

Appellant Initial Brief - Rogers Case

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

U.S. BANK NATIONAL ASSOCIATION,)) Respondent,)) v.) Appellate Case No.: 2026-000295) BARBARA HANNAH ROGERS and) ANTONIO ROGERS,)) Appellants.)

APPELLANTS' INITIAL BRIEF

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Case# 2022CP2101609

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TABLE OF AUTHORITIES

Cases:

Bank of America, N.A. v. Draper, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013) Deutsche Bank Nat'l Trust Co. v. Johnston, 369 S.C. 152, 631 S.E.2d 214 (Ct. App. 2006)

Statutes:

S.C. Code Ann. § 36-3-301

STATEMENT OF THE CASE

This matter arises from a foreclosure action filed by Respondent, U.S. Bank National Association, against Appellants in the Court of Common Pleas.

Appellants challenged the foreclosure based on lack of standing, defective assignments, and failure to produce the original note. Despite these challenges, the trial court entered judgment in favor of Respondent.

Appellants timely filed their Notice of Appeal and subsequently cured all deficiencies as acknowledged by the Court of Appeals.

ISSUES ON APPEAL

I. Whether the trial court erred in granting judgment where Respondent lacked standing at the time the action was commenced.

II. Whether the trial court erred in allowing enforcement of a mortgage with a defective chain of assignments.

III. Whether the trial court violated Appellants' due process rights.

IV. Whether the trial court erred in failing to require strict proof of ownership of the original note.

STANDARD OF REVIEW

In equity actions, including foreclosure cases, the appellate court may review the findings of fact and conclusions of law. However, the appellate court is not required to disregard the trial court's findings and may affirm unless there is clear error. "Standing must exist at the inception of the action. Here, the foreclosure was initiated by a servicer, Select Portfolio Servicing, which is not the owner of the debt.

A servicer cannot confer standing where none exists. The failure is not procedural—it is fatal."

ARGUMENT

I. RESPONDENT LACKED STANDING TO FORECLOSE

In *Bank of America, N.A. v. Draper*, the Court held that a plaintiff must have standing at the time the foreclosure action is commenced. 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013).

Similarly, in *Deutsche Bank Nat'l Trust Co. v. Johnston*, the Court emphasized that standing requires proof of ownership and possession of the note. 369 S.C. 152, 631 S.E.2d 214 (Ct. App. 2006).

Respondent failed to establish that it possessed the note at the time of filing. Any subsequent assignment cannot cure this defect.

“Appellants are in possession of the original promissory note, issued by Caliber Home Loans, Inc., which contains no endorsement, no allonge, and no transfer to Respondent.

Respondent, therefore, cannot establish holder status, non-holder status, or any lawful right to enforce the instrument under South Carolina law.

Without the note, Respondent has no standing. Without standing, the trial court lacked jurisdiction. The foreclosure judgment is void.”

II. DEFECTIVE CHAIN OF TITLE AND ASSIGNMENTS

Under South Carolina law, a foreclosing party must demonstrate a complete and valid chain of title.

The assignments presented by Respondent contain irregularities and lack proper authentication, rendering them unreliable and insufficient to establish ownership.

“Standing must exist at the inception of the action. Here, the foreclosure was initiated by a servicer, Select Portfolio Servicing, which is not the owner of the debt.

A servicer cannot confer standing where none exists. The failure is not procedural—it is fatal.”

III. FAILURE TO PRODUCE THE ORIGINAL NOTE

Pursuant to S.C. Code Ann. § 36-3-301, a party must be the holder of the instrument or otherwise entitled to enforce it.

Respondent failed to produce the original note or competent evidence of lawful possession, which is required to enforce the debt.

IV. VIOLATION OF DUE PROCESS RIGHTS

The trial court proceeded despite unresolved factual disputes and insufficient evidence, depriving Appellants of due process.

The court failed to require strict proof, resulting in prejudice to Appellants.

“The referee’s decision to halt Appellants’ presentation of evidence—after stating on the record that the hearing would continue—constitutes a structural due process violation.

This is not harmless error. It deprived Appellants of their right to be heard and mandates reversal.”

“The recusal of the Master-in-Equity, followed by irregular proceedings before a substitute referee, resulted in a fundamentally unfair tribunal.

The integrity of the proceeding is compromised, requiring vacatur.”

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the judgment of the lower court, vacate the foreclosure order, and remand the case for further proceedings.

“This case is not about a technical defect—it is about a complete failure of proof.

Respondent never acquired the note. Appellants possess it.

Under settled law, the party without the note cannot foreclose.

The judgment must be reversed and dismissed with prejudice.”

Respectfully submitted,



Barbara Hannah Rogers

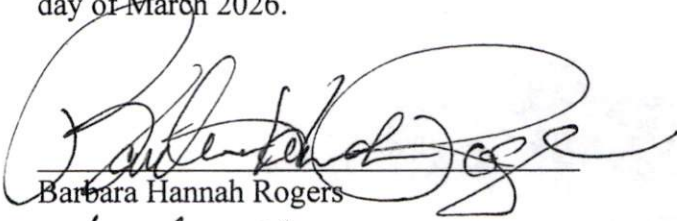


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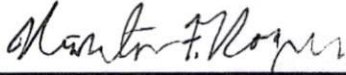
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CERTIFICATE OF SERVICE

I certify that a copy of this Brief was served on all counsel of record by U.S. Mail on this 23rd day of March 2026.



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