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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Ninth Judicial Circuit

Hon. Dale E. Van Slambrook, Circuit Court Judge

Appellate Case No. 2026-001122

Colonial Savings, F.A., Respondent,

v.

Elizabeth M. Dimler, Appellant.

BRIEF OF APPELLANT

Elizabeth M. Dimler, sui juris

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Appellant, sui juris

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STATEMENT OF ISSUES ON APPEAL

ISSUE I

Whether the circuit court erred in permitting the foreclosure action to proceed where the record did not establish which category of "person entitled to enforce" under S.C. Code Ann. § 36-3-301 Colonial Savings, F.A. satisfied when it commenced foreclosure on July 1, 2025.

ISSUE II

Whether the record established the real party in interest and the source and scope of Colonial Savings, F.A.'s claimed representative authority under Rule 17(a), SCRCP, where the record separately identified ownership, beneficial rights, servicing rights, possession, and enforcement authority.

ISSUE III

Whether the circuit court was required to determine the Rule 19 status of the separately recorded EMD Revocable Living Trust where the Trust was recorded on July 25, 2024, before AOM No. 1 was recorded, Colonial later acknowledged the Trust and Appellant's Trustee and beneficiary capacities, but the Complaint and Lis Pendens proceeded against Appellant only in her individual capacity. A claimed lack of monetary value does not eliminate a claimed title or property interest.

ISSUE IV

Whether the record established the complete transfer history of the Note and Mortgage where the record reflects separate MERS beneficial-rights and servicing-rights events, MERS deactivation, three (3) recorded assignments of the Mortgage, multiple materially different versions of the Note, and unresolved questions concerning indorsement, possession, and Article 3 enforcement rights.

ISSUE V

Whether Selene Finance LP's servicing transfer, AOM Nos. 2 and 3, and its later substitution as Plaintiff established the precise enforceable interest Selene acquired where Selene became servicer on November 3, 2025, Colonial thereafter ceased servicing, Selene began billing on November 17, 2025, Colonial remained the named Plaintiff, the docket reflected "Decline to Sign: Order/Substitution of Parties" on December 15, 2025, and substitution was not granted until March 27, 2026.

ISSUE VI

Whether the August 3, 2026 mootness disposition can stand where Appellant challenged the March 27, 2026 substitution Order through Rule 59 proceedings, Judge Van Slambrook ruled on reconsideration on June 24, 2026, expressly stated that the underlying foreclosure merits had been "specifically not addressed," and the substitution remains operative while the docket reflects the case status as "Appeal."

STATEMENT OF THE CASE

This action commenced on July 1, 2025, when Colonial Savings, F.A. ("Colonial") filed a foreclosure Complaint in the Charleston County Court of Common Pleas, Case No. 2025-CP-10-03716, naming Elizabeth M. Dimler and Oak Bluff Homeowners Association, Inc. as Defendants. For clarity, Riley Pope & Laney, LLC is referred to as "RPL"; Mortgage Electronic Registration Systems, Inc. as "MERS"; Federal Home Loan Mortgage Corporation as "Freddie Mac"; Selene Finance LP as "Selene"; and each Assignment of Mortgage as an "AOM." The Complaint concerns an August 27, 2019 Promissory Note in the original principal amount of $141,620.00, originally payable to PrimeLending, A PlainsCapital Company, and a Mortgage recorded September 11, 2019 at Book 0821, Page 007. Paragraph 3 alleged Colonial was the "holder of or otherwise entitled to enforce the Note and Mortgage," while paragraph 15 alleged Colonial acted "as the holder of the Note and Mortgage." The Complaint relied upon AOM No. 1, executed August 8, 2024 and recorded October 15, 2024 at Book 1273, Page 317.

Appellant contested Colonial's entitlement to enforce, the identity and authority of the real party in interest, the Note and Mortgage transfer history, the recorded EMD Revocable Living Trust, MERS events, and later assignments. Servicing transferred from Colonial to Selene Finance LP ("Selene") effective November 3, 2025. Colonial filed a Motion to Substitute on December 3, 2025. The docket reflects "Decline to Sign: Order/Substitution of Parties" on December 15, 2025. After a March 25, 2026 hearing, Judge Dale E. Van Slambrook entered a March 27, 2026 Order granting Selene's substitution as Plaintiff.

Appellant sought Rule 59(e) relief from the March 27, 2026 Order. Judge Thomas J. Rode entered a May 7, 2026 Order permitting the Rule 59(e) motion to be filed; it was docketed May 8, 2026. Judge Van Slambrook denied reconsideration on June 24, 2026, while stating that the underlying foreclosure merits had been "specifically not addressed by the Court." On August 3, 2026, Judge Jennifer B. McCoy entered a Form 4 reflecting "Deft Motion/Reconsider Moot." Written notice was mailed August 4, 2026, and received August 8, 2026. The circuit-court docket reflects the case status as "Appeal."

STANDARD OF REVIEW

Questions concerning interpretation and application of statutes and court rules are questions of law reviewed de novo. Whether the established record facts satisfy a statutory definition, including S.C. Code Ann. § 36-3-301, likewise presents a legal question. To the extent substitution and Rule 59 rulings involve discretionary procedural determinations, review is for abuse of discretion; a ruling controlled by an error of law or unsupported by the record constitutes an abuse of discretion.

Rule 201(a), SCACR, permits an appeal, as provided by law, from a final judgment, appealable order, or decision. S.C. Code Ann. § 14-3-330 identifies categories of final and intermediate orders subject to appellate review in law cases. Appellant relies on those authorities for the appellate-review framework and does not contend that every interlocutory order is immediately appealable. The appeal is further governed by Rule 203, SCACR, and Rule 263, SCACR. Rule 208 governs the Initial Brief; Rule 209 governs designation of matter for the Record on Appeal; Rule 210 governs the Record on Appeal; Rule 211 governs the later Final Brief; and Rule 220 identifies available appellate dispositions.

The Court of Common Pleas possessed general subject-matter jurisdiction over mortgage foreclosure actions. The distinct threshold question is whether Colonial Savings, F.A. established that it was legally entitled to prosecute and obtain foreclosure relief in this particular action when it filed the Complaint on July 1, 2025. That inquiry requires determination of Colonial's status under S.C. Code Ann. § 36-3-301, its Rule 17 authority, the Rule 19 status of the recorded Trust interest, and the evidentiary connection between the Note, Mortgage, possession history, and recorded assignments. Preservation questions under Rules 59(e), 59(g), and 77, SCRCP, and Rule 203, SCACR, require review of the actual filing, service, notice, and order chronology.

STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW

August 27, 2019 – September 25, 2019. Appellant executed the Note and Mortgage on August 27, 2019. The Note names PrimeLending as payee; the Mortgage defines PrimeLending as "Lender," names MERS solely as nominee for Lender and Lender's successors and assigns and separately addresses a sale of the Note and a change of loan servicer. Exhibit M-23 records

MERS registration on August 28, 2019. The Mortgage was recorded on September 11, 2019, at Book 0821, Page 007. M-23 further records a September 20, 2019 "Transfer Beneficial Rights – Option 1" to Freddie Mac, with an underlying transfer date of September 19, 2019, and a separate September 25, 2019 transfer of servicing rights to Colonial.

October 9, 2019 – July 9, 2024. A Freddie Mac borrower letter dated October 9, 2019 states that Freddie Mac purchased the mortgage loan. On April 16, 2024, Colonial issued the Notice of Default later relied upon in the foreclosure. Section 22 of the recorded Mortgage assigns the pre-acceleration notice obligation to "Lender," while the Mortgage expressly defines PrimeLending as "Lender." The source and scope of Colonial's authority to exercise that contractual right are addressed in Argument I. The letter states that PrimeLending sold the loan to Freddie Mac and sold Colonial the servicing rights, and directs Appellant to the "owner/assignee, Freddie Mac." This letter was subsequently filed in the circuit-court record on March 6, 2026, as Newly Discovered Evidence ("NDE") Exhibit A.

July 25, 2024 – October 15, 2024. The EMD Revocable Living Trust was recorded on July 25, 2024, at Book 1258, Page 686. AOM No. 1 was executed on August 8, 2024, purporting to assign MERS's mortgage interest to Colonial. Exhibit M-23 records September 14, 2024, MERS deactivation initiated by Colonial. Colonial's October 1, 2024, loss-mitigation letter thereafter identified the investor as "FHLMC Gold/ARC Bifurcated." AOM No. 1 was recorded on October 15, 2024, at Book 1273, Page 317.

That sequence must be reconciled with the Note-transfer history. Under *Carpenter v. Longan*, the debt evidenced by the Note is the principal obligation and the Mortgage is incidental to that debt. Accordingly, the claimed transfer of the Mortgage to Colonial cannot be evaluated independently of the transfer, indorsement, possession, and enforcement history of the Note.

