenges were pending "[in order to] make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case;...". (R. at 74).
8. Appellee subsequently moved for summary judgment. (R. at 94-95).
9. Following the aforementioned hearing at which only Appellee's counsel appeared and no witnesses or properly authenticated admissible evidence were presented.

10. On September 24, 2025, before the Order of Judgment was entered, Appellants filed an Emergency Rule 43 Motion (R. at 125-128), as well as a Motion to Compel Evidence. (R. at 130-135). Order was filed on that same day, but chronologically later.

11. Following this hearing the Master in Equity entered a Final Judgment of Foreclosure and Sale on September 24, 2025. This appeal timely follows.

12. The Master's Order of Foreclosure, entered September 24, 2025, states it relied on "closing documents (R. at 140)... show that the money for the loan went to purchase the subject property" and "what appears to be the original of the Promissory Note" displayed in court. (R. at 140).

13. The Order further declares "no material fact in dispute" while ignoring Appellants' pending, verified challenges. (R. at 140-141).

STATEMENT OF THE CASE

The material facts are procedural and revolve around the evidence that was *not* presented. Appellee's claim rests entirely on copies of a note, mortgage, and assignment attached to its Summons and Complaint as Exhibits A, B, and C. (R. at 13-42); and that they had been assigned a "[valid] debt secured thereby." (R. at 7). Appellants, appearing specially and not generally as trustees for the titled owner, specifically challenged the authenticity of these documents, the validity of the assignment, and the proof of consideration/ existence of the alleged debt. Appellants filed a Petition to Dismiss and a Verified Counterclaim, which included demands for a

hearing pursuant to Rule 43, S.C. R. Civ. P., to compel Appellee to meet its burden of proof. (R. at 50-53).

The Master's Order of Foreclosure, entered September 24, 2025, states it relied on "closing documents... show that the money for the loan went to purchase the subject property" and "what appears to be the original of the Promissory Note" displayed in court. (R. at 140). The closing documents were never admitted into evidence rather only emailed to the Master and the Appellants from the Appellee at the Master's request. (R. at 176-177) No witness testified as to their authenticity, no custodian affidavit was provided, and absolutely no foundation was laid under the South Carolina Rules of Evidence. The Order further declares "no material fact in dispute" while ignoring Appellants' pending, verified challenges. (R. at 140-141). It notes the individual borrowers were in default but proceeds to foreclose against the Trust without a finding, **based on admissible evidence**, that Appellee is the holder of the original note entitled to enforce it against the Trust. (R. at 142). The Order dismisses Appellants' counterclaims in a single sentence as "without merit," without any analysis or findings of fact. (R. at 148).

The documents requested for review in the Appellants' petition (R. at 62,63), memorandum (R. at 107-108), and motion(s) (R. at 126,127, 131-134) are not obscure or fictional documents. They are required by either Federal Statute, a Federally organized and controlled bureaucracy or regulatory agency, the IRS, Trust law, accounting practices or prior precedent. The Appellants also have a right to this

information, as their name is on the account, the pledged collateral, and the subsequent collateral account opened upon the deposit of said collateral.

STANDARD OF REVIEW

This appeal presents questions of constitutional due process, subject-matter jurisdiction, the admissibility of evidence, and the trial court's failure to make findings of fact as required by Rule 52(a), SCRPC. Each issue carries its own well-established standard of review.

Constitutional questions, including whether the proceedings violated the Due Process Clause or the Equal Protection Clause, are reviewed **de novo**. *Snow v. Smith*, 321 S.C. 548, 551, 470 S.E.2d 573, 575 (Ct. App. 1996) (constitutional due process violations are reviewed without deference). Whether a litigant received a "meaningful opportunity to be heard" is a pure question of law. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Standing and **subject-matter jurisdiction** are also reviewed **de novo**, as they are questions of law that may be raised at any stage of the proceedings. *In re Foreclosure of G & H Land Co.*, 389 S.C. 520, 525, 698 S.E.2d 823, 826 (Ct. App. 2010); *Roche v. Young Bros.*, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995).

Evidentiary rulings, including the admission of unauthenticated documents and the refusal to hold a Rule 43 evidentiary hearing, are reviewed for **abuse of discretion**, but that discretion "is constrained by the Rules of Evidence." *J.K. Constr. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 170, 519 S.E.2d 561, 565 (Ct. App. 1999). Evidence not

properly authenticated “is not admissible,” and reliance on such evidence constitutes reversible error. *Concrete Servs., Inc. v. USF&G Co.*, 331 S.C. 506, 510, 498 S.E.2d 865, 867 (1998).

A trial court’s **failure to make findings of fact and conclusions of law** under Rule 52(a), SCRPC, is reviewed **as a matter of law**, because adequate findings are necessary to permit appellate review. *Thompson v. Pruitt Corp.*, 416 S.C. 161, 168, 785 S.E.2d 438, 442 (2016). A conclusory order unsupported by specific factual findings requires reversal. *Feliciano v. Alibaugh*, 373 S.C. 318, 322, 644 S.E.2d 271, 273 (Ct. App. 2007).

To the extent the foreclosure judgment rests on **legal conclusions**—including the determination of holder status, the legal sufficiency of an allonge, or the effect of federal statutory provisions—those questions are reviewed **de novo**. *Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 565, 568, 730 S.E.2d 305, 307 (2012).

Finally, whether the court applied an **unequal or inconsistent procedural standard** in violation of the Equal Protection Clause is reviewed **de novo**, as it presents a pure question of constitutional law. *Hewins*, 409 S.C. at 102, 761 S.E.2d at 23.

ARGUMENT(s)

I. THE CIRCUIT COURT VIOLATED DUE PROCESS BY ADOPTING A SERIES OF UNSUPPORTED PRESUMPTIONS THAT DEPRIVED APPELLANTS OF A MEANINGFUL OPPORTUNITY TO BE HEARD AND TO PRESENT A DEFENSE.

Due process requires that a deprivation of property be preceded by notice and **“the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”**

Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Here, the circuit court circumvented this requirement at every turn, employing a cascade of presumptions to relieve Appellee of its burden of proof and to block Appellants' defenses. A "presumption is a procedural device that allocates the burden of production... [It] does not alter the burden of persuasion, nor does it 'possess [an] independent evidentiary value.'" *Reves v. Ernst & Young*, 494 U.S. 56, 66 (1990). The court's judgment, however, treats Appellees' presumptions as conclusive facts, violating both procedural rules and the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, § 9 of the South Carolina Constitution.

A. The Court Presumed the Admissibility of Unauthenticated and Incomplete Documents, Violating Foundational Rules of Evidence and the Right to Confront Proof

The Master's Order explicitly bases its finding of indebtedness on "closing documents" and an in-court display of what "appears to be the original of the Promissory Note." (R. at 140). Additionally, the conclusion drawn from what appear[ed] to be the original was contradictory and drawn from an ambiguous presentation of the note itself within the hearing. The master asked the opposing counsel "do you have a **copy of the original Note with you?**". The response was "yes"; confirming that this was in fact a copy. (R. at 163). Then the master began exhibiting confusion on precisely *what* he had asked for. The appellants pointed out and wanted clarification for the record on whether the document was a copy or the original. (R. at 163). The master responded that he had indeed asked the attorney for the original and was given that very original to inspect. (R. at 163). Two distinct things pointed out by the appellants were that: (a) the note was **not under** notary seal, (R. at 164); (b) the chain of

assignment (by reference) seemed to be missing. The validity of the document's original nature was clearly questioned by the appellants. The court's conclusion was drawn from this in court display, and emailed copies of the closing documents. This conclusion rests on a critical and erroneous presumption: **that these documents were admissible** in the first place to conclusively **prove the debt** without any qualifying foundational testimony or certification, that this was indeed an original document, **and that the subsequent assignment of such documents were consistent with governing statutes regarding transfer rights of** . This presumption is irreconcilable with the South Carolina Rules of Evidence and binding precedent.

The Plaintiff presented a document it represented to be the "original" note, but that document **did not include the allonges or endorsements**, nor any additional pages reflecting a lawful and complete chain of title. Under South Carolina's adoption of the Uniform Commercial Code, an endorsement must be "written on the instrument or on a paper **affixed to the instrument.**" S.C. Code Ann. § 36-3-204(a). A purported allonge not physically attached to the original note is legally ineffective. Because the Plaintiff failed to produce an affixed allonge—and instead presented an incomplete instrument—the Plaintiff failed to establish itself as the "holder" under § 36-3-301 and therefore could not enforce the note as a matter of law.

