THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Civil Action Case No. 2012-CP-15-00262
Appellate Case No. 2013-002555

Melissa Jean Marks, ...Appellant,

v.

Nationstar Mortgage, LLC, ...Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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Appellant/Plaintiff *Pro Se*

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I. Contrary to Nationstar's argument, the trial court's premature summary judgment dismissal of Plaintiff's case was improper and an abuse of discretion.

In Moore v. Weinberg, 373 S.C. 209, 644 S.E. 2d 740 (Ct. App. 2007), the opinion states in pertinent part,

> "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (Ct. App. 2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991); N*elson v. Charleston County Parks & Recreation Comm'n*, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004)."

In Renney v. Dobbs House, Inc., 275 S.C. 562, 274 S.E.2d 290, 291 (1981), the opinion states, "An abuse of discretion arises in cases in which the judge was controlled by some error of law or where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support."

The trial court abused its discretion by ignoring the following facts when issuing its final orders prematurely disposing of Plaintiff's case: (a) the documentary evidence that Plaintiff submitted established that the source of the funds for the closing was Fannie Mae, not Flagstar Bank; (b) there was no evidence submitted by any of the parties indicating Plaintiff's closing attorney knew that Fannie Mae was the source of the funds for the closing before Plaintiff signed the documents; (c) there was no evidence submitted by any of the parties indicating that Plaintiff personally knew Fannie Mae was in any way involved in the transaction that took place at the closing before her Chapter 13 plan was confirmed; and (d) there was no evidence submitted by any of the parties indicating that

Plaintiff personally knew Fannie Mae was still claiming to own the subject instruments before her Chapter 13 plan was confirmed.

In Plaintiff's motion to dismiss Nationstar at page 19, Plaintiff explained to the trial court and attached as Exhibit 12 Fannie Mae's admission from its own official website in the public domain that Fannie Mae acquired Plaintiff's loan on October 1, 2007, which was four days prior to the closing on October 5, 2007, during the time frame that Plaintiff's loan application was being processed by Old South Mortgage and Flagstar Bank.

Unbeknownst to Plaintiff at the closing because it was not disclosed to her verbally or in writing, Fannie Mae was involved in the background during the closing, and Fannie Mae apparently believes it originated this particular loan, and that Fannie Mae, not Flagstar, was the intended owner and beneficiary of the subject instruments as of the date of the closing, which means Fannie Mae necessarily had to have been the source of the funds, not Flagstar.

In addition, in Plaintiff's memorandum in support of her motion to dismiss Nationstar at page 9, Plaintiff explained and attached as Exhibit 4 as follows:

> "Upon information and belief, in its first reporting of the mortgage to the credit reporting agencies, Flagstar reported that the mortgage was a 'Fannie Mae account' as of the date opened in October 2007, the same month and year Plaintiff signed the mortgage, and in doing so, represented to the credit bureau that Fannie Mae owned the mortgage at the time Flagstar first reported the account. This evidence also shows that Flagstar believed Fannie Mae owned the mortgage as of October 2007, and that Flagstar was merely servicing for Fannie Mae."

Nationstar argued contrary to the foregoing documentary evidence maintaining its unsupported and unproven theory that is in essence as follows: (a) that Flagstar was the

source of the funds; (b) that Plaintiff's closing attorney allegedly was aware Flagstar was the source of the funds before Plaintiff signed the documents; (c) therefore, even though Plaintiff was not personally aware that Old South was not the actual lender as was stated in the original mortgage and note she signed at the closing, Plaintiff should be bound by what her closing attorney allegedly knew and had not disclosed to Plaintiff; and (d) therefore, Plaintiff's claims should be barred by *judicial estoppel* and *res judicata* because she did not report any potential claims arising from the mortgage in her first set of bankruptcy schedules that she filed, even though she did not personally know any such potential claims existed at that time.