The record reflects that Freddie Mac had previously been identified as recipient of beneficial rights/investor, while Colonial was separately identified as servicer. Although Colonial's October 1, 2024, correspondence used the designation "FHLMC Gold/ARC Bifurcated," Appellant does not rely upon that term alone as proof that the Note and Mortgage were legally severed. Rather, the designation reinforces the need to identify the precise allocation of rights: who owned or beneficially held the debt, where the operative Note was located, who possessed or controlled its enforcement rights, who held the corresponding Mortgage interest, and what legal instrument connected those interests when AOM No. 1 was recorded.

Where the record reflects that the Note was sold into the Freddie Mac system, the transfer history must identify the Note's custody and indorsement chain and explain how those rights connect to Colonial's later acquisition of the Mortgage interest and Colonial's claimed status as a person entitled to enforce the Note on July 1, 2025.

That connection is particularly material because Freddie Mac's servicing framework requires original Notes sold to Freddie Mac to be delivered to a document custodian and requires verification of the Note and the chain of indorsements.

Under *Carpenter v. Longan*, the debt evidenced by the Note is the principal obligation and the Mortgage is incidental to that debt. The claimed Mortgage-assignment chain therefore cannot be evaluated independently of the corresponding Note-transfer, indorsement, possession, and enforcement history.

The record therefore must answer a straightforward question: what happened to both sides of the transaction? The Note history must establish the operative instrument, its indorsement, custody, and the person entitled to enforce it, while the Mortgage history must establish the corresponding security interest and each assignment. Where the record reflects that the Note was sold into the Freddie Mac system, those histories must be reconciled with Colonial's later acquisition of the Mortgage interest and its claimed PETE status on July 1, 2025.

June 13, 2025 – July 21, 2025. Appellant sent Colonial a written Qualified Written Request seeking ownership, authority, and loan-document information on June 13, 2025. The filed USPS delivery record reflects Colonial received the correspondence on June 24, 2025 at 9:04 a.m., and Colonial issued its CR001 acknowledgment that same day, stating that it was collecting documents and information to prepare a response. Colonial commenced foreclosure on July 1, 2025, seven (7) calendar days after receipt. On July 21, 2025, RPL responded on Colonial's behalf as reflected in Exhibit M-1. Appellant relies on this chronology as evidence that ownership, authority, custody, and transfer information had been requested before commencement and remained the subject of a later response; she does not contend that the pendency of a QWR, standing alone, prohibited commencement of foreclosure.

July 1, 2025. Colonial commenced foreclosure at 8:51 a.m. Paragraph 3 alleged Colonial was the "holder of or otherwise entitled to enforce the Note and Mortgage," and paragraph 15 alleged Colonial acted "as the holder of the Note and Mortgage" when electing to accelerate. Paragraph 7 alleged that Appellant made and delivered the Note to PrimeLending. Paragraph 8 separately alleged that Appellant delivered the Mortgage to MERS as mortgagee and nominee for PrimeLending and its successors and assigns. Paragraph 9 alleged that the Mortgage was later assigned to Colonial by AOM No. 1; it did not allege that AOM No. 1 transferred the Note. Paragraph 11 alleged that the Mortgage secured money advanced by Colonial "or its predecessor in interest." The Note attached to the Complaint was redacted and contained a Susan Saffle, AVP indorsement.

The Complaint also alleged in paragraph 5 that, “based upon a search of the public records of Charleston County,” all persons or entities having an interest, lien, or possible claim in the mortgaged premises subordinate to Plaintiff's claimed lien had been made defendants. The caption nevertheless named only Appellant individually and Oak Bluff Homeowners Association, Inc.; the Complaint and contemporaneous Lis Pendens did not identify the EMD Revocable Living Trust or Appellant in Trustee capacity, although the Trust had been recorded on July 25, 2024 at Book 1258, Page 686.

July 14, 2025 – July 21, 2025. Thirteen (13) days after filing, Colonial requested the complete Trust for attorney review “per Investor.” This letter was subsequently filed in the circuit-court record on March 6, 2026, as NDE Exhibit B. RPL's July 21, 2025 response on Colonial's behalf identified Freddie Mac as “the owner of the Note” and separately stated that PrimeLending sold Colonial “the servicing rights of your loan, which includes the right to enforce the Note.” The response did not attach the operative servicing, agency, power-of-attorney, or custodial instrument establishing the asserted enforcement authority.

August 15, 2025 – October 20, 2025. Bailee instructions dated August 15, 2025 and RPL's August 20, 2025 acknowledgment document later custody of the collateral file after commencement. Those documents postdate the July 1, 2025 filing and do not, on their face, identify who physically possessed the operative Note on the commencement date. Appellant recorded a challenge to AOM No. 1 on August 21, 2025 at Book 1332, Page 580 and filed her Master Counterclaim with Exhibit M-9 on August 29, 2025. On September 25, 2025, Freddie Mac's public lookup stated: "No. Our records show that Freddie Mac is not the owner of your mortgage." On September 26, 2025, Appellant filed Exhibit M-16, the Freddie Mac Loan

Lookup, and Exhibit M-17, the Fannie Mae Loan Lookup. Appellant recorded an additional Notice of Challenge / Clouded Title on September 29, 2025 at Book 1340, Page 605.

October 3, 2025 — Colonial's First Discovery Responses (Exhibit M-58). More than three months after commencement, Colonial served discovery responses that identified Colonial as servicer rather than purchaser of the Note; stated that Colonial did not advance money in exchange for the Note; asserted that the Note was indorsed in blank and negotiated by transfer of possession; stated that "the Note is transferred by a different means than the recorded assignment of mortgage"; and admitted there was no executed Colonial–Freddie Mac agency agreement or power of attorney authorizing Colonial to sue in its own name on Freddie Mac's behalf. Colonial instead identified Freddie Mac servicing regulations and its servicing relationship as the asserted source of authority. Colonial denied the proposition that a legal separation of the Mortgage from the Note occurred after origination. Because M-58 postdates commencement, it identifies Colonial's later-described enforcement theory; it does not itself establish when the asserted possession, indorsement, or representative authority existed on July 1, 2025.

Exhibit M-23, the MERS Milestones Report, was filed on October 9, 2025. The October 1, 2024 Colonial loss-mitigation letter identifying the investor as "FHLMC Gold/ARC Bifurcated" was later filed with Exhibits M-34 and M-35 on October 20, 2025.

October 14, 2025 – October 16, 2025. Appellant sent Colonial a second QWR / Notice of Error on October 14, 2025 concerning disputed fees and requested supporting authority and documentation. The filed QWR record states that no acknowledgment or substantive response was received. Two days later, on October 16, 2025, Colonial issued its servicing-transfer notice, effective November 3, 2025. Appellant relies on the dates as chronology only and does not ask the Court to infer that the October 14 request caused the servicing transfer.

October 16, 2025 – November 19, 2025. Colonial issued a servicing-transfer notice on October 16, 2025, effective November 3, 2025. A substitution-related hearing occurred on November 7, 2025. Appellant recalls that RPL sought a continuance because the Colonial/Selene transfer paperwork was not complete; because no transcript has been identified, that recollection is not offered as a verbatim quotation or adjudicated fact. AOM No. 2 was also executed on November 7, 2025. Colonial's servicing account reflected a zero balance on November 13, 2025 (Ex. M-44A); Appellant offers that entry as evidence of a servicing closeout, not payment or satisfaction of the underlying debt. Selene began billing Appellant on November 17, 2025, while Colonial remained the named Plaintiff. AOM No. 2 was recorded on November 19, 2025, at Book 1351, Page 243.

The Charleston County Register of Deeds cover page identifies the "Maker" as "COLONIAL SAVINGS ETC," while the underlying assignment identifies "Colonial Savings FA" as assignor and is signed by Juan Ordaz as Vice President. Appellant later preserved the identity discrepancy in her Rule 59(e) materials and included an official South Carolina Secretary of State business-entity search reflecting no entity under the name "Colonial Savings ETC." Appellant does not treat the indexing discrepancy, standing alone, as an adjudicated determination that the assignment is void; the preserved issue is whether the record sufficiently established the identity and authority of the transferor relied upon for substitution under Rule 25(c).