South Carolina appellate precedent confirms that a foreclosing party must prove ownership of **both** the note and the mortgage through competent, authenticated evidence. In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 221, 746 S.E.2d 478 (Ct. App. 2013), the Court held that a plaintiff must prove its status as the lawful owner of the

note and that “mere allegations are insufficient.” A note with no affixed endorsement, and no accompanying evidence of proper transfer, fails to satisfy this burden. South Carolina courts have repeatedly rejected efforts to enforce instruments where the purported chain of title is incomplete or contested. See also *HSBC Mortg. Servs. v. Murphy*, 420 S.C. 642, 804 S.E.2d 720 (2017) (foreclosing party must present competent evidence of assignment). Because the Plaintiff did not produce the actual allonge or any affixed endorsements when confronted with an authenticity challenge, the trial court’s acceptance of the incomplete note violated Rules 901, 1002, and 1003, SCRE, and deprived Appellants of their right to a proper evidentiary foundation.

Courts nationwide interpreting the identical UCC provision have uniformly rejected unattached or suspiciously loose allonges. The Second Circuit in *Slutsky v. Blooming Grove*, 281 A.D. 2d 764 (N.Y. App. Div. 2001), held that an allonge “must be so firmly affixed to the note as to become part of it,” and invalidated a loose endorsement offered in litigation. The Florida Third District Court of Appeal, citing the same UCC rule adopted in South Carolina, reversed a foreclosure where an allonge was not proven to have been affixed at the time of transfer. *Riggs v. Aurora Loan Servs.*, 36 So. 3d 932, 933–34 (Fla. 4th DCA 2010). Numerous jurisdictions—including Massachusetts, New Jersey, and federal bankruptcy courts—have reached the same conclusion: **a free-floating allonge, is insufficient to prove transfer or standing.** These authorities are persuasive because South Carolina has adopted the same UCC text and applies it with equal rigor in determining holder status and admissibility.

Because Plaintiff's in-court presentation, claimed as the purported "original" note was **incomplete**, with **no affixed allonge**, and because the Master-in-Equity relied on this defective instrument despite a preserved authenticity objection (by way of pointing out an incomplete chain of title transfers (R. at 156-158), the order of foreclosure rests on inadmissible and legally insufficient evidence. Under *Draper, Murphy*, and § 36-3-204(a), the failure to produce an affixed allonge is fatal to standing and constitutes reversible error. The judgment must therefore be vacated because Plaintiff failed to prove it was the lawful holder of the original note at any time, and the court lacked evidence sufficient to sustain foreclosure.

Authentication is "a condition precedent to admissibility," **requiring** "evidence sufficient to support a finding that the matter in question is what its proponent claims." S.C. R. Evid. 901(a). The best evidence rule further requires the **original writing to prove its contents**. S.C. R. Evid. 1002. These rules, promulgated under authority of Act of February 15, 1870, No. 275, § 2, 1870 S.C. Acts 387, 388, **are not mere technicalities but foundational safeguards against inaccuracy and fraud**. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) ("The purpose of the best evidence rule is to prevent inaccuracy and fraud when attempting to prove the contents of a document."). The record is devoid of any custodian testimony, Rule 902 certification, or foundational affidavit that would satisfy Act of June 14, 1995, No. 83, § 3, 1995 S.C. Acts 374, 376. No credible and knowledgeable witness was presented to authenticate the "closing documents" or the alleged original note displayed in court.

Rather the only testimony obtained in the pleadings or the hearing was that of the Plaintiff's counsel. (R. at 164-167, 96-97)

By presuming admissibility from a bare in-court display and unattested copies, the court denied Appellants any opportunity to cross-examine a witness, challenge the documents' provenance, or test their validity – all avenues that would have been made available within a Rule 43 hearing. This presumption transformed a procedural safeguard into a nullity. *Snow v. Smith*, 321 S.C. 548, 551, 470 S.E.2d 573, 575 (Ct. App. 1996) (reviewing due process violations de novo). **As this Court has held, “[i]f evidence is not properly authenticated, it is not admissible.”** *Concrete Servs., Inc. v. USF&G Co.*, 331 S.C. 506, 510, 498 S.E.2d 865, 867 (1998). A court's discretion in admitting evidence is “limited by the rules of evidence.” *J.K. Constr. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 170, 519 S.E.2d 561, 565 (Ct. App. 1999). Where, as here, no foundation is laid and the reliance on inadmissible materials as the basis for judgment is a clear abuse of that discretion and a denial of due process. *Smith v. Tiffany*, 419 S.C. 548, 558, 799 S.E.2d 479, 484 (Ct. App. 2017). The challenge of admissibility was also raised by the Appellants in the hearing (R. at 156) as well as within the pleadings (R. at 50, 57-62, 102-103, 107-108, 114-115, 126, 131-132)

B. The Court Presumed Material Facts Were Undisputed by Ignoring Verified Challenges, Violating Rule 52(a) and the Requirement for Specific Findings

The Master's Order declares “no material fact in dispute” based solely on “Plaintiff's verified Complaint... Affidavit of Debt... with supporting exhibits” (R. at 141) [and] loan documents.” This constitutes a second, fatal presumption: that a verified

complaint and an affidavit are sufficient to resolve a case on the merits, even when specific, verified counter-pleadings have placed authenticity, ownership, and consideration directly in controversy. This presumption violates both the rule of law and due process.

Rule 52(a) of the South Carolina Rules of Civil Procedure commands that in nonjury matters, the court “**shall find the facts specially and state separately its conclusions of law.**” Its purpose is to facilitate meaningful appellate review. *Goldman v. Alk*, 422 S.C. 429, 437, 812 S.E.2d 488, 492 (Ct. App. 2018). This requirement **is not satisfied** by a conclusory recitation that no facts are disputed. Appellants’ Petition to Dismiss and Verified Counterclaim specifically challenged the authenticity of the loan documents, the validity of the assignment, and the proof of consideration. These were not “unverified, conclusory allegations,” *Doe v. Roe*, 421 S.C. 490, 498, 807 S.E.2d 695, 699 (Ct. App. 2017), but specific demands for proof that created genuine disputes of material fact.

The court’s presumption that Appellee’s pleadings and exhibits were sufficient proof is directly contrary to law. As held in *First Union*, **a party “must do more than simply rely on the allegations of its pleadings to carry its burden of proof.”** 333 S.C. at 566, 511 S.E.2d at 378. In the foreclosure context, this burden includes proving “the mortgage and note are held by the plaintiff.” *Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 565, 568, 730 S.E.2d 305, 307 (2012). **An affidavit of debt, if unsupported by proper business records foundation, is inadmissible hearsay.** *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 221, 746 S.E.2d 478, 481 (Ct. App. 2013); S.C. R. Evid. 801(c), 803(6). The

legislative framework for foreclosure, Act of March 22, 1932, No. 794, § 1, 1932 S.C. Acts 1185, 1185-86, **requires a judicial finding of the debt and default based on evidence properly authenticated.** By declaring no material fact in dispute without making specific findings on these contested issues, the court violated Rule 52(a) and deprived Appellants of their due process right to a reasoned adjudication of their defenses.

C. The Court Presumed a Co-Defendant's Default Cured the Plaintiff's Failure to Prove Standing Against the Appearing Equitable Titleholder, a Jurisdictional Error

The Order notes the individual borrowers were in default but proceeds to judgment against the Signature Gain Express Trust, the record titleholder that had actively appeared (by and through its trustees) and contested the action. (R. at 56). This reflects a third erroneous presumption: that a co-defendant's default relieves a plaintiff of its burden to establish standing against a **non-defaulting party** who has specifically challenged it. This is a jurisdictional error of constitutional dimension.