Plaintiff finds Nationstar's theory an egregious distortion and misapplication of the existing body of case law opining on the applicability of those two doctrines to bar a party's claims, and she prays this Court will as well. Plaintiff does not know why the court ignored and set aside the evidence she presented because that is not explained in the final orders. If the trial court felt she had not produced enough evidence that established Fannie Mae was the source of the funds, the court should have brought that to Plaintiff's attention and directed her to conduct further discovery on that issue instead of prematurely dismissing her case.

Plaintiff believes Fannie Mae's foregoing admission is sufficient evidence that Fannie Mae was the source of the funds because the civil court's standard for rulings is based upon a preponderance of the evidence and not the higher standard required in criminal matters of beyond a reasonable doubt. Consequently, the trial court erred and abused its discretion when it prematurely dismissed Plaintiff's case.

II. To clarify in response to Nationstar's argument, Plaintiff's argument is that the trial court erred by not dismissing Nationstar from the action upon receipt of her motion to dismiss and her memorandum, facts, evidence and law in support; Plaintiff agrees that the trial court did nothing improper by allowing Nationstar an opportunity to be heard by the court.

Plaintiff is producing in the record on appeal the emails exchanged between the parties and the trial court in July 2012 regarding Nationstar's proposed order granting its motion to intervene. The emails evidence Nationstar's counsel's disclosure after the hearing that Nationstar apparently had conveyed to her that Nationstar was the owner of the note and had supposedly corrected that a few days after the hearing.

It was obviously unfair and prejudicial to Plaintiff's right to a fair hearing on Nationstar's motion to intervene for Nationstar to wait and make this disclosure of a material fact to its counsel after the court had already publicly granted it permission to intervene from the bench based upon its false claim that it was not merely servicing but was also the owner of the note. During the hearing, the court instructed Plaintiff she cannot argue the motion again, and although Plaintiff pointed out some things for the court to consider prior to signing the order, Plaintiff ended her email submissions by saying she will "respectfully defer to this Court's discretion whether Nationstar still has legal standing to intervene in light of this new information."

Although the law clerk had emailed the parties acknowledging receipt of Plaintiff's emails, Plaintiff is skeptical whether the presiding judge had actually personally read them because the order he signed contains substantially the same language as the proposed order Nationstar submitted. The court had not made the changes that the parties had requested in their emails in other words.

In fact, in the final order at page 2 that the presiding judge signed granting

Nationstar permission to intervene, it includes the same language as Nationstar's proposed order as follows: "Nationstar then filed its Motion to Intervene claiming it is the current **owner** and holder of the Note and Mortgage, and is the real party in interest in this case." [Emphasis added.]

Plaintiff understands that the trial court was required as a matter of law to consider Nationstar's claims and review the evidence since Nationstar had intervened and requested to be heard by the court. However, in light of everything Plaintiff had subsequently submitted to the court, the court erred and abused its discretion to allow Nationstar, an improper party that had been misjoined based upon its false claim of ownership, to prejudice and delay Plaintiff's case with legal arguments it did not have standing to raise and to remain in the case after she had formally moved for Nationstar's dismissal.

III. Contrary to Nationstar's argument, *res judicata* and *judicial estoppel* do not bar Plaintiff's claims in consideration of the facts, evidence and applicable law as to her specific case.

The evidence shows that Plaintiff did not know enough facts and applicable law prior to her Chapter 13 plan's confirmation that she had any valid causes of action against anyone arising from the mortgage. In fact, she did not even remotely suspect that she did when she filed her Chapter 13 case; therefore, she was not prompted to investigate that possibility prior to her Chapter 13 plan's confirmation.

Plaintiff is a respected, professional paralegal with many years of experience, so she would not conjure up wild tales out of thin air and then file a frivolous, unsupported objection to a creditor's claim prior to her Chapter 13 plan's confirmation. Plaintiff explained in her complaint and provided exhibits showing the court and the parties step

by step exactly how, where and why she first discovered her causes of action months after her Chapter 13 plan was confirmed. Since the defendants have not produced any concrete evidence disproving Plaintiff's explanation, Plaintiff's explanation in her verified complaint should be deemed and accepted as the truth.