December 3, 2025 – January 30, 2026. Appellant sent Selene a QWR / Notice of Error on December 3, 2025; the record reflects receipt on December 8, 2025, and Appellant's April 30, 2026 filing stated that no substantive response had been received as of that date. Colonial filed its Motion to Substitute on December 3, 2025, asserting that it had "recently transferred its servicing rights to Selene Finance LP along with its interest in the subject note." The docket reflects "Decline to Sign: Order/Substitution of Parties" on December 15, 2025. AOM No. 3 contains an internal date discrepancy between December 15, 2025 and January 2, 2026, and was recorded January 23, 2026 at Book 1365, Page 047.001. On December 31, 2025, Exhibit M-48, the sworn affidavit of Selene Corporate Appearance Representative Peter Katsikas, was electronically filed. Katsikas stated that PrimeLending was the original owner of the Note, indorsed the Note in blank, delivered the Note to Freddie Mac on or about September 20, 2019, and transferred servicing rights to Colonial on or about September 25, 2019; he further identified Freddie Mac as the current investor/owner of the Note, Colonial as prior servicer, Selene as current servicer, and RPL as temporary custodian under a bailment agreement with Colonial. Paragraph 15 stated that Selene engaged RPL on or about November 18, 2025 to continue the foreclosure and, "to the extent that any ratification is necessary," purported to ratify Colonial's commencement. Paragraph 17 stated that RPL had temporary custody of the Note pursuant to the Colonial bailment agreement. A separate authorization letter dated January 6, 2026 and signed January 7, 2026 identified Katsikas in a different capacity—Selene Finance LP as Attorney-in-Fact for Freddie Mac—stated that Freddie Mac owns the Note, identified Colonial as former servicer and Selene as current servicer, and purported to authorize RPL to retain possession of the Note under the Colonial bailment arrangement "as of November 1, 2025" until Selene was substituted. The January authorization is not captioned or sworn as an affidavit and contains no jurat or notarial acknowledgment on its face. On January 30, 2026, Judge Thomas J. Rode entered a Form 4 concerning multiple pending motions and related issues. Its relevance to preservation and the later Rule 59(e) proceedings is addressed in Argument VI.

AOM No. 3 was later recorded on January 23, 2026, at Book 1365, Page 047.001. Its Charleston County recording page identifies the Maker as "COLONIAL SAVINGS F A," unlike the

"COLONIAL SAVINGS ETC" maker designation on AOM No. 2. Because both instruments concern successive Colonial-to-Selene transfers of the same Mortgage, the difference in recorded maker designation and the existence of the second assignment are material to identifying what interest was conveyed by AOM No. 2, what interest remained in Colonial thereafter, and what legal or corrective purpose AOM No. 3 served. Appellant does not presume the answer.

March 6, 2026 – March 27, 2026. — NDE Exhibits A and B Filed; RPL Note Inspection. Appellant filed a Notice of Newly Discovered Evidence placing the July 9, 2024, Colonial letter into the record as **NDE Exhibit A** and the July 14, 2025, Colonial Trust letter into the record as **NDE Exhibit B**. On the same date, Appellant inspected the Note and related collateral materials at Riley Pope & Laney, LLC ("RPL"). The version presented as the alleged original bore an "ORIGINAL" stamp and a handwritten Freddie Mac number; Appellant observed no separate allonge and no additional front- or back-page indorsement. Appellant recalls M. McMullen Taylor stating that there was no allonge and informing her during that inspection that the FedEx envelope associated with delivery of the collateral file had been discarded. Because no transcript or written memorialization of those oral statements has been identified, Appellant does not offer them as verbatim quotations or adjudicated facts. The envelope circumstance is relevant only to provenance because the shipping container could have supplied independent sender, origin, shipment-date, tracking, and delivery information. On March 9, 2026, Appellant filed the inspection materials as Exhibits M-46 through M-52. A substitution hearing occurred on March 25, 2026. AOM No. 3 had already been recorded, but Appellant does not recall it being identified or discussed before the tribunal. Judge Van Slambrook entered the substitution Order on March 27, 2026.

April 1, 2026 – July 30, 2026. Appellant attempted to present Rule 59(e) relief on April 1, 2026. Judge Rode permitted filing by Order entered May 7, 2026, and the motion was docketed on May 8, 2026. On April 20, 2026, Selene issued correspondence identifying itself as a mortgage loan servicer and stating that it was a debt collector; the letter did not identify Selene as owner of the Note, holder of the Note, lender, or secured party. On May 8, 2026, Appellant filed a Notice of Forensic Accounting Discrepancies & Improper Fee, placing Selene's billing and accounting activity before the circuit court. On May 15, 2026, Appellant filed the Weeks & Irvine closing-file materials as Exhibits M-53 through M-58. M-54 identifies the $141,620.00 loan amount; M-55 records a $140,691.84 incoming wire from PrimeLending, A PlainsCapital Company, into the Weeks & Irvine trust/IOLTA ledger; M-56 identifies Prime Lending Inc. as the remitter through PlainsCapital Bank and Weeks & Irvine LLC as beneficiary; and M-58 contains Colonial's October 3, 2025 discovery responses. These exhibits were filed as corroborating record evidence concerning origination, funding, transfer, possession, and asserted authority. On May 18, 2026, Appellant filed a Motion to Reconsider concerning the substitution proceedings. RPL raised Rule 59(g) by email on June 17, 2026; Appellant responded concerning prior delivery. Judge Van Slambrook denied reconsideration on June 24, 2026, while stating that the underlying foreclosure merits had been "specifically not addressed." On July 15, 2026, Appellant filed the October 9, 2019 Freddie Mac borrower letter as Newly Discovered Evidence Exhibit C. On July 17, 2026, Appellant made a supplemental filing addressing standing at commencement, Rule 17, Rule 19, the assignment history, MERS, and related threshold issues. On July 3, 2026, Appellant sent additional written QWR requests to both Colonial and Selene seeking, among other things, owner/assignee identity and authority information. Selene's July 20, 2026 correspondence acknowledged receipt and stated that it would respond within 30 business days. Colonial's July

29, 2026 letter stated that Colonial had received the Notice of Error, forwarded it to Selene on July 15, 2026, and that Selene would provide the response. Those acknowledgment and forwarding letters did not themselves supply the requested substantive ownership, transfer, or enforcement-authority information. On July 30, 2026, the Wells Fargo subpoena was served upon Spencer Thomas, Attorney & Authorized Agent, Corporation Service Company, Registered Agent, at 100 Coastal Drive, Suite 210, Charleston, South Carolina 29492. The subpoena sought additional banking and settlement records concerning the August 27, 2019 closing and the source and movement of the loan funds. Appellant does not offer the subpoena itself as substantive proof of Colonial's role at closing; it documents her continuing effort to obtain evidence concerning origination and funding.

August 3, 2026 – August 8, 2026. Judge McCoy entered on August 3, 2026, Form 4 characterizing a reconsideration matter as moot. Notice was mailed August 4, 2026, and received August 8, 2026.

Appellant distinguishes between evidence presented to the circuit court and materials obtained after appellate proceedings commenced. The unfiled Third Discovery objections/responses and the later Wells Fargo subpoena production are not offered in this Initial Brief as substantive appellate-record evidence. Likewise, Appellant does not rely upon any post-record Freddie Mac public-lookup result as proof of the merits. Selene's August 24, 2026, correspondence, received by Appellant on August 29, 2026, is likewise post-record correspondence and is not offered as substantive appellate-record evidence. The arguments herein rely upon materials previously presented to the circuit court, including Exhibits M-1, M-16, M-23, M-34/M-35, M-44A/M-44B, M-46 through M-58, NDE Exhibits A, B, and C; the recorded EMD Revocable Living Trust;

AOM Nos. 1–3; the December 31, 2025, Peter Katsikas affidavit and Exhibit D; the January 6, 2026, Katsikas authorization letter; and the circuit-court orders and docket history.

Appellant reserves any right permitted by law to present subsequently obtained evidence in the circuit court should this matter be remanded for further evidentiary proceedings.

ARGUMENT I

COLONIAL DID NOT ESTABLISH WHICH STATUS UNDER S.C. CODE ANN. § 36-3-301 IT POSSESSED WHEN IT COMMENCED FORECLOSURE ON JULY 1, 2025

The commencement-date enforcement inquiry is whether Colonial possessed a legally enforceable interest when it commenced the foreclosure action on July 1, 2025. That inquiry requires identification of Colonial's status under S.C. Code Ann. § 36-3-301 and the evidence connecting the Note, the Mortgage, possession, indorsement, and any representative authority as of that date.

The Note is analyzed as a negotiable instrument under S.C. Code Ann. § 36-3-104, and § 36-3-301 defines a "person entitled to enforce" an instrument as the holder, a nonholder in possession who has the rights of a holder, or a person not in possession who satisfies the limited statutory circumstances identified by Article 3. The statute expressly separates entitlement to enforce from ownership. The question presented is therefore not simply who owned the loan or who serviced it, but which statutory category Colonial satisfied on July 1, 2025.