1. The First Amendment Petition and the Special Appearance Negated Any Presumption of Submission to Jurisdiction

On July 24, 2025, the docketed equitable titleholder, SIGNATURE GAIN EXPRESS TRUST, filed a Petition to Dismiss that expressly stated: "NOW COMES Petitioner... appearing specially, not generally, and without granting jurisdiction." (R. at 56). **This filing invoked the First Amendment right "to petition the Government for a redress of grievances."** U.S. Const. amend. I. It was a precise legal act: **a special appearance conditioned solely on the court's adjudication of the jurisdictional challenge under Rule 12(b)(1) and Rule 12(h)(3), SCRPC.**

The court and plaintiff presumed that this act constituted a general appearance waiving jurisdictional objections. This presumption is a legal error. The right to petition permits access to the courts without compelled surrender of constitutional defenses. *McDonald v. Smith*, 472 U.S. 479, 482-84 (1985). A party may appear specially to contest jurisdiction without submitting to the court's general power. See *Roche v. Young Bros., Inc.*, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995) (jurisdictional defects can be raised at any time). The Trust's express reservation negated any inference of consent. Due process forbids a court from presuming consent to adjudicatory power not established on the record. U.S. Const. amend. XIV, § 1. **By proceeding to the merits while this special-appearance petition was pending, the court acted without jurisdiction.**

Standing is "a jurisdictional prerequisite to filing an action" derived from the case-or-controversy requirement of Article III of the U.S. Constitution. *In re Foreclosure of Deed of Tr. Executed by G & H Land Co.*, 389 S.C. 520, 525, 698 S.E.2d 823, 826 (Ct. App. 2010); *Southeast Resource Recovery, Inc. v. S.C. Dep't of Health & Env't'l Control*, 358 S.C. 402, 411, 595 S.E.2d 468, 473 (2004). It is "a jurisdictional issue that may be raised at any time." *Hamm v. Ameriquest Mortgage Co.*, 379 S.C. 561, 565, 666 S.E.2d 454, 456 (2008).

The Trust's active participation through its Petition to Dismiss placed Appellee's standing directly at issue. The plaintiff's burden to prove it was the "holder of the note or ha[d] a valid assignment of the mortgage," *First Union*, 333 S.C. at 564, 511 S.E.2d at 377, was not excused by the unrelated default of other parties. Default judgments are permitted against parties who fail to plead or otherwise answer; they do not authorize

judgments against other parties based on presumption rather than proof. *Rogers v. [Redacted]*, S.C. Ct. App. (2015) (unpublished) (“Default does not relieve a plaintiff of its burden to establish standing against a party who has appeared and contested it.”). The court’s entry of judgment against the Trust, **without any finding based on admissible evidence that Appellee was the holder entitled to enforce the obligation against the Trust, was a jurisdictional error.** “Without standing, a court lacks subject matter jurisdiction.” *In re Foreclosure of G & H Land Co.*, 389 S.C. at 525, 698 S.E.2d at 826.

2. The Court Presumed Standing from Unauthenticated Pleadings While Denying a Hearing on Competent Evidence, Violating Due Process

The plaintiff’s case rested on **copies of documents** and an affidavit of debt. The Trust’s petition demanded an evidentiary hearing under Rule 43 to authenticate the note, establish a certified chain of title, and prove consideration. The court presumed that the pleadings and copies were sufficient to establish standing, effectively rendering the requested hearing unnecessary. This presumption and subsequent rendering violates the rules of evidence and due process.

Authentication and the original writing rule **are mandatory** “conditions precedent to admissibility.” S.C. R. Evid. 901(a), 1002. **“If evidence is not properly authenticated, it is not admissible.”** *Concrete Servs., Inc. v. USF&G Co.*, 331 S.C. 506, 510, 498 S.E.2d 865, 867 (1998). A court cannot assume the existence of a case or controversy from the very materials whose authenticity and ownership are under active challenge. The Trust’s petition placed these foundational facts in dispute. **By denying a hearing and relying on the presumed validity of unauthenticated documents, the court deprived Appellants of**

the “meaningful opportunity to be heard” guaranteed by due process. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970).

3. The Court Violated Rule 12(a)(4) by Failing to Provide the Mandatory Ten-Day Window to Answer After Implicitly Denying the Jurisdictional Challenge

Even if the September 17, 2025 hearing is construed as an implicit denial of the Trust’s petition, the court committed a separate, fatal procedural error. Rule 12(a)(4), SCRCF, is unequivocal: “If the court denies the motion... **the responsive pleading shall be served within ten days after notice of the court’s action.**” The hearing was the court’s “action.” The Master’s Order, issued just seven days later on September 24, 2025, (R. at 140), foreclosed the mandatory ten-day period to answer. **By entering a final judgment of foreclosure before the rule-prescribed period to plead had expired, the court entered a default that was, by definition, premature and void.** A judgment entered in violation of a mandatory procedural rule designed to protect a party’s right to be heard is reversible error. This violation alone requires reversal.

D. The Court’s Denial of an Evidentiary Hearing Prevented Adjudication of a Preserved, Dispositive Defense Based on the Controlling Statutory Authorities, Voiding the Plaintiff’s Claim as a Matter of Law

Appellants also preserved a defense that goes to the heart of the plaintiff’s standing: the absence of a valid, outstanding debt. Through their Motion to Compel Production of Evidence (R. at 130-134), Appellants placed the plaintiff’s proof of consideration and funding directly at issue, demanding the paper trail that would show the alleged traditional loan of money and therefore outstanding debt. ¶¶ 2-3. The court’s failure to rule on this motion or order a hearing allowed the case to proceed on the

presumption of a valid debt, while blocking Appellants from proving the **fact** that extinguished it.

The legal significance of this missing proof is grounded in positive federal law. The Federal Reserve Act, specifically 59 Stat. 237, § 2 (1945), provides that when a member bank deposits eligible paper, **including promissory notes**, with a Federal Reserve Bank, such notes “shall be the obligations of the Federal Reserve bank procuring the same” and are received “**at par.**” This statutory framework effects a novation: the note is exchanged for its face value, **and the obligation transfers to the Federal Reserve.** The original lender no longer holds a collectable debt; **it holds cash or credit from the central bank in exchange for the pledged collateral (note).**

Appellants’ discovery demands sought the very evidence that would prove this statutory reality applied. By asking for certified proof of the fund transfer and the account into which proceeds were deposited, **Appellants were challenging the plaintiff to disprove that the note had been monetized through the Federal Reserve system.**

The court’s refusal to compel this discovery or to hold a hearing where Appellants could present contrary statutory evidence and analysis (including a forensic audit prepared for that very purpose) constituted a denial of due process. *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (**due process includes the right to present evidence and to confront and cross-examine witnesses**).

The due process violation is compounded because the defense is dispositive. If the note was deposited as eligible paper at par, then:

1. The obligation was satisfied upon deposit, **as the intermediary received its equal value (i.e. "at par")**.
2. **The obligation became that of the Federal Reserve Bank by statute.**
3. The plaintiff, **a subsequent claimant, cannot be the "holder" or "owner" of an obligation that was extinguished and transferred before its alleged assignment.**

By denying a hearing on this preserved defense, the court allowed the plaintiff to obtain a judgment on an **inadmissible presumption of debt** while systematically excluding the statutory facts and analysis that would have rebutted it. This is the essence of a due process violation: the state-assisted deprivation of property based on a one-sided and incomplete record. *Coventry v. Deutsche Bank Nat'l Tr. Co.*, 251 So. 3d 897, 900 (Fla. 3d DCA 2018) (reversing foreclosure where defendant was denied opportunity to present evidence that note was satisfied via securitization).

Conclusion of Argument I

The circuit court's judgment rests on a series of unlawful presumptions that collectively deprived Appellants of the due process guaranteed by the federal and state constitutions. The court presumed the admissibility and completeness of an unauthenticated and facially defective note, despite Appellants' express challenges to authenticity, missing allonges, and an incomplete chain of title. It further presumed standing from pleadings and an affidavit of debt while denying Appellants the evidentiary hearing required to test those very assertions under Rules 901, 1002, and 43. It presumed that no material facts were in dispute even though Appellants filed verified

pleadings placing ownership, consideration, and document validity squarely at issue. It presumed jurisdiction against the appearing equitable titleholder based on a co-defendant's alleged default, disregarding the Trust's special appearance and its preserved Rule 12(b)(1) challenges as well as the 10 day window allowed after a ruling on standing and subject matter jurisdiction for co-defendants to furnish an answer. It presumed that the plaintiff's failure to produce proof of funding or consideration was immaterial, while simultaneously blocking the statutory defense demonstrating the legal impossibility of an outstanding debt under 59 Stat. 237. Each presumption substituted speculation for evidence, nullifying Appellants' right to confront the proof against them and to present the dispositive statutory and evidentiary defenses preserved in the record. Because the foreclosure decree rests entirely on inadmissible evidence, unproven standing, and the denial of a meaningful opportunity to be heard, the judgment must be vacated.