The federal statutes and cases Nationstar cited to in its pleadings and appellate brief should not be deemed by this Court as conclusive authorities holding that Plaintiff's claims are automatically barred by *res judicata* and *judicial estoppel* as a matter of law due to her bankruptcy filings because there are also exceptions to the doctrines found in federal case law that should be applied in Plaintiff's case so that justice may be done.

Even if those exceptions are not found to be applicable very often in the context of a confirmed Chapter 13 plan, the federal courts do sometimes rule that an exception shall apply so that a debtor's viable claim will not be barred and prejudiced unfairly or unjustly. The federal courts have also sometimes taken into consideration that other creditors involved in the Chapter 13 plan might potentially benefit in the event the debtor recovers on his or her claim. See Royal v. R&L Carriers Shared Servs., L.L.C., Bank. L. Rep. (CCH) P82,479, 2013 WL 1736658 (E.D. Va., April 22, 2013). See also Baldwin v. Citigroup, Inc., 307 B.R. 251, 2004, U.S. Dist. LEXIS 3952 (M.D. Ala., March 10, 2004).

In Royal, the opinion states in pertinent part,

> "This consensus appears fitting when one acknowledges the 'windfall for an undeserving defendant' that judicial estoppel can create. *Guay*, 677 F.3d at 19 & n.5. As long as the bankruptcy proceedings continue, rather than granting judgment to a defendant on the basis of a plaintiff's inconsistency, a court acts in the greater interest of equity by allowing a plaintiff an opportunity to amend his or her bankruptcy petition and thereby allowing for additional recovery by the plaintiff's deserving

creditors. One might object permitting amendment rewards plaintiffs who have attempted to conceal their bankruptcy status in civil suits. But even more importantly, it protects the parties whose interests truly hang in the balance when a bankruptcy debtor pursues litigation, even if that debtor might have acted unjustly in some sense."

In Baldwin, the opinion states in pertinent part,

" '[...] Issues that were not mature for decision and could not be appropriately resolved in either the confirmation hearing or in the order confirming the plan are not barred.' *In re Seidler*, 44 F.3d 945, 948 (11th Cir. 1995). [...]

In assessing the claim preclusion impact of the confirmation of a Chapter 13 plan, 'if an issue must be raised through an adversary proceeding it is not part of the confirmation process and, unless it is actually litigated, confirmation will not have a preclusive effect.' *In re Beard*, 112 B.R. 951, 956 (Bankr. N.D. Ind. 1990); *Cen-Pen Corp. v. Hanson*, 58 F.3d 89, 93 (4th Cir. 1995) (concluding that 'confirmation of a Chapter 13 plan is res judicata only as to issues that can be raised in the less formal procedure for contested matters'); *see also In re Piper Aircraft Corp.*, 244 F.3d at 1304 (citing *In re Beard* and *Cen-Pen Corp.* in support of a similar proposition). [...]

Consequently, the claim preclusion impact of the confirmation of a Chapter 13 plan should not necessarily be identical to the claim preclusion impact of a Chapter 11 plan. The court concludes that a Debtor, who discovers a claim, facts and law, after the confirmation of his or her Chapter 13 plan, but before the debt is discharged or the case closed, showing that a Creditor engaged in misrepresentations and fraud in a loan with regard to which the debtor is currently proceeding in bankruptcy, and who successfully amends his or her bankruptcy schedule to include a claim for that fraud and misrepresentation, is not barred by res judicata from pursuing that claim. To conclude otherwise would be to accept that a party who is not aware of the facts or law underlying a claim, and hence under no duty to report the claim, but who is under a continuing duty to report claims as they become known and who is permitted to amend a bankruptcy schedule to do so, is barred by res judicata from pursuing the claim, even though the case remains on-going before the bankruptcy court. Considering the concerns of the bankruptcy court with regard to the ability of the Debtor to effectively litigate his claim and the reasons previously discussed, this court concludes that the Debtor's cause of action is not barred by res judicata."