Colonial's own Complaint placed Article 3 status directly at issue. Paragraph 3 alleged Colonial was the "holder of or otherwise entitled to enforce the Note and Mortgage," while paragraph 15 alleged more specifically that Colonial acted "as the holder of the Note and Mortgage" when it elected to accelerate. Thus, the issue is not whether Colonial merely serviced the loan; it is whether competent record evidence established the statutory status Colonial itself invoked at commencement.

The Note was originally payable to PrimeLending. Under §§ 36-3-201, -204, and -205, negotiation and indorsement determine whether a transferee becomes a holder; possession also matters. The Mortgage separately identifies PrimeLending as "Lender" and MERS as nominee mortgagee. Its servicing provisions recognize that servicing can change independently of a sale of the Note. A recorded assignment of the Mortgage is therefore not, without more, proof of Article 3 status as to the Note.

A. The pre-foreclosure record repeatedly identified Colonial as servicer while identifying another owner, investor, or holder capacity.

M-23 records beneficial rights to Freddie Mac in September 2019 and a separate transfer of servicing rights to Colonial. Colonial's April 16, 2024 default notice states that Colonial services the loan "on behalf of the holder of the promissory note." Its July 9, 2024 letter states that PrimeLending sold the loan to Freddie Mac and sold Colonial servicing rights, and identifies Freddie Mac as "owner/assignee." Colonial's October 1, 2024 letter again identifies a separate FHLMC investor. Those documents consistently distinguish servicing from ownership or holder status.

RPL's July 21, 2025, QWR response, made on Colonial's behalf after commencement, identifies Freddie Mac as "the owner of the Note" and Colonial as holder of servicing rights, while asserting that those servicing rights "include the right to enforce the Note." That assertion is material, but the response did not attach the servicing agreement, agency agreement, power of attorney, custodial agreement, or other operative instrument establishing the scope of that asserted authority. It also did not identify whether Colonial claimed to be a holder, a nonholder in possession with rights of a holder, or a qualifying person not in possession.

B. The later bailee evidence does not establish Colonial's possession or Article 3 status at commencement.

The foreclosure was filed July 1, 2025. The bailee instructions are dated August 15, 2025, and RPL acknowledged custody on August 20, 2025. Those documents establish later custody by foreclosure counsel. They do not, on their face, identify who physically possessed the Note on July 1, 2025, or which § 36-3-301 category Colonial then satisfied. The August 15, 2025, Bailee Instructions were later filed on December 31, 2025, as Exhibit D.

Exhibit M-58, served October 3, 2025, later asserted that the Note was indorsed in blank and negotiated by transfer of possession. That response identifies Colonial's later-stated legal theory, but it does not by itself establish the date on which Colonial obtained possession or identify who physically possessed the operative Note on July 1, 2025. The first specifically dated custody documentation in this record is the August 15–20, 2025 bailee material. The commencement-date inquiry therefore remains whether competent evidence establishes Colonial's holder or other § 36-3-301 status on July 1, 2025.

At the March 6, 2026 inspection, Appellant recalls M. McMullen Taylor informing her that the FedEx envelope associated with delivery of the collateral file had been discarded. Because no transcript or written memorialization of that oral statement has been identified, Appellant does not offer it as a verbatim quotation or adjudicated fact and does not characterize the circumstance as adjudicated spoliation. Its relevance is limited to provenance: the shipping container could have supplied independent information concerning sender, origin, shipment date, tracking history, and delivery. The surviving August 15–20, 2025 bailee materials therefore stand on their own as post-commencement custody evidence.

C. The April 16, 2024, Default Notice Required Evidence of Colonial's Authority to Exercise the "Lender's" Section 22 Rights

The recorded Mortgage identifies PrimeLending as "Lender." Section 22 provides that "Lender shall give notice to Borrower prior to acceleration" following a breach and prescribes the required contents of that notice. Colonial, rather than PrimeLending, issued the April 16, 2024, Notice of Default later relied upon in the foreclosure.

Appellant does not contend that a mortgage servicer can never perform the Lender's contractual functions. The narrower question is whether the record establishes the source and scope of Colonial's authority to exercise the contractual acceleration rights assigned by Section 22 to "Lender." That question is material because Colonial's July 9, 2024, correspondence subsequently stated that PrimeLending sold Colonial servicing rights, while directing ownership inquiries to Freddie Mac. That correspondence was placed into the circuit-court record on March 6, 2026, as NDE Exhibit A.

Thus, before Colonial could rely upon its April 16, 2024, notice as fulfillment of the contractual condition preceding acceleration and foreclosure, the record had to establish the representative or enforcement authority under which Colonial exercised the Section 22 rights of the contractually defined "Lender."

D. The record contains materially different Note versions and no separate allonge was produced at the March 6, 2026, inspection.

The record contains four materially different Note presentations: a closing-file version; a Weeks & Irvine version bearing Appellant's signature but an incomplete PrimeLending indorsement block; the redacted version attached to the July 1, 2025 Complaint containing the Susan Saffle indorsement; and the version presented at the March 6, 2026 inspection bearing an "ORIGINAL" stamp and handwritten Freddie Mac number. Appellant observed no separate allonge and no additional front- or back-page indorsement/endorsement during that inspection.

The evidentiary use of the parties' and servicers' records is governed by the ordinary foundation requirements, including Rules 602, 801(d)(2)(D), 803(6), and 901, SCRE, as applicable. Appellant does not contend that the Freddie Mac corporate borrower letter is automatically self-authenticating as commercial paper.

Those differences do not, by themselves, establish invalidity of the Note. They do make the indorsement, possession, and provenance evidence material to determining the precise Article 3 status asserted at commencement. If Colonial relied on holder status, the record must support holder status; if it relied on nonholder-in-possession status, the transfer of holder rights must be established; if it relied on a non-possession theory, the requirements of § 36-3-309 or another applicable Article 3 provision must be satisfied.

E. Discovery, the Katsikas affidavit, and the closing file still do not identify Colonial's July 1, 2025, statutory category.

Colonial's October 3, 2025 discovery responses and the closing records distinguish origination and funding from Colonial's later servicing role. Exhibit M-54 identifies the original loan amount as $141,620.00. Exhibit M-55 records a $140,691.84 incoming wire from PrimeLending, A PlainsCapital Company, into the Weeks & Irvine trust/IOLTA ledger. Exhibit M-56 independently identifies Prime Lending Inc. as the remitter, PlainsCapital Bank as the originating bank, and Weeks & Irvine LLC as beneficiary. M-58 further states that Colonial "did not advance any money in exchange for Defendant's Note," that Colonial was the servicer rather than purchaser of the Note, and that PrimeLending, as lender, funded the original transaction. These records establish PrimeLending's origination and funding role; they do not themselves determine subsequent entitlement to enforce. Colonial's later status therefore must be established separately under § 36-3-301 through the applicable evidence of possession, transfer, indorsement, or other statutory entitlement.

To the extent Exhibit M-58 contains responses to requests for admission, Rule 36, SCRCP, governs the effect of those admissions. Appellant relies on the responses for the propositions actually admitted or asserted and does not enlarge them beyond their text.

Exhibit M-48, the December 31, 2025 Katsikas affidavit, separates the relevant capacities. Katsikas swore that PrimeLending was the original owner of the Note, indorsed it in blank, delivered the Note to Freddie Mac on or about September 20, 2019, and separately transferred servicing rights to Colonial on or about September 25, 2019. He identified Freddie Mac as the current investor/owner of the Note and RPL as temporary custodian pursuant to a bailment agreement with Colonial. The affidavit does not identify a later delivery of the Note from Freddie Mac to Colonial or state when Colonial first obtained physical possession. To the extent the September 2019 delivery assertion rests on incorporated business records rather than Katsikas's firsthand observation, Rules 602 and 803(6), SCRE, make the foundation for the underlying record material: the record must show the qualifying business record and foundation supporting the asserted historical delivery. The affidavit therefore supplies a later sworn account of the claimed Note history; it does not itself establish Colonial's possession or other § 36-3-301 status on July 1, 2025.

Draper does not eliminate the need to examine the evidence supporting the asserted foreclosure status. In Bank of America, N.A. v. Draper, 405 S.C. 214, 746 S.E.2d 478 (Ct. App.

2013), the Court of Appeals recognized that a loan servicer may have standing to foreclose based on its pecuniary interest and servicing relationship; the court separately examined § 36-3-301 and concluded the record showed the bank held the note. Appellant therefore does not argue that servicing status categorically defeats foreclosure. The narrower question is whether this record establishes Colonial's asserted servicing authority and the Article 3 facts supporting its claimed enforcement status on July 1, 2025.