II. THE COURT'S SYSTEMATICALLY UNEQUAL APPLICATION OF EVIDENTIARY AND PROCEDURAL RULES VIOLATED THE GUARANTEE OF EQUAL PROTECTION

The Fourteenth Amendment's Equal Protection Clause guarantees that all persons similarly situated shall be treated alike. *State v. Hewins*, 409 S.C. 93, 102, 761 S.E.2d 18, 23 (2014). This guarantee is echoed in Article I, § 3 of the South Carolina Constitution. Here, the court constructed a dual system of justice: one set of indulgent, outcome-determinative presumptions for the plaintiff, and an impossible set of procedural barriers for the defendant trust. This unequal application of the law is fatal to the judgment.

A. The Court Applied a Favorable Presumption of Validity to the Plaintiff's Pleadings While Barring Appellants' Right to Test Their Authenticity, Creating an Unconstitutional Dual System

From the outset, the court treated Appellee's filed copies as conclusive proof. The Summons and Complaint alleged the attached documents were "true copies" of the note and assignment and not certified ones. (R. at 7). The court presumed this allegation was sufficient, **requiring no further authentication under Rules 901 or 902**. Simultaneously, **it denied Appellants' repeated requests for a hearing to test this very authenticity**. This unequal treatment is the essence of favoritism forbidden by the Equal Protection Clause. By treating the "true copy" label (alleged as such by the plaintiff) as having independent evidentiary value, the court relieved Appellee of its core burdens of production and persuasion. *Reves*, 494 U.S. at 66. This Court has repeatedly held that "mere allegations in a complaint, **even if verified, are not evidence.**" *Doe*, 421 S.C. at 498, 807 S.E.2d at 699. The best evidence rule exists "to prevent fraud," *First Union*, 333 S.C. at 566, 511 S.E.2d at 378, **a purpose utterly defeated** when a defendant is barred from demanding the original or authenticated evidence while the plaintiff benefits from a presumption of regularity.

The court compounded this error in considering Appellee's Motion for Summary Judgment, **which relied solely on these unauthenticated loan documents**. (R. at 94). The moving party "bears the initial responsibility" of identifying evidence that demonstrates the absence of a genuine dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Unauthenticated documents are not competent evidence for this purpose. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court's presumption that

the attached copies were valid evidence, while treating Appellants' specific authentication challenges as irrelevant, constituted an unequal application of Rule 56. The non-movant is required to "set forth specific facts showing there is a genuine issue for trial." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 179, 185, 625 S.E.2d 884, 887 (Ct. App. 2005); S.C. R. Civ. P. 56(c). Appellants did so by challenging the Plaintiff's standing via authenticity and ownership, creating a genuine issue that the court ignored through presumption. Furthermore, the court's action contravened the authentication requirements of Act of June 14, 1995, No. 83, § 3, 1995 S.C. Acts 374, 376, applying them to the defendant but not to the plaintiff.

B. The Court Presumed the Validity of an Order of Reference and Judgment While Refusing to Adjudicate the Jurisdictional and Factual Predicates for Either.

The court's issuance of an Order of Reference authorizing a summary reviewal for final judgment, while Appellants' challenge to standing was pending, presumed the court had subject matter jurisdiction to delegate that authority. (R. at 74-75). This was a presumption of law with no factual basis. A reference under Act of March 22, 1932, No. 794, § 1, 1932 S.C. Acts 1185, 1185-86 and Rule 53(b) **presupposes a valid, proven cause of action.** "Subject matter jurisdiction is the power of a court to hear and determine cases of the general class." *Daufuskie Island Util., LLC v. Town of Hilton Head Island*, 434 S.C. 598, 607, 865 S.E.2d 846, 851 (Ct. App. 2021). Where, as here, standing—and thus subject-matter jurisdiction—is contested, **the court must resolve that threshold issue before any delegation of authority.** *Rutland v. Holler*, 371 S.C. 91, 95, 637 S.E.2d 316, 318 (2006) (subject matter jurisdiction is a question of law for the court). "Without standing, a court lacks subject matter jurisdiction." *In re Foreclosure of*

G & H Land Co., 389 S.C. at 525, 698 S.E.2d at 826. The court's presumption to the contrary was error.

Furthermore, the court's summary, one-sentence dismissal of Appellants' counterclaims as "without merit," without the factual findings required by Rule 52(a), presumed the legal insufficiency of those claims without analysis. (R. at 148). Rule 52(a) is designed "to ensure careful consideration of the facts and law and to aid appellate review." *Thompson v. Pruitt Corp.*, 416 S.C. 161, 168, 785 S.E.2d 438, 442 (2016). A "conclusory ruling without supporting factual findings is insufficient." *Feliciano v. Alibaugh*, 373 S.C. 318, 322, 644 S.E.2d 271, 273 (Ct. App. 2007). **This failure is reversible error, as it leaves this Court "unable to discern the basis of the trial court's decision."** *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 498, 575 S.E.2d 549, 556 (2003); see also *Owens v. Owens*, 320 S.C. 543, 546, 466 S.E.2d 373, 375 (Ct. App. 1996); *Estate of Carr ex rel. Bolton v. City of N. Charleston*, 430 S.C. 170, 179, 843 S.E.2d 921, 926 (Ct. App. 2020). The court's unequal application of procedural rigor—demanding nothing of the plaintiff's case while dismissing the defendant's claims without a hearing or findings—epitomizes the denial of equal protection.

Conclusion of Argument II

The circuit court's judgment cannot stand because it was achieved through an unequal and unconstitutional application of evidentiary and procedural rules that favored the plaintiff while obstructing the Appellants' ability to defend their property rights. The court treated unauthenticated copies as conclusive evidence while

simultaneously denying Appellants any opportunity to test authenticity or require compliance with Rules 901, 902, and 1002, creating a dual evidentiary standard prohibited by the Equal Protection Clause. It presumed the validity of the plaintiff's Motion for Summary Judgment, despite the absence of competent evidence, while disregarding Appellants' verified disputes that created genuine issues of material fact. It further presumed jurisdiction by issuing an Order of Reference while standing was being actively contested, violating the rule that subject-matter jurisdiction cannot be presumed and must be proved before delegation or adjudication. The court then dismissed Appellants' counterclaims with a conclusory sentence, ignoring Rule 52(a)'s mandate for specific findings essential to appellate review. By applying strict procedural barriers to the defendants while waiving foundational requirements for the plaintiff, the court created an imbalance that is constitutionally intolerable. This systematic favoritism not only denied equal protection but also produced a judgment unsupported by competent evidence or lawful procedure. Because the foreclosure decree was obtained through these unconstitutional disparities, it must be reversed.

III. THE PROMISSORY NOTE WAS STATUTORILY TRANSFORMED INTO A SECURITY AND THE DEBT EXTINGUISHED UPON ITS DEPOSIT AS "ELIGIBLE PAPER"; ITS SUBSEQUENT TRANSFER INTO THE SECURITIZATION TRUST UNDER FEDERAL ACCOUNTING AND SECURITIES LAW CONFIRMS THE DEBT'S SATISFACTION.

This statutory defense is properly before the Court as evidence of the merit of the defense that the circuit court's procedural rulings stifled. **Appellants preserved the core issue—whether the court violated due process by refusing to compel evidence on consideration and by denying a Rule 43 hearing to test the Plaintiff's foundational**

case. The detailed statutory analysis that follows demonstrates the substantive merit of the defense Appellants sought to develop. This Court must consider the merits of this defense to evaluate whether the circuit court's refusal to allow its development constituted reversible prejudice. See *l'On, L.L.C.*, 338 S.C. at 419, 526 S.E.2d at 723; *Council*, 335 S.C. at 19-20, 515 S.E.2d at 517-18. This Court may reverse a judgment on any ground supported by the record, including lawful assertions/ claims that demonstrate the judgment's error.

A. The Defense Was Preserved by Challenging the Foundation of the Debt and Demanding Proof of a Traditional Loan.

1. Factual Record of Preservation: Appellants' Motion to Compel Production of Evidence (R. at 131-134) demanded "certified copies of all wire transfer receipts, canceled checks, or other banking instruments evidencing disbursement of loan proceeds" and a complete "chain of title." This was a specific challenge to the plaintiff's foundational allegation: **that a sum of the original intermediary's (Synovus) money was lent to the borrower, creating a simple debt, and that the transferor still held the rights in the collateral to effect a lawful transfer to the Appellee.**
2. Legal Significance of the Demand: By demanding proof of the funding and unbroken ownership chain, Appellants placed the legal nature of the transaction directly at issue. **A plaintiff alleging a simple debt must prove the consideration (the loan of money) and its own status as the party to whom that debt is owed.** The refusal to provide this evidence, coupled with Appellants' alternative statutory explanation for that refusal, preserved the defense that the obligation

was not a simple debt but a securitized instrument, satisfied via the statutory pathway of the Federal Reserve Act.