In Baldwin, Plaintiff draws this Court's attention to the fact that the Alabama

court cited to the federal Fourth Circuit Court of Appeal's finding in Cen-Pen Corp. v. Hanson, 58 F.3d 89, 93 (4th Cir. 1995), which lends support to an argument that a confirmation hearing is not the proper time or place to actually litigate complex matters involving allegations of a creditor's misrepresentation or fraud where it will become necessary for the court to spend considerable time reviewing pleadings and evidence to adjudicate the matter.

Plaintiff's state court action is obviously too detailed and multifaceted and could not have been properly brought and actually litigated during her Chapter 13 plan's confirmation hearing even if she had known she had any potential causes of action arising from the mortgage prior to that hearing, which she did not. As Plaintiff explained in her first brief, she filed amended schedules to report her pending state court action, no one filed an objection within 30 days, so her amended schedules were accepted by the trustee and the bankruptcy court, and her case is still pending. Consequently, the doctrines of *res judicata* and *judicial estoppel* cannot be reasonably, fairly or justly applied to bar any of her causes of action that she filed in state court.

On the one hand, Nationstar argues in essence that Plaintiff had motivation to conceal her causes of action from the bankruptcy court to obtain a more favorable Chapter 13 plan, but Plaintiff does not understand why or how, so that is not a thought that had occurred to her at the time she submitted her initial bankruptcy schedules. If Plaintiff were not paying a mortgage, the bankruptcy court would still look at her income, all her living expenses and outstanding debts and might have reached substantially the same conclusion that the maximum she can afford to pay out to her creditors monthly is in the range she is currently paying out to Nationstar and her unsecured creditors, which

is $871.09 per month.

On the other hand, it is obvious Nationstar would have motivation to conceal from the bankruptcy court's purview the information and evidence Plaintiff unearthed during her investigation and state court proceedings because what could happen as a result is the bankruptcy court might decide that Plaintiff's monthly payments to her unsecured creditors should be increased and her payments to Nationstar should be decreased or eliminated altogether and her Chapter 13 plan be amended accordingly.

IV. Contrary to Nationstar's argument, *judicial estoppel* bars Nationstar from changing its stated position of "owner" to "servicer" in her pending cases, and for this and other reasons, Nationstar should have been dismissed with prejudice.

This Court is well versed in the applicable law and is aware of what happened from a read of Plaintiff's first brief and will see that supported in the record on appeal, so Plaintiff trusts this Court will be able to see that the elements have been satisfied, that *judicial estoppel* bars Nationstar from changing its stated position of "owner" to "servicer" in her pending cases, so it should have been dismissed from her state case with prejudice. Interestingly, also in Baldwin, the Alabama court noted that,

> "The doctrine of judicial estoppel 'is applied to the calculated assertion of divergent sworn positions. The doctrine is designed to prevent parties from making a mockery of justice by inconsistent pleadings.' *Alabama v. Shalala*, 124 F. Supp.2d 1250, 1265-66 (M.D. Ala. 2000) [...]."

Please bear with Plaintiff a moment in offering this analogy for consideration. If Plaintiff being of sound mind came to court and swore, "Your Honor, my name is Marcy Jones, and this is my house," and if Nationstar said, "No, Your Honor, here is her birth certificate, it says her name is Melissa Jean Marks, we've checked, there's no record that she ever changed her name to Marcy Jones, this is Marcy Jones' house, and here's the

title that deeds the property to Marcy Jones," the court would assume Plaintiff had intentionally misstated material facts in an attempt to get away with a fraud upon Marcy Jones, other innocent parties, and the court. That would clearly be contempt and making a mockery of the court to do such a thing. Plaintiff would never do such a thing, and if she ever did, she most likely would be dismissed by the court immediately without a moment's hesitation and sanctioned.

Nationstar was acting by and through its agents, and just like Plaintiff knows that her legal name is Melissa Jean Marks and that Marcy Jones' house doesn't belong to Plaintiff, they knew Nationstar was not the owner of the note and mortgage because they were given a MERS database record showing Fannie Mae reportedly owns it, along with other credible documentary evidence, prior to them stating or implying otherwise to the courts to obtain permission to intervene. In fact, it is their job and contractual duty to know and keep track of who claims to own each and every mortgage for which Nationstar is the servicer.