F. Selene's later substitution did not retrospectively establish Colonial's status on July 1, 2025.

Selene was not substituted until March 27, 2026. Procedural substitution does not itself establish which § 36-3-301 category Colonial satisfied eight months earlier. Nor does it establish, without the underlying transfer evidence, what enforceable interest Colonial possessed and what enforceable interest Selene acquired.

Accordingly, the Court should determine whether the record established Colonial's entitlement to enforce the August 27, 2019 negotiable instrument at commencement. Ownership, servicing, possession, and party status are related but distinct; none substitutes for proof of the statutory category actually relied upon.

ARGUMENT II

THE RECORD DID NOT ESTABLISH THE REAL PARTY IN INTEREST OR THE SOURCE AND SCOPE OF COLONIAL'S CLAIMED REPRESENTATIVE AUTHORITY UNDER RULE 17(a), SCRCP

Rule 17(a), SCRCP, requires prosecution in the name of the real party in interest but permits specified representatives and other legally authorized parties to sue in their own names for another's benefit. It also permits ratification, joinder, or substitution after objection.

Appellant therefore does not contend that a servicer can never prosecute a foreclosure or that substitution is categorically unavailable. The narrower question is whether the record established why Colonial was legally authorized to prosecute this particular foreclosure in its own name.

As shown in Argument I, the record repeatedly distinguishes Freddie Mac's ownership/investor role from Colonial's servicing role. The April 16, 2024 notice states Colonial serviced "on behalf of the holder"; the July 9, 2024 letter identifies Freddie Mac as owner/assignee and Colonial as recipient of servicing rights; and M-1 identifies Freddie Mac as owner of the Note while asserting that Colonial's servicing rights included enforcement. The operative agreement establishing the scope of that asserted enforcement authority was not attached to M-1.

Exhibit M-58 narrows the source of authority Colonial actually asserted. Colonial admitted there was no executed agency agreement or power of attorney between Colonial and Freddie Mac authorizing Colonial to sue in its own name on Freddie Mac's behalf. Colonial instead stated that its authority derived from its Freddie Mac servicing relationship and Freddie Mac servicing regulations, and its production response invoked the Freddie Mac Servicer Guide as authority to obtain possession of the Note and bring a foreclosure action in its own name. Thus, Appellant does not contend Colonial identified no theory of representative authority. The question is whether the authority actually identified in the record established Colonial's right to prosecute this foreclosure in its own name and, separately, whether the factual predicates for § 36-3-301 entitlement existed on July 1, 2025. Rules 26 and 37, SCRCP, supplied mechanisms for seeking and compelling discovery concerning the asserted representative and transfer authority. The appellate point, however, is not the content of any off-record discovery dispute; it is what the filed record does and does not establish concerning Colonial's asserted authority.

Federal servicing law likewise preserves the distinction between servicing and ownership. 15 U.S.C. § 1641(f)(1) provides that a servicer is not treated as an assignee merely by servicing unless the servicer is or was the owner of the obligation; § 1641(f)(2) further provides that an assignment solely for administrative convenience does not itself make the servicer the owner and requires the servicer, upon written request, to provide, to the best of its knowledge, the name, address, and telephone number of the owner or master servicer. 12 U.S.C. § 2605(k)(1)(D) and 12 C.F.R. § 1024.36(d)(2)(i)(A) separately require a servicer to respond within ten business days to a borrower's request for the identity and contact information of the owner or assignee. Appellant relies on these provisions only to reinforce the legal distinction among servicing, ownership, and enforcement status and to explain why her repeated requests for owner/authority information were material; they do not themselves determine PETE status under S.C. Code Ann. § 36-3-301.

Bardoon Properties, N.V. v. Eidolon Corp., 326 S.C. 166, 485 S.E.2d 371 (1997), holds that real-party-in-interest status does not concern the circuit court's subject-matter jurisdiction and that a Rule 17 objection may be waived if not timely raised. Appellant therefore does not convert Rule 17 into a categorical subject-matter-jurisdiction theory. Unlike the post-default objection in Bardoon, Appellant raised Colonial's claimed enforcement status, representative authority, real-party-in-interest status, and related Note-enforcement issues during the underlying proceedings and continued to preserve them through Rule 59 proceedings.

Exhibit M-16, filed September 26, 2025, contains Freddie Mac's September 25, 2025 public lookup stating, "No. Our records show that Freddie Mac is not the owner of your mortgage." The lookup did not identify a successor owner, investor, trust, or other entity. Three months later, Exhibit M-48 stated under oath that Freddie Mac was the current investor/owner of the Note and that PrimeLending had delivered the Note to Freddie Mac in September 2019. Those filed records require reconciliation rather than assumption. Ownership, servicing, custody, and PETE status remain distinct questions; the conflict in ownership information reinforces the need for competent evidence identifying the actual Note-transfer and custody history and the source of Colonial's representative authority.

Katsikas's affidavit also expressly invokes ratification. Paragraph 15 states that Selene engaged RPL on or about November 18, 2025 to continue the foreclosure and, "to the extent that any ratification is necessary," ratifies Colonial's commencement. Appellant recognizes that Rule 17(a), SCRCP, permits ratification in appropriate circumstances. The ratification statement, however, does not itself identify which § 36-3-301 status Colonial possessed on July 1, 2025, what enforceable interest Selene possessed on November 18, 2025, or the substantive interest being ratified. Rule 17 supplies a procedural mechanism; it does not replace the substantive proof required for entitlement to enforce the Note.

Rule 17(a)'s ratification and substitution provisions do not retrospectively establish the source of authority that existed at commencement. Selene's later substitution may be procedurally permissible if the requirements of Rules 17 and 25 are satisfied, but the substitution itself does not prove what representative or enforceable interest Colonial possessed on July 1, 2025, or what precise interest Selene later acquired. The Court should therefore require the record to identify the real-party-in-interest or representative basis actually supporting Colonial's prosecution of this foreclosure.

ARGUMENT III

THE RECORDED EMD REVOCABLE LIVING TRUST WAS MATERIAL TO NOTICE AND RULE 19, AND THE CIRCUIT COURT DID NOT ADJUDICATE ITS REQUIRED-PARTY STATUS

Appellant does not contend that recording the Trust, standing alone, transferred the Note or determined Article 3 enforcement rights. The Trust issue concerns the public land record, notice, and whether complete foreclosure relief affecting the property could be adjudicated without determining the Rule 19 status of the separately recorded Trust interest.

The Trust was recorded July 25, 2024, at Book 1258, Page 686. AOM No. 1 was executed August 8, 2024 and recorded October 15, 2024; the foreclosure was filed July 1, 2025; AOM No. 2 was recorded November 19, 2025; and AOM No. 3 was recorded January 23, 2026. Thus, the Trust was part of the public title record before each later recorded assignment and before commencement. S.C. Code Ann. § 30-7-10 makes recordation material to priority and notice as to instruments affecting real estate.

The Complaint itself makes the omission material. Paragraph 5 affirmatively alleged that, "based upon a search of the public records of Charleston County," all persons or entities having an interest, lien, or possible claim in the mortgaged premises subordinate to Plaintiff's claimed lien had been made defendants. Yet the recorded Trust was not identified in the Complaint or Lis Pendens, and Appellant was named only individually. Appellant does not contend that paragraph 5 itself resolves Rule 19; it establishes that Colonial placed the asserted completeness of its public-record party search at issue.

Colonial also had actual awareness. Its July 14, 2025 letter requested all pages of the Trust for counsel to review "per Investor" and requested information concerning Appellant's

Trustee and beneficiary capacities and continued occupancy. Those requested characteristics correspond to the inter vivos trust framework addressed by 12 U.S.C. § 1701j-3(d)(8). Appellant does not contend that Garn-St. Germain itself creates Rule 19 joinder; rather, the letter demonstrates that Colonial recognized the Trust transfer and Appellant's distinct capacities while the foreclosure was pending.

The July 1, 2025, Lis Pendens identified Appellant individually and the same property secured by the Mortgage at Book 0821, Page 007 and AOM No. 1 at Book 1273, Page 317. It did not identify the Trust or Appellant in Trustee capacity. Foreclosure has an in-rem component because it seeks sale of the property, while §§ 29-3-650 and -660 contemplate personal liability and a deficiency where legally available. The action therefore directly implicated the property interest reflected in the recorded Trust while also proceeding against Appellant individually.

Rule 19(a), SCRCP, requires joinder when a person claims an interest relating to the subject of the action and disposition in that person's absence may impair the ability to protect that interest or expose existing parties to multiple or inconsistent obligations. Rule 19 does not make nonjoinder automatically jurisdictional. The required analysis is whether the recorded Trust or Appellant in Trustee capacity met Rule 19(a), and if joinder was not feasible, whether Rule 19(b) required further analysis.