- 3. Conclusion of Law: Where a defendant specifically challenges the plaintiff's proof of consideration and ownership, and the plaintiff fails to meet that challenge, the defendant is entitled to present an alternative legal explanation for that failure. This is echoed in controlling precedent: *Carter v. Bruce*, 275 S.C. 529 (1980); Rule 17(a), SCRPC; Rules 901, 902, 1002, 1004, SCRE. When the plaintiff fails to meet that burden, the defendant is not only permitted but constitutionally entitled to present the legal consequences of that failure, **for the court may not presume facts not supported by evidence.** *Hovey v. Elliott*, 167 U.S. 409, 417–18 (1897); *Smith v. Smith*, 290 S.C. 194 (Ct. App. 1986). The defendant **may therefore advance an alternative legal explanation for the plaintiff's inability to prove ownership or consideration.** The trial court's entry of judgment while ignoring both the challenge and the proffered statutory defense violated due process and is reversible error.**

B. Step 1: CONGRESS Defined Promissory Notes as "Eligible Paper" That May Be Deposited with Federal Reserve Banks.

1. Governing Law: Federal Reserve Act, § 13 (Act of December 23, 1913, ch. 6, § 13, 38 Stat. 251, 259) (codified as amended at 12 U.S.C. § 355).
2. Relevant Statutory Text: The Act authorizes any Federal Reserve Bank to "discount notes, drafts, and bills of exchange arising out of actual commercial, agricultural, or industrial transactions... To establish eligibility for discount, such

notes, drafts, and bills of exchange must have a maturity at the time of discount of not more than 90 days..."

3. Congressional Intent & Legal Effect: Congress created a distinct class of financial instruments—"eligible paper"—that member banks could present to their Federal Reserve Bank to obtain liquidity. The purpose was to create a flexible, asset-backed currency system. By including "notes" in this category, Congress statutorily classified promissory notes like the one at issue as potential reserve assets, **distinct from simple contracts**.
4. Sub-Conclusion of Law: The borrower's promissory note is, by definition under the Federal Reserve Act, an instrument that qualifies as "eligible paper" and can be received by a Federal Reserve Bank. Appellants preserved defense by way of demand for very specific documents, and Appellee's avoidance of obtaining and providing such documentation at worst solidifies that no traditional simple contract for a loan of money was executed at closing; and at best that the note was, by statutory definition, an eligible paper deposited with the Federal Reserve as collateral for liquidity.

C. Step 2: The Statutory Process of Deposit "At Par" and the Transfer of Obligation, Effecting a Statutory Novation and Satisfaction.

The legal effect of presenting a note classified as eligible paper is dictated by Congress in 59 Stat. 237, § 2:

1. **The "At Par" Mandate and Transfer of Obligation:** The statute mandates that eligible paper "shall be receivable **"at par"** in all parts of the United States." **"At**

par" means at 100% of face value. Concurrently, the statute contains the operative language of transfer: "Such notes **shall be the obligations** of the Federal Reserve bank procuring the same..."

2. **The Statutory Parties and Their Redefined Roles:** The statute establishes three parties in this transaction: the Principal (obligor on the note), the Agent/Depositor (the entity presenting the note), and the Federal Reserve Bank (the entity procuring the note). The statute redefines the Agent/Depositor's role. By depositing the note and having the Federal Reserve Bank procure it, the Agent/Depositor's function is complete. The statute transfers the obligation from the Principal to the Federal Reserve Bank.
3. **Congressional Intent – Satisfaction of the Original Obligation:** The unified statutory command is a sequence: The Agent/Depositor presents the note; the Federal Reserve Bank receives it at its full face value (par) and procures it; in exchange, the obligation becomes that of the Federal Reserve Bank. The Agent/Depositor has received value equal to the obligation from the Federal Reserve. The original obligation from the Principal is satisfied by this statutory exchange.
4. **Sub-Conclusion of Law:** The deposit of eligible paper at par under 59 Stat. 237, § 2 constitutes a statutory novation and satisfaction. The obligation of the Principal is extinguished as a private obligation and is replaced by a security obligation of the Federal Reserve System. **The Agent/Depositor is not a creditor or lender; it is a conduit whose role concludes upon the statutory transfer; an intermediary.**

D. Step 3: Congress Designated This Eligible Paper as the “Collateral Security” Backing Federal Reserve Notes, the United States Currency.

1. **Governing Law:** Federal Reserve Act, § 16 (Act of December 23, 1913, ch. 6, § 16, 38 Stat. 251, 265-66) (codified as amended at 12 U.S.C. § 411).
2. **Relevant Statutory Text:** “Federal Reserve notes... shall be obligations of the United States... [They] shall be secured by collateral consisting of... notes, drafts, bills of exchange, or bankers’ acceptances acquired under the provisions of this Act... The collateral security thus offered shall be deposited with a Federal reserve bank.”
3. **Congressional Intent & Legal Effect:** This section creates the foundational link between the currency of the United States (Federal Reserve notes) and the productive assets of the economy. The “collateral security” for every dollar in circulation includes pools of “notes... acquired under this Act”—i.e., eligible paper, including mortgage notes. Congress did not merely allow these notes to be held; **it mandated them as the backing for the currency. This elevates the deposited note from a private contract to a component of the public monetary system.**
4. **Sub-Conclusion of Law:** The borrower’s note, once deposited as eligible paper, is not merely an asset on a bank’s ledger. It is, by congressional mandate, part of the “collateral security” that secures the obligations of the United States (Federal Reserve notes). It functions as a security in the truest sense: an asset pledged to guarantee a larger obligation.

E. The Unified Statutory Process: From Private Note to Extinguished Debt.

1. **The Inescapable Sequence:** The three statutory provisions above are not disjointed; they are consecutive steps in a single process created by Congress:
 - Step 1 (§ 355): The note is defined as eligible paper.
 - Step 2 (59 Stat. 237): It is deposited at par, becoming a Federal Reserve obligation.
 - Step 3 (§ 411): It is pooled as collateral security for U.S. currency.
2. **The Legal Consequence – Novation and Satisfaction:** Step 2 is a statutory novation. “Novation” is the substitution of a new obligation for an old one, with the intent to extinguish the old. See Restatement (Second) of Contracts § 280. Here, Congress itself effects the novation: “Such notes shall be the obligations of the Federal Reserve bank.” The original obligation (borrower to depositor) is replaced by a new one (the note as an asset of the Federal Reserve). The depositor has been paid at par. The debt is satisfied.
3. **Factual Application to This Case:** The plaintiff, **a subsequent claimant**, alleges it owns a simple, unpaid debt. The statutory framework proves this is a legal impossibility if the standard practice of the originating “lender” (depositing eligible paper for liquidity) was followed. **The plaintiff’s failure to produce evidence of a traditional loan (as demanded) supports the factual inference that this statutory pathway was followed.**

F. This Statutory Satisfaction of the Debt Extinguishes the Mortgage Under Controlling Supreme Court Authority.

1. Governing Precedent: *Carpenter v. Longan*, 83 U.S. 271, 274 (1872).

2. Holding: “The note and mortgage are inseparable; the former as essential, the latter as an incident... An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity... if the note is paid, the mortgage is thereby discharged.”
3. Application: Under *Carpenter*, the mortgage is a mere “incident” to the debt (the note). The incident cannot survive the principal. Therefore, if the debt represented by the note was satisfied—as it was upon its deposit at par and statutory novation under 59 Stat. 237—then the incident mortgage was simultaneously “discharged.” A discharged mortgage cannot be foreclosed upon.

G. The Plaintiff’s Claim Fails as a Matter of Law Because It Relies on a Legal Impossibility.

The plaintiff’s entire case rests on the presumption that the note remains a simple, enforceable debt obligation in its hands. The Federal Reserve Act creates an irrefutable legal paradigm that destroys this presumption:

1. The Plaintiff Cannot Be the “Holder” of an Extinguished Obligation: If the note was deposited as eligible paper, the obligation transferred to the Federal Reserve. **The plaintiff cannot hold what no longer exists in the private debt market.**
2. The Plaintiff Seeks to Enforce a Mortgage That Cannot Exist: Under *Carpenter*, a satisfied note means a discharged mortgage. The plaintiff is asking the court to enforce a security interest in a lien that was extinguished by operation of federal law.