The moral of the story is that if an act is something the court would never allow an individual person to get away with unpunished, then the act is something that a company acting by and through its agents, who are people too, should never be permitted to get away with unpunished either.

V. Contrary to Nationstar's argument, the trial court did not grant summary judgment dismissal on the ground that Plaintiff's fraud claim is barred by the three-year statute of limitations, and if that had happened, that would have resulted in another error of law subject to this appeal.

Nationstar argued in its pleadings that Plaintiff's fraud claim is barred by the three-year statute of limitations, but the trial court may not have agreed with that. The

court may have intentionally omitted that issue from the orders disposing of Plaintiff's case and may have intentionally declined to rule that summary judgment dismissal would be proper on that ground standing alone.

Plaintiff argued in her opposition to Nationstar's motion for summary judgment at pages 9-10 that the twenty-year statute of limitations applied pursuant to S.C. Code Ann. § 15-3-520 (1976) because the relief she was seeking was related to permanently removing the mortgage lien, and she had not requested an award of monetary damages against anyone in her prayer for relief arising from a fraud claim. Plaintiff argued and showed how the state legislature had made it clear in the statutes that the state intended for its citizens to have a twenty-year statute of limitations to bring an action on a mortgage contract. Plaintiff's mortgage was signed and recorded in 2007, so the earliest her statute of limitations might have expired on an action such as this is 2027.

VI. Contrary to Nationstar's argument, the trial court in effect determined that even if the instruments are invalid, and even if Nationstar and the other parties involved had committed fraud or illegality affecting the instruments, Plaintiff is barred from bringing and actually litigating any of her claims against them.

Plaintiff disputes Nationstar's interpretation of the trial court's orders disposing of her case in consideration of the contents of Nationstar's motion for summary judgment, its memorandum in support, and the orders themselves. Plaintiff does not interpret the orders to mean the court determined that the mortgage and note are valid and enforceable notwithstanding the facts, evidence and law Plaintiff submitted. Plaintiff interpreted the orders to mean nothing Plaintiff submitted mattered to the court because the court believed her causes of action are barred due to her bankruptcy filings.

VII. Contrary to Nationstar's argument, this Court is not restricted to reversing only the final orders in Plaintiff's case, but rather, this Court has the inherent authority to reverse other procedurally erroneous decisions of the trial court so that justice may be done.

Plaintiff's interpretation of Rule 72, SCRCP and Rule 201, SCACR, is that, generally, a party can only file an appeal upon receipt of a final judgment, and Plaintiff is unaware of any strict written requirement in Rule 203(e)(1), SCACR or elsewhere to include in the notice of appeal each and every underlying order and error of law in the proceeding in the notice of appeal. Nationstar cited to an obscure case from the 1800s that probably has not been cited to by the appellate courts in this state regarding that issue since because the court rules and court forms have changed substantially since then.

Plaintiff included in her initial appellate brief a description of the underlying orders that should be reversed because the errors in those orders contributed and led to the adverse final orders that she appealed. The final appealable orders are identified in her notice of appeal. Nationstar was granted an additional 30 days to consider and respond to each issue in its initial brief and therefore suffered no harm. Consequently, this issue should be overruled on the ground that it is either a specious argument or pursuant to Rule 61, SCRCP requiring the court to disregard harmless errors or defects in the proceeding so that justice may be done. Generally, the courts will accept substantial compliance with the procedural rules where there is no evidence of any harm done.

VIII. Contrary to Nationstar's argument, Fannie Mae is the proper party to defend Plaintiff's action if so minded, not Nationstar.

Nationstar complained to this Court in essence that Old South, a dissolved corporation, is not going to adequately protect Nationstar's alleged interest in the subject instruments. However, the appropriate remedy for that would have been to allow

Plaintiff to amend her complaint as she had requested and attempt