The March 27, 2026 substitution Order did not determine the Trust's Rule 19 status, Trustee capacity, or the effect of the public-record chain of title. Judge Van Slambrook's June 24, 2026 Order expressly stated that the underlying merits had been "specifically not addressed." Accordingly, the Trust issue remains an unresolved required-party and title-record question, not a claim that recordation itself determined Note ownership or PETE status.

A claimed lack of monetary value does not eliminate a claimed title or property interest.

ARGUMENT IV

THE COMPLETE NOTE AND MORTGAGE TRANSFER HISTORY REMAINS UNRESOLVED, INCLUDING THE RELATIONSHIP BETWEEN THE NOTE, THE MORTGAGE, MERS EVENTS, AND AOM NOS. 1–3

South Carolina law supplies the controlling transfer principle. In U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G v. Singleton, Opinion No. 6160 (S.C. Ct. App. filed Aug. 12, 2026), the Court of Appeals reiterated that an assignment of a note secured by a mortgage carries the mortgage, while an assignment of the mortgage alone does not carry the note, relying on Hahn v. Smith, 157 S.C. 157, 154 S.E. 112 (1930), and Draper. That rule accords with Carpenter v. Longan, 83 U.S. (16 Wall.) 271 (1872), under which the debt is the principal obligation and the mortgage is incident to the debt. Appellant relies on Carpenter only for that limited interdependence principle and on South Carolina Article 3 for entitlement to enforce the negotiable instrument. Accordingly, the Mortgage-assignment record cannot substitute for proof of the Note-transfer, indorsement, possession, and enforcement facts material to July 1, 2025.

The Complaint and M-58 themselves distinguish the transfer mechanisms. Paragraph 7 of the Complaint alleged delivery of the Note to PrimeLending; paragraph 8 separately alleged delivery of the Mortgage to MERS as nominee for PrimeLending and its successors and assigns; and paragraph 9 alleged only that the Mortgage was later assigned to Colonial through AOM No. 1. M-58 later stated that "the Note is transferred by a different means than the recorded assignment of mortgage." Colonial also denied the proposition that a legal separation of the Mortgage from the Note occurred after origination. Appellant therefore does not characterize M-58 as an admission of legal severance. The narrower record point is that the claimed Note transfer and recorded Mortgage assignment were different evidentiary events, and each must be established under the law governing the interest transferred.

Where Colonial relied on holder status, §§ 36-3-201, 36-3-204, and 36-3-205 govern negotiation and indorsement, while § 36-3-301 governs entitlement to enforce. AOM No. 1 may evidence a claimed transfer of the Mortgage interest; it does not itself establish negotiation, possession, or holder status as to the Note. The record must therefore connect the Note and Mortgage through competent evidence rather than infer Article 3 status from the land-record assignment alone.

The September 2019 MERS events identify different categories of rights going to different entities: beneficial rights to Freddie Mac and servicing rights to Colonial. The October 1, 2024 Colonial letter continued to identify a separate FHLMC investor. Those records do not show a beneficial-rights transfer to Colonial. AOM No. 1, by contrast, purports to assign a Mortgage interest from MERS, as nominee for PrimeLending, to Colonial. Its recording does not itself establish negotiation or transfer of the Note under §§ 36-3-201, -204, and -205.

M-23 records deactivation of the MIN on September 14, 2024, after AOM No. 1 was executed but before it was recorded. Appellant relies on MERS Procedures Manual § 26.1 as evidence of a procedural framework requiring prompt recording following deactivation associated with an assignment from MERS. The filed record does not identify the version of the MERS Procedures Manual in effect on September 14, 2024. Appellant therefore does not represent that the wording of the later § 26.1 was identical on that date, and she does not contend that any timing discrepancy automatically voids AOM No. 1. The narrower point is that the September 14 deactivation and October 15 recordation present a chronology and compliance question that the filed record does not resolve. Appellant does not rely on unfiled third-discovery objections or responses as appellate evidence.

The later ownership evidence is also unresolved. Exhibit M-16 reflects Freddie Mac's September 25, 2025 public lookup stating that Freddie Mac was not then the owner of Appellant's mortgage, while Exhibit M-48 later states under oath that PrimeLending delivered the Note to Freddie Mac in September 2019 and that Freddie Mac remained the current investor/owner of the Note. Appellant does not infer from the lookup the identity of a successor owner or treat the lookup alone as dispositive. The conflict requires reconciliation through competent transfer and custody evidence. Under Carpenter v. Longan, the debt evidenced by the Note is the principal obligation and the Mortgage is incidental to that debt. Thus, if the Note was delivered to Freddie Mac as Katsikas swore, the record must explain how that Note interest remained legally connected to the separate recorded Mortgage chain through MERS, Colonial, and Selene. M-58 itself states that "the Note is transferred by a different means than the recorded assignment of mortgage." The Mortgage-assignment record therefore cannot substitute for proof of the corresponding Note-transfer, indorsement, possession, and enforcement history.

AOM No. 2 was executed November 7, 2025 and recorded November 19, 2025 at Book 1351, Page 243 after servicing had transferred to Selene. AOM No. 3 contains an internal date discrepancy between December 15, 2025, and January 2, 2026, and was recorded on January 23, 2026, at Book 1365, Page 047.001. Both purport to convey Mortgage interests from Colonial to Selene. The existence of successive assignments from the same assignor raises the factual question of what interest remained to be conveyed by the later instrument; it does not, by itself, establish that either assignment was void.

Appellant's recorded challenges at Book 1332, Page 580 and Book 1340, Page 605 placed her objections into the public title record. Those filings do not adjudicate the assignments, but they are relevant to Appellant's contention that the public-record chain of title became disputed and potentially impaired marketability. The title-record question must remain distinct from Article 3 entitlement to enforce.

The four Note versions and post-commencement custody evidence discussed in Argument I further demonstrate why the Note history cannot simply be inferred from the Mortgage assignments. A Mortgage assignment may establish a claimed transfer of the security instrument; it does not automatically establish indorsement, possession, or § 36-3-301 status as to the negotiable instrument.

Accordingly, the complete Note-and-Mortgage transfer history remains unresolved. The proper inquiry is not whether the Note and Mortgage should be treated as unrelated chains, but whether the record connects the legally interdependent debt and security interests through competent evidence of transfer, indorsement, possession, assignment, and enforcement authority at each material stage.

Accordingly, the record does not yet establish one complete, legally coherent chain connecting the Note, the Mortgage, MERS events, AOM Nos. 1–3, possession, servicing, and entitlement to enforce.

ARGUMENT V

SELENE'S SERVICING TRANSFER, THE COLONIAL-TO-SELENE ASSIGNMENTS, AND THE MARCH 27, 2026 SUBSTITUTION DO NOT BY THEMSELVES ESTABLISH WHAT ENFORCEABLE INTEREST SELENE ACQUIRED

Colonial's October 16, 2025 notice transferred servicing to Selene effective November 3, 2025. A change of servicer did not, by itself, substitute Selene as Plaintiff or establish transfer of the Note, possession, ownership, or entitlement to enforce. Colonial remained the named Plaintiff until March 27, 2026.

AOM No. 2 was executed November 7, 2025. Appellant recalls that at a proceeding that day RPL sought a continuance because Colonial/Selene paperwork was not complete; because no transcript has been identified, that recollection is not offered as a verbatim quotation or adjudicated fact. The documentary fact is that AOM No. 2 was executed on November 7, 2025, after Selene became servicer and before Colonial's servicing closeout.

Colonial's servicing account reflected a zero balance on November 13, 2025. Appellant does not contend that this entry means the debt was paid or that no legal interest could remain. It is evidence that Colonial closed out its servicing account in connection with the transfer. Selene then began billing Appellant on November 17, 2025 while Colonial remained the named Plaintiff, and AOM No. 2 was recorded November 19, 2025.

Exhibit M-44B identifies Selene servicing-transfer information and an unpaid principal balance of $129,978.23. Selene then began billing Appellant on November 17, 2025 while Colonial remained the named Plaintiff, and AOM No. 2 was recorded November 19, 2025. Selene continued servicing and billing during the ensuing period but was not substituted as party Plaintiff until March 27, 2026. Appellant does not contend that a mortgage servicer becomes unable to send servicing statements merely because it has not yet been substituted as a party in pending litigation. The narrower point is that, during the pre-substitution period, Selene was the entity actively administering and billing the account while Colonial remained the named Plaintiff prosecuting the foreclosure. The record therefore must identify what authority Selene possessed to service and collect, what enforceable or representative authority Colonial retained to continue prosecuting the action in its own name, and what legal instrument or relationship connected those functions.