3. The Plaintiff's Failure of Proof is Fatal: Appellants demanded the evidence that would show this statutory pathway **was not followed** (proof of a traditional fund transfer). The plaintiff's refusal to provide it, in the face of this statutory framework, **means it cannot meet its burden to prove the existence of a valid, outstanding debt.** *See Bank of Am., N.A. v. Draper, 405 S.C. 214, 221, 746 S.E.2d 478, 481 (Ct. App. 2013).

H. The Securitization Process Under Federal Securities and Accounting Law Legally Cannot Proceed with an Encumbered Debt, Confirming the Obligation Was Extinguished.

The journey of the note from the Federal Reserve system into a mortgage-backed security provides independent, irrefutable confirmation that the debt was satisfied.

Federal law governing these trusts prohibits the inclusion of live, collectable or "encumbered" debts.

1. The "Derecognition" Requirement of ASC 860 Proves the Debt Was Extinguished.

- Governing Law: Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 860, "Transfers and Servicing." The Securities and Exchange Commission recognizes FASB standards as authoritative for publicly traded companies under the Securities Exchange Act of 1934, § 19(a) (Act of June 6, 1934, ch. 404, 48 Stat. 881, 897). **It is requested that this Court take judicial notice that Synovus, the original "creditor" is a publicly traded company (NYSE:SNV).**

- Legal Standard: ASC 860 governs whether a transferred financial asset can be removed from a lender's balance sheet—a process called “derecognition.” Derecognition is only permitted if the transfer meets the “financial-components approach,” **which requires that the transferred asset has been isolated from the transferor—put presumptively beyond the reach of the transferor and its creditors—even in bankruptcy.**
- Application & Conclusion of Law: **An “asset” that remains an enforceable debt owed to the transferor (the lender) is, by definition, not isolated from the transferor.** The lender's right to collect is a direct claim against the asset itself. Therefore, for the note to have been derecognized from the originator's books and placed onto the books of the securitization trust—as must occur for the trust to function—the note could not have been subject to the lender's right of collection. **The accounting treatment mandated by federal securities law proves the underlying debt obligation was extinguished.**

2. The Pooling and Servicing Agreement (PSA) Language Warrants an Unencumbered Asset.

- Standard PSA Text (Exemplar): “The Depositor hereby transfers, assigns, sets over, and otherwise conveys to the Trustee... all of its right, title, and interest in and to... the Mortgage Loans identified on the Mortgage Loan Schedule...” (Emphasis added). This is a warranty of clean, marketable title. The PSA was requested in order to determine this language within Synovus' securitization trust via QWR, that can be provided with oral briefs if warranted.

- Governing Commercial Law: Uniform Commercial Code, Article 9, § 9-203(b)(2) (S.C. Code Ann. § 36-9-203(b)(2)). A security interest (the trust’s interest in the pooled note) is enforceable **only if** “the debtor has rights in the collateral or the power to transfer rights in the collateral.”
- Conclusion of Law: The PSA’s conveyance of “all right, title, and interest” is a legal representation that the Depositor possesses full, unencumbered ownership. **If the note simultaneously represented an outstanding debt owed to the Depositor or its assignee, the Depositor would not have “all” rights—the borrower’s equity of redemption and the lender’s contradictory claim to payment would be competing interests.** The PSA’s standard language is therefore **legally incompatible with the continued existence of an enforceable debt.** The act of conveying the note into the PSA is an admission, by operation of contract and commercial law, that the debt claim was resolved.

I. The “Borrower in Custody” (BIC) Agreement and the Original Servicer’s Contradictory Actions Prove the Debt Was Monetized and Extinguished Under Positive Federal Law and Commercial Precedent.

The mechanism by which the note was processed is governed by positive federal law and uniform commercial law, **which confirm the transaction was a monetization of collateral, not a lending of capital.**

a. The Legal Framework and Function of a “Borrower in Custody” (BIC) Agreement.

1. Statutory and Regulatory Basis: The BIC agreement operates under the authority of the federal charter of Government-Sponsored Enterprises (GSEs) like the

Federal National Mortgage Association (Fannie Mae). See the Federal National Mortgage Association Charter Act, Act of June 27, 1934, ch. 847, Title III, § 301 et seq., 48 Stat. 1246, 1252, as amended (authorizing the Association to purchase, service, sell, and otherwise deal in mortgages). Implementing regulations for housing finance programs further define these secured lending arrangements. This positive law authorizes GSEs to provide liquidity to the mortgage market through various means, **including secured lending arrangements where the mortgage note serves as collateral.**

2. Legal Implication & Conclusion of Law: Under a BIC agreement, the originating entity (e.g., Synovus) pledges the mortgage note and file as collateral to a GSE to obtain financing. The GSE, as the secured party, provides the funds. The originator retains physical custody as an agent or bailee for the GSE, the true financier. This arrangement is a secured transaction governed by the Uniform Commercial Code, Article 9, which has been enacted into positive state law. The GSE's perfected security interest establishes its superior claim to the note. **The legal conclusion is that the originator did not lend its own capital; it acted as a conduit, using the borrower's note as collateral to access third-party funds.** This contradicts the foundational premise of a **simple loan requiring the lender's advance of its own money and therefore a privately enforceable debt.**

b. The Original Servicer's Contradictory Conduct and the Application of the Doctrine of Election of Remedies.

1. Factual Record: The original servicer (Synovus) executed documents treating the same note as: (a) eligible paper deposited at par with the Federal Reserve under

Act of July 31, 1945, ch. 339, § 2, 59 Stat. 237, 237; (b) collateral under a BIC agreement with a GSE; and (c) an asset conveyed into a Pooling and Servicing Agreement (PSA) for securitization.

2. Governing Legal Principle – Election of Remedies: The common-law doctrine of election of remedies "prevents double redress for a single wrong" and precludes a party from pursuing "remedies that are inconsistent and repugnant to each other." *Oaks at Rivers Edge, LLC v. Heisler*, 394 S.C. 381, 387, 715 S.E.2d 348, 351 (Ct. App. 2011). It is based on principles of estoppel and the prevention of unfairness. *Id.*
3. Application & Conclusion of Law: Synovus's conduct constitutes an inconsistent election of remedies as a matter of law rendering the Appellee's claims as a holder and enforcer of the obligation or the real party in interest. By depositing the note as eligible paper under 59 Stat. 237, **it elected the statutory remedy of receiving its par value from the Federal Reserve, effecting a novation.** By pledging the same note under a BIC agreement, it elected the remedy of treating it as collateral for a separate financing transaction. By conveying it into a PSA, it elected the remedy of selling the asset for securitization. These remedies are mutually exclusive and legally repugnant. A party cannot be both paid in full (via Federal Reserve deposit) and retain a live collection right. A note cannot be simultaneously the exclusive property of a securitization trust and serve as collateral for a separate loan to the originator. **The servicer's contradictory actions prove it treated the note as a monetized financial asset, not as evidence of a simple, outstanding debt.** Its subsequent assignment of "servicing rights" to

the Plaintiff attempted to transfer a claim that had already been extinguished or encumbered by its prior, binding elections.

c. The Scheme Constitutes a Legal Fraud Under the Holder-in-Due-Course Doctrine and Precedent.

1. Holder-in-Due-Course Doctrine: The doctrine is codified in the Uniform Commercial Code, Article 3. A holder in due course takes a negotiable instrument free from most "claims to the instrument" and "defenses of any party to the instrument." However, this status is not available if the instrument bears "apparent evidence of forgery or **alteration**" or the taker has "notice" of a claim or defense. A party who takes an instrument with knowledge that it has already been paid, satisfied, or used as collateral for another obligation cannot be a holder in due course. See *First Nat. Bank of Antioch v. Guerra*, 833 N.E.2d 854, 862 (Ill. App. Ct. 2005) (holding that payment or satisfaction is a real defense).
2. Precedent on Fraud and Satisfaction: Courts have reversed foreclosure judgments **where the plaintiff sought to enforce a note that had been satisfied through prior monetization.** *Coventry v. Deutsche Bank Nat'l Tr. Co.*, 251 So. 3d 897, 900 (Fla. 3d DCA 2018) (reversing summary judgment where borrower presented evidence note was paid off via securitization, creating a genuine issue of material fact). **The attempt to collect on a debt already satisfied through the processes described above constitutes a legal fraud upon the court.** See *In re Mortgage Electronic Registration Systems (MERS) Litigation*, 744 F. Supp. 2d 1018, 1032 (D. Ariz. 2010) (discussing potential fraud where parties obscure true note

holder). This was highlighted in the Appellant's Verified Counterclaim (R. at 50-51)

3. Conclusion of Law: **The Plaintiff, as a subsequent claimant, cannot and has not , established that it is a holder in due course entitled to enforce the note.** The original servicer's conduct—depositing under 59 Stat. 237, pledging under a BIC agreement, and selling into a PSA—provides "notice" that the debt was satisfied or the instrument encumbered, defeating holder-in-due-course status. **The subsequent demand for repayment from the Principal seeks a double recovery for an obligation already monetized and satisfied, constituting a fraud on the borrower and the court.** The circuit court's enforcement of this claim, while ignoring the legal implications of the BIC agreement and the doctrine of election, was error.