The servicing-account records reinforce that distinction. Exhibit M-51 separately identifies the $12,061.28 Payment Deferral amount. The billing records placed before the circuit court reflect a sequence in which Colonial treated that amount as "Deferred Principal" and later "Balloon Payment," while Selene identified the same amount as a "Deferred Balance." Those accounting classifications do not by themselves invalidate the servicing transfer. They underscore the need for a complete boarding and transfer reconciliation identifying what account components were transmitted, how Selene treated them, and what substantive Note-related interest, if any, accompanied the servicing data.

AOM No. 2 also contains a preserved recorded-identity discrepancy. The Charleston County Register of Deeds cover page for the November 19, 2025 instrument identifies the "Maker" as "COLONIAL SAVINGS ETC," while the underlying assignment identifies "Colonial Savings FA" as assignor. Appellant challenged that discrepancy below in her Rule 59(e) proceedings and submitted an official South Carolina Secretary of State business-entity search reflecting no entity under the name "Colonial Savings ETC." Under Rules 201 and 901, SCRE, the significance of the official public record and the authentication or identification of the transferor were matters placed before the circuit court. Appellant does not ask this Court to presume that an indexing discrepancy automatically voided the underlying assignment. The narrower preserved question is whether the evidence sufficiently established the identity and authority of the transferor relied upon to demonstrate a transfer of interest for Rule 25(c) substitution.

The comparison with AOM No. 3 makes the issue concrete rather than speculative. AOM No. 2 expressly states "FOR VALUE RECEIVED" and purports to "assign, transfer and set over unto Selene Finance LP" Colonial's right, title, and interest in the Mortgage. AOM No. 3 likewise states "For Value Received" and again purports to "grant, sell, assign, transfer and convey" the Mortgage from Colonial to Selene. AOM No. 3 was recorded on January 23, 2026; its Charleston County recording page identifies the Maker as "COLONIAL SAVINGS F A" and reflects that it was electronically filed by Peirson Patterson LLP, while the underlying instrument states "Prepared by and after Recording Return To: Colonial Savings, F.A." AOM No. 3 therefore does not repeat the "COLONIAL SAVINGS ETC" maker designation appearing on AOM No. 2, and Appellant does not attribute its filing to RPL. Because AOM No. 2 had already purported to transfer Colonial's Mortgage interest to Selene for value received, the record must identify what interest remained in Colonial to convey through AOM No. 3, why a second instrument again recited value received and operative conveyance language, and what legal or corrective purpose the second Colonial-to-Selene assignment served. AOM No. 3 does not, on its face, identify itself as corrective or confirmatory or reference AOM No. 2. Appellant does not presume that AOM No. 3 was corrective or that either assignment was invalid; she asks that the legal relationship between the two recorded transfers be established from competent evidence. Selene's collection activity is also consistent with its April 20, 2026, written identification of itself as a mortgage loan servicer and debt collector. Appellant does not rely on that designation as proof that Selene owned the Note, possessed the Note, or was a person entitled to enforce under § 36-3-301. Rather, it further demonstrates that Selene was actively servicing and collecting the claimed debt while Colonial remained the named Plaintiff. Appellant's December 3, 2025 QWR / Notice of Error, received December 8, 2025, sought information bearing on servicing and authority; Appellant's record filing stated that no substantive response had been received as of April 30, 2026. Appellant also placed Selene's billing and accounting activity before the circuit court through the May 8, 2026 Notice of Forensic Accounting Discrepancies & Improper Fee. These facts are offered here as part of the continuity and authority record, not as a separate FDCPA or RESPA damages claim.

On December 3, 2025, Colonial filed the Motion to Substitute. The motion alleged that Colonial had "recently transferred its servicing rights to Selene Finance LP along with its interest in the subject note" and that an assignment of the Mortgage had been executed and recorded. Those allegations identify a claimed transfer, but they do not independently establish what "interest in the subject note" meant under § 36-3-301, whether possession transferred, or what precise enforceable interest Colonial had to transfer.

This later transfer allegation must be measured against the position pleaded at commencement. On July 1, 2025, Colonial alleged it was holder of or otherwise entitled to enforce and later alleged it acted "as the holder." On December 3, 2025, Colonial asserted that it had transferred servicing rights to Selene "along with its interest in the subject note." The record therefore must identify what Note-related interest Colonial actually possessed before it could be transferred and whether the transfer conveyed the enforcement status necessary to support Selene's substitution.

On December 15, 2025, the circuit-court docket reflects exactly: "Decline to Sign: Order/Substitution of Parties." The docket does not characterize that entry as an order denying the December 3, 2025 Motion to Substitute. AOM No. 3 later entered the public record on January 23, 2026. The December 3 motion remained associated with the later March 25, 2026 hearing, and Judge Van Slambrook granted substitution by written Order entered March 27, 2026.

Rule 25(c), SCRCP, permits an action to continue in the name of the original party following a transfer of interest unless the court directs substitution or joinder. Thus, Appellant does not contend that the case automatically terminated on November 3, 2025 or November 13, 2025. Rule 25(c) explains how litigation may procedurally continue; it does not itself establish what substantive interest was transferred, whether Note-enforcement rights accompanied the transfer, or whether the original party retained representative authority.

Rule 17(a) likewise permits ratification, joinder, and substitution. But a procedural mechanism does not create the underlying interest being transferred or ratified. The central evidentiary question through the approximately four-month transition is what enforceable or representative interest remained in Colonial while Selene serviced and billed the account, and what precise interest Colonial then conveyed to Selene.

The March 27, 2026 substitution Order changed the named Plaintiff. It did not itself adjudicate Colonial's July 1, 2025 Article 3 status, what interest passed through AOM No. 2, what remained for AOM No. 3, whether Note possession or enforcement authority transferred, or the complete legal bridge from Colonial's continued prosecution to Selene's later substitution. Judge Van Slambrook's June 24, 2026 Order confirmed that the underlying merits had been "specifically not addressed."

The March 27 Order expressly confined its ruling to the "narrow grounds germane to the issue of substitution." The June 24, 2026 reconsideration Order then stated that Appellant's substantive arguments concerned "the merits of the case which were specifically not addressed by the Court." Those express limitations matter because the procedural fact of substitution cannot be treated as an adjudication of the unresolved Article 3, Rule 17, Rule 19, assignment, and transfer-history questions.

Selene's April 20, 2026 correspondence, issued after substitution, identified Selene as a mortgage loan servicer and debt collector; it did not identify Selene as owner of the Note, holder of the Note, lender, or secured party. That later correspondence is consistent with the servicing role reflected in the pre-substitution billing record. The QWR chronology further shows repeated written requests for ownership, authority, and servicing information: Colonial received Appellant's June 13, 2025 QWR on June 24, 2025 and acknowledged it that day; RPL responded on Colonial's behalf on July 21, 2025 as Exhibit M-1; Appellant sent Colonial a second QWR / Notice of Error on October 14, 2025; Appellant sent Selene a QWR / Notice of Error on December 3, 2025, received December 8, 2025; and Appellant sent additional QWR requests to Colonial and Selene on July 3, 2026. Selene's July 20, 2026 letter acknowledged receipt, and Colonial's July 29, 2026 letter stated it forwarded the Notice of Error to Selene. Appellant relies on that chronology to show that the identity and authority information remained a subject of repeated written requests; she does not present an independent RESPA or FDCPA damages claim in this appeal, and she does not contend that a pending QWR, standing alone, barred foreclosure. Appellant also placed Selene's billing and accounting activity before the circuit court through the May 8, 2026 Notice of Forensic Accounting Discrepancies & Improper Fee.

The custody record likewise changes over time. Exhibit M-48 states that RPL held temporary custody of the Note pursuant to a bailment agreement with Colonial. The January 6, 2026 Katsikas authorization, and signed January 7, 2026, was made in a different asserted capacity—

capacity—Selene Finance LP as Attorney-in-Fact for Freddie Mac—and purported to authorize RPL to retain possession under the Colonial bailment arrangement "as of November 1, 2025" until substitution. The letter is not a sworn affidavit and does not, on its face, contain a jurat or notarial acknowledgment. Appellant does not contend that notarization is required for every business authorization letter. The narrower evidentiary issue is whether competent evidence establishes the underlying attorney-in-fact authority and the legal bridge connecting Freddie Mac ownership, Colonial's bailment, RPL custody, Selene's later authority, and the transfer of enforcement rights.

Accordingly, Selene's ultimate substitution cannot substitute for proof of the substantive transfer. The record must establish what enforceable interest Colonial possessed, what it retained after the servicing transfer, what it conveyed through the assignments and any Note-related transfer, and what enforceable interest Selene possessed when substitution was granted.