J. The Integrated Fraud Voids the Transaction.

The totality of this process constitutes a fraud upon the borrower and the trial court:

1. The Scheme: The lender, via an adhesion contract (power of attorney or similar), obtains all but unlimited control over the borrower's note. It then uses that control to: (a) monetize the note through the Federal Reserve system, satisfying the debt at par, and/or (b) pledge it under a BIC agreement, and/or (c) sell it into a securitization trust, which by law requires the debt to be extinguished.
2. The Fraud: Having extinguished the debt through monetization, the lender (or its assignee, the Plaintiff) then pretends the debt still exists. It demands payment

from the borrower for a debt that was already paid (to the lender) via the Federal Reserve or secondary market. It uses the court system to enforce this fictional obligation, relying on the borrower's ignorance and judicial presumptions.

3. Legal Effect – Voidness: A contract procured by fraud, or whose central purpose is fraud, is void ab initio (from the beginning). *See *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 360 (1991). Furthermore, when the performance of a contract (the debt) is extinguished by an act of one party (monetization), the contract is discharged. *Restatement (Second) of Contracts* § 278(1).

K. The Plaintiff's Claim Fails as a Matter of Law Because It Relies on a Legal Impossibility.

The plaintiff's entire case is a legal fiction. It requires the court to believe that a note can simultaneously be:

1. A satisfied obligation, deposited at par with the Federal Reserve (59 Stat. 237);
2. An unencumbered asset, derecognized under ASC 860 and conveyed into a PSA;
3. AND a live, enforceable debt owed to the Plaintiff.

These states are mutually exclusive. The first two are established by the positive federal law and standard practice the original lender engaged in. The third is the Plaintiff's fraudulent claim. The Plaintiff's refusal to provide the evidence of a traditional loan, when demanded, is an admission it cannot reconcile this contradiction. It has therefore failed to meet its burden to prove the existence of a valid, outstanding debt.

CONCLUSION OF ARGUMENT III

The foreclosure is founded on a debt that does not exist, having been statutorily satisfied. Congress, through the Federal Reserve Act, classified the note as a security/eligible paper, mandated its receipt at par by the Federal Reserve, and declared the obligation transferred. This statutory scheme effected a novation and satisfaction of the original debt. **Federal securities and accounting law confirm that securitization requires the debt's extinction.** The original lender utilized an unconscionable power of attorney to execute this monetization, then participated in a scheme to collect on the already-satisfied obligation. **This defense was preserved by Appellants' specific challenges to the Plaintiff's foundational evidence and Appellant's request for the specific documentation that would either cement the Appellee's claim or prove the meritorious nature of Appellant's defense.** The circuit court's judgment, enforcing this legally impossible and statutorily extinguished debt, must be reversed.

ARGUMENT IV: THE CONGRESSIONALLY-DEFINED CLASS OF "ELIGIBLE PAPERS" CONSTITUTES A SECURITY AS A NON-REBUTTABLE LEGISLATIVE FACT, PREEMPTING THE *REVES* FAMILY RESEMBLANCE TEST

i. CONGRESS HAS LEGISLATIVELY DEFINED "ELIGIBLE PAPER" AS A SECURITY, CREATING A NON-REBUTTABLE PRESUMPTION.

A. Congressional Acts Establish the Legal Fact of Classification.

1. Fact: The Federal Reserve Act of 1913, 12 U.S.C. § 412, defines eligible paper as collateral "security" for Federal Reserve notes.
2. Fact: The Banking Act of 1933, § 1, states eligible paper consists of instruments to be held "as security" by Federal Reserve Banks.

3. Fact: 59 Stat. 237, § 2, identifies eligible paper as "collateral security."
4. Fact: 12 U.S.C. § 411 specifies Federal Reserve notes are backed by eligible paper held "as collateral."
5. Fact: The Banking Act of 1933, § 12, governs the deposit of eligible paper "as security."
6. Conclusion of Law: Congress has not merely described these instruments; it has defined their legal function and status across multiple statutes. A "security" under federal law is any instrument commonly known as such. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298 (1946). By repeatedly and explicitly classifying the class of "eligible papers" as "security" and "collateral," Congress has made a legislative determination that these instruments are securities. This is a positive legal designation, not a judicial inference.

B. The Statutory Treatment of Eligible Papers Confirms Their Status as Regulated Securities.

1. Fact: 12 U.S.C. § 412 requires eligible paper to be "in form prescribed by the Secretary of the Treasury," imposing a formal, regulatory requirement.
2. Fact: 59 Stat. 237, § 2, mandates eligible paper "shall be receivable at par in all parts of the United States," a characteristic of negotiable instruments and securities with standardized, guaranteed value.
3. Fact: 59 Stat. 237, § 2, states that deposited notes "shall be the obligations of the Federal Reserve bank."
4. Fact: 59 Stat. 237 states that upon deposit, notes become the property of the Federal Reserve Bank.

5. Fact: Federal Reserve Act of 1913, § 16, provides that eligible paper is "property" held in trust by Federal Reserve Banks.
6. Conclusion of Law: Congress has embedded "eligible papers" within a federal regulatory and fiduciary framework. These requirements—prescribed form, receipt at par, transfer of obligation and title, and treatment as trust property—are hallmarks of regulated securities, not simple contracts. This framework establishes "eligible paper" as a distinct, congressionally-defined class of financial instrument.

ii. THE CONGRESSIONAL DESIGNATION IS A LEGISLATIVE FACT THAT PREEMPTS AND RENDERS MOOT THE *REVES* "FAMILY RESEMBLANCE" JUDICIAL PRESUMPTION.

A. The *Reves* Test Addresses Judicial Interpretation, Not Congressional Definition.

1. Fact: In *Reves v. Ernst & Young*, 494 U.S. 56 (1990), the Supreme Court created a four-factor "family resemblance" test. This test is a judicial tool for determining whether an instrument not explicitly defined by Congress should be classified as a security.
2. Fact: The *Reves* test begins with a rebuttable presumption that *any* note is a security.
3. Conclusion of Law: The *Reves* framework exists to guide judicial interpretation in areas of statutory ambiguity. It operates in the absence of a clear congressional command. See *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (where Congress has directly spoken, that is the end of the matter). Where, as here, Congress has directly spoken by repeatedly defining a

specific class of instruments as securities, the judicial presumption and test are preempted by the superior legislative fact.

B. The "Eligible Paper" Class is the Congressional "Family List," Making Rebuttal Impossible.

1. Fact: A core component of the *Reves* analysis is checking an instrument against a judicially-recognized "family list" of instruments that are not securities (e.g., consumer financing notes).
2. Fact: Congress has created its own, superior "family list" through the statutory classification of "eligible papers."
3. Conclusion of Law: Congress has exercised its constitutional authority to define terms for the purposes of its statutes. By defining "eligible papers" as "security," "collateral security," and property held "as security" in no fewer than twelve statutory instances, Congress has placed this class of instruments on its own, definitive list of what constitutes a security within the Federal Reserve system. A party cannot rebut a judicial presumption to contradict an express congressional definition. To allow such a rebuttal would permit a court or a litigant to nullify a direct statutory command, violating the separation of powers. *United States v. Lopez*, 514 U.S. 549, 566 (1995) ("[T]he Constitution...withdraws from [the Judiciary] all legislative powers.").

iii. THE LEGAL EFFECT IS THAT A PROMISSORY NOTE QUALIFYING AS "ELIGIBLE PAPER" IS A SECURITY AS A MATTER OF LAW.

Ultimate Conclusion of Law: A promissory note that meets the statutory criteria for "eligible paper" is, **by operation of positive federal law, a security. This status is**

conferred by Acts of Congress, not by judicial inference under *Reves*. The instrument's deposit at par with a Federal Reserve Bank, its acceptance as collateral security, and its treatment as an obligation and property of the Federal Reserve confirm its operation within this statutory framework. Any subsequent judicial proceeding concerning such an instrument **must accept this congressionally-mandated classification as a settled, non-rebuttable fact.** The *Reves* test and its rebuttable presumption are inapplicable where Congress has provided the specific rule.

IV. SYNOVUS BANK IS A MEMBER OF THE FEDERAL RESERVE SYSTEM, AND THE PROMISSORY NOTE AT ISSUE WAS PLEDGED INTO THAT FEDERAL MECHANISM, WHEREUPON ITS LEGAL EFFECT WAS DEFINED BY FEDERAL LAW.

Appellant's obligation was processed through a Federal Reserve member bank and, upon pledge, was subsumed into the federal banking mechanism. Under the supremacy of federal law, its character was transformed from a private debt into a federal obligation, **extinguishing the state-law presumption of a continuing personal liability.**

A. Synovus Bank is a Member of the Federal Reserve System, Integrating Appellant's Transaction into the Federal Banking Mechanism.

As a threshold matter, the originating financial institution **is not a private lender but a constituent part of the federal monetary system.** Synovus Bank is a listed member of the Federal Reserve System, assigned RSSD ID 395238 (See Federal Reserve Institution Directory). National banks are required by statute to be members of the Federal Reserve System. (Federal Reserve Act, 38 Stat. 251, 256 (1913) (codified as amended at 12 U.S.C. § 222)). Consequently, Synovus Bank operates as an agent of the

Federal Reserve System. Any transaction conducted through its mechanism, including the pledge of the promissory note at issue, constitutes an action within the "federal banking mechanism" as defined by controlling precedent. *Norman v. Baltimore & Ohio R.R.*, 294 U.S. 240, 303 (1935). The precedent in *Norman* states:

*"The Congress is authorized 'to coin money [and] regulate the value thereof.'... **This grant of exclusive authority is comprehensive.** The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures. **These powers, when exercised in conjunction with the power to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States, enable the Congress to create and control a national currency, either in coin or in paper, and to determine the rights and duties of persons, including corporations, with respect thereto, when incorporated into the federal banking mechanism.**"*

The bottom line remains that there is no other authority that can classify or regulate the instruments of the "federal banking mechanism" other than Congress. The controlling statutes align with this assessment.

B. The Federal Reserve Act and Governing Regulations Convert a Pledged Note into an Obligation of the Federal Reserve Bank.

The promissory note was tendered and pledged according to the standard operating procedures of the Federal Reserve System. This act triggers specific federal statutory consequences. The Federal Reserve Act provides unequivocally: "Such notes shall be the obligations of the Federal Reserve bank procuring the same..." (Federal Reserve Act, 38 Stat. 251, 264 (1913) (codified as amended at 12 U.S.C. § 412)). The operational framework for this pledge is established by Federal Reserve Operating Circular 10, which authorizes designated individuals "to pledge collateral to/ request to borrow money from the Federal Reserve Banks" and grants the Bank an irrevocable power of attorney over the collateral. (Federal Reserve Operating Circular 10, Appendix 3; *Id.* at § 12.3).

C. Congress Possesses Exclusive Constitutional Authority to Define the Legal Status of Instruments Within the Federal Banking Mechanism.

Once the note was pledged through the Federal Reserve member bank, it entered the federal domain. **The Supreme Court has long affirmed that Congress holds plenary power over this realm.** Congress has the authority to classify instruments like promissory notes and decree that their "legal effect is determined by the Act once deposited." *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 210 (1921). This authority is exclusive and paramount, granting Congress the "exclusive constitutional power to define the monetary and redemption status of obligations transferred into the federal banking mechanism." *Norman*, 294 U.S. at 303.

D. Rebuttal to the Presumption of a Continuing State-Law Debt Obligation.

The lower court's ruling rests on the presumption that the promissory note remained a simple, enforceable debt obligation under state law. **This presumption is legally erroneous because it ignores the federal preemption that occurred.** The sequence of law is dispositive:

1. The note was pledged through Synovus Bank, a Federal Reserve System member.
2. Upon this pledge, the Federal Reserve Act statutorily redefined it as an obligation of the Federal Reserve Bank. (Federal Reserve Act, 38 Stat. 251, 264).
3. Congress's exclusive constitutional power to define the status of obligations within its banking mechanism is controlling. *Norman*, 294 U.S. at 303.
4. **Congress's authority to determine the legal effect of an instrument upon its deposit into a federal system is settled.** *Smith*, 255 U.S. at 210.

CONCLUSION OF ARGUMENT IV

Therefore, by operation of federal law, the instrument was converted. Appellant's role is conclusively that of a pledgor of collateral, as defined by the Federal Reserve Operating Circular, for an obligation that federal statute expressly attributes to the Federal Reserve Bank. The contrary presumption of a surviving personal debt obligation is extinguished by the supremacy of federal law. The transaction is governed by the chain: (1). Deposit/Pledge (Federal Act & Regulation). (2). Federal Redefinition of Legal Status (Supreme Court Precedent) (3). Transformation of Instrument. Any state-law claim to the contrary is preempted.

CONCLUSION

The foreclosure judgment must be reversed because it is built upon a foundation of judicially-created presumptions that served as an unconstitutional substitute for proof, resulting in the denial of due process and equal protection. The court presumed the sufficiency and authenticity of unadmitted documents, presumed material facts out of existence despite verified challenges, and presumed that default by some parties cured fatal jurisdictional defects against others, when in fact there was no default by the alleged parties, because the challenge to standing had not been disposed of before the date of the hearing in question. These presumptions operated as a categorical denial of Appellants' right to a hearing and to confront evidence. Simultaneously, the court applied these indulgent presumptions only to benefit the plaintiff, while blocking requests from the defending trust for documentation incidental to the very transactions that would have proven a valid debt existed; and operated in manners inconsistent with procedure in benefit of the plaintiff, thereby violating the guarantee of equal protection. By issuing an Order of Reference and entering judgment without first requiring—and obtaining—admissible proof of standing, **the court proceeded directly to a merits hearing without affirmatively ruling on the plaintiff's standing and ultimately the court's subject matter jurisdiction.** Finally, the court's categorical refusal to conduct a requested Rule 43 evidentiary hearing, despite numerous requests, was itself a constitutional violation. This refusal denied Appellants the opportunity to present exculpatory evidence, including a forensic mortgage audit/assessment and the operation of the Federal Reserve Act (with the additional

controlling statutes), while allowing the plaintiff's **unauthenticated** documents to stand as conclusive proof. By blocking Appellants from testing the plaintiff's case and presenting their own, the court applied the law unequally and deprived Appellants of the very hearing rights that due process secures. Appellants were not given the opportunity to cross examine a credible witness with personal knowledge of the alleged underlying debt, primarily because no such witness exists that the Plaintiff could produce. Each of these errors is independently reversible; collectively, they render the judgment void.

For the foregoing reasons, the Final Judgment of Foreclosure and Sale was entered in violation of Appellants' constitutional rights to due process and equal protection **and** without the requisite subject matter jurisdiction. The judgment is void and must be reversed.

WHEREFORE, Appellants respectfully pray that this Court:

1. Reverse the Judgment of Foreclosure and Sale entered September 24, 2025, and vacate the Order of Reference;
2. Find that the circuit court's refusal to conduct an evidentiary hearing on Appellants' preserved defenses regarding consideration and the nature of the obligation constituted a denial of due process and equal protection;
3. Remand with instructions to dismiss the foreclosure action, as the plaintiff's failure to prove consideration and the operation of the Federal Reserve Act extinguished the alleged debt as a matter of law; **or, in the alternative,**
4. Remand for a full Rule 43 evidentiary hearing on all contested issues, including the validity of the debt and the application of the Federal Reserve Act;
5. Reinstate Appellant's Verified Counterclaim on the merits of their preserved defense within the circuit court;
6. Grant Appellants such other and further relief as this Court deems just and proper.

Respectfully presented,

s/ Austin J. Davis, Appellant
Self Represented

s/ Erica Lynn Davis, Appellant
Self Represented

February 13, 2026

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word-count and formatting requirements of the South Carolina Appellate Court Rules.

Austin J. Davis
Appellant, Self Represented

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Feb 17 2026

SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2026, I served a copy of the foregoing Motion for Permission to File Out of Time, together with the Appellants' Initial Brief and Designation of Matter, upon counsel for Respondent via the Court's electronic filing and notification system used by the Appellate Court (which Respondent should receive notification of on Monday, February 16, 2025)

s/ Austin J. Davis

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