ARGUMENT VI

THE RULE 59 RECORD AND ACTUAL PROCEDURAL CHRONOLOGY DO NOT SUPPORT TREATING APPELLANT'S PRESERVED SUBSTITUTION CHALLENGE AS MOOT WITHOUT IDENTIFYING AN INTERVENING EVENT THAT MADE EFFECTUAL RELIEF IMPOSSIBLE

The operative substitution Order was entered March 27, 2026. Appellant attempted to present Rule 59(e) relief on April 1, 2026. Judge Rode entered a May 7, 2026 Order permitting the Rule 59(e) materials to be filed, and they were docketed May 8, 2026. Thus, the preservation history is not one in which Appellant simply failed to challenge the substitution ruling.

Rule 59(g), SCRCP, requires a party filing a written Rule 59 motion to provide a copy to the judge within the prescribed period. On June 17, 2026, RPL emailed Judge Van Slambrook and asserted that it did not appear Appellant had complied. RPL's correspondence itself acknowledged the March 27, 2026 Order, Appellant's attempted reconsideration filing, Judge Rode's order permitting the Rule 59(e) motion, and the fact that the motion was before Judge Van Slambrook. Appellant responded concerning prior certified-mail delivery. The Rule 59(g) dispute therefore concerned delivery and timing, not whether a challenge existed.

Judge Van Slambrook expressly ruled on June 24, 2026, denying reconsideration. The two Orders use distinct but complementary language. The March 27, 2026 Form 4 stated that nothing in the ruling should be construed as the Court speaking outside the "narrow grounds germane to the issue of substitution requested by Plaintiff." The June 24, 2026 Order then stated that Appellant's arguments had bearing on "the merits of the case which were specifically not addressed by the Court" and characterized the March 27 Order as having "unequivocally" limited itself to substitution. The March 27 and June 24 Orders therefore cannot be treated as adjudications of every disputed merits question concerning Article 3 status, Rule 17 authority, the Trust and Rule 19, MERS, the three assignments, the accounting-transfer issues, or the complete Colonial-to-Selene enforcement chain.

On August 3, 2026, Judge McCoy entered a Form 4 reflected on the docket as "Order/Electronic Form 4/Deft Motion/Reconsider Moot." That occurred after Judge Van Slambrook had already denied reconsideration on June 24, 2026. One possible explanation is that the later roster item overlapped a matter already ruled upon, but Appellant does not ask this Court to presume that explanation as fact. The docket entry itself does not identify the intervening event upon which mootness rested

August 3, 2026, Form 4 Contains Material Chronological Discrepancies Concerning the Order Being Reconsidered and the Prior Proceedings:

The August 3, 2026, Form 4 does more than characterize the reconsideration matter as moot; its stated procedural premises conflict with the docketed chronology. The Form 4 states that Appellant filed a Motion to Reconsider on May 18, 2026, but then states that the motion was "not appropriately filed as there was no ruling because this was simply a 'Decline to Sign' via e-filing and not a ruling." The record, however, contains Judge Van Slambrook's March 27, 2026, written Order expressly granting Selene Finance LP's substitution as party Plaintiff. Appellant's May 18 motion sought reconsideration of that March 27 Order, not reconsideration merely of Judge McCoy's earlier December 15, 2025 "Decline to Sign" entry.

The August 3 Form 4 also states that Judge Rode entered the filing restriction on "January 20, 2026." The docketed Form 4 was entered January 30, 2026. More significantly, the August 3 Form 4 states that Judge Van Slambrook "ruled on this 'Motion to Reconsider' in March 2026." That chronology cannot describe the May 18, 2026, Motion to Reconsider because that motion did not yet exist in March. Judge Van Slambrook's March 27 Order granted substitution; his ruling on the later reconsideration request was entered June 24, 2026.

These discrepancies concern the chronology upon which the August 3 mootness disposition appears to rest: whether a prior ruling existed, what ruling Appellant sought to reconsider, and when reconsideration was actually adjudicated. The docketed chronology establishes that a March 27 substitution Order existed, Appellant challenged that Order, Judge Van Slambrook adjudicated the reconsideration request on June 24, and the March 27 substitution remains operative. The August 3 Form 4 therefore should not foreclose appellate review based upon a materially inaccurate procedural premise.

A mootness determination must therefore be tested against the actual procedural sequence, not an inaccurate chronology. A prior denial of reconsideration may dispose of a particular motion, but it does not necessarily make appellate review of the operative substitution Order incapable of providing effectual relief.

South Carolina's mootness rule is direct: a case is moot when an intervening event makes any grant of effectual relief impossible for the reviewing court. Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). Here, the March 27, 2026 substitution remains operative, Selene remains the substituted Plaintiff, and appellate reversal or vacatur could affect which party may proceed when jurisdiction returns to the circuit court. The record identified by the August 3 Form 4 does not state what intervening event allegedly made that relief impossible.

The circuit-court docket reflects the case status as "Appeal." Selene remains the substituted Plaintiff under the March 27, 2026 Order. If the substitution ruling is reversed or vacated, the identity and authority of the party permitted to proceed when jurisdiction returns to the circuit court may be affected. The controversy therefore retains practical legal consequences.

Elam v. South Carolina Department of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004), is cited only for the Rule 59(e)/appellate-timing framework: an initial Rule 59(e) motion may toll the appeal period until written notice of the order disposing of that motion. It is not relied upon as the source of the mootness rule.

The December 15, 2025 docket entry should remain described exactly as "Decline to Sign: Order/Substitution of Parties." The December 3, 2025 motion was later heard on March 25, 2026, and the operative written grant was entered March 27, 2026. Those events should not be conflated with the later June 24 denial or August 3 mootness entry.

Accordingly, the August 3, 2026 mootness disposition should not eliminate appellate review merely by labeling the matter "moot" without identifying the intervening event that rendered effective relief impossible. Appellant preserved a challenge to the March 27, 2026 substitution, obtained a June 24, 2026 ruling, and continues to seek relief from an operative order with practical consequences.

CONCLUSION AND RELIEF REQUESTED

Appellant does not ask this Court to decide disputed foreclosure merits in the first instance. She asks the Court to review whether the March 27, 2026 substitution was supported by a record establishing the enforceable and representative interest claimed to have passed from Colonial to Selene, while preserving the circuit court's express limitation of its ruling to the "narrow grounds germane to the issue of substitution" and its later statement that the underlying foreclosure merits were "specifically not addressed."

The record separates ownership, servicing, possession, Note enforcement, Mortgage assignments, party status, and representative authority into distinct events. Colonial's July 1, 2025 Complaint invoked holder or other enforcement status; its October 3, 2025 M-58 responses later identified a blank-indorsement/possession theory, a separate Note-transfer mechanism, and Freddie Mac servicing regulations as the asserted representative-authority source. The closing records identify PrimeLending as the original funding source. The public-record chain includes the recorded Trust, AOM Nos. 1–3, and Appellant's recorded challenges. AOM No. 2 further presents the preserved "COLONIAL SAVINGS ETC" maker-index discrepancy, while AOM No. 3 later identifies the Maker as "COLONIAL SAVINGS F A." Under § 36-3-301 and the South Carolina rule reaffirmed in Singleton, the recorded Mortgage assignments cannot substitute for proof of the Note-enforcement facts. The public-record chain of title is therefore distinct from, but legally connected to, the Article 3 enforcement chain, and neither should be collapsed into the procedural fact of substitution.

For those reasons, Appellant respectfully requests that this Court:

1. Reverse or vacate the March 27, 2026 Order granting substitution of Selene Finance LP as party Plaintiff to the extent the Court determines that the record did not establish the transfer of the enforceable interest necessary to support substitution;
2. Reverse or vacate the June 24, 2026 Order denying Rule 59(e)/reconsideration relief to the extent necessary to permit review of the preserved substitution issues;
3. Vacate or decline to give preclusive effect to the August 3, 2026 mootness disposition to the extent it purports to eliminate appellate consideration of issues for which effective relief remains available;
4. Remand for determination, from competent record evidence, of Colonial's § 36-3-301 status at commencement; the source and scope of any Rule 17(a) representative authority, including the Freddie Mac servicing authority asserted in Exhibit M-58; the Rule 19 status of the recorded Trust interest; the complete Note-and-Mortgage transfer and enforcement history; the public-record chain involving AOM Nos. 1–3, including the preserved AOM No. 2 maker-identity discrepancy and the relationship between AOM Nos. 2 and 3; the legal and evidentiary bridge governing Selene's pre-substitution servicing and collection activity while Colonial remained the named Plaintiff; the accounting/boarding reconciliation reflected by Exhibits M-44A, M-44B, and M-51; and the precise enforceable interest, if any, transferred to Selene; and
5. Grant such other and further relief as the Court determines just and proper.

Respectfully submitted,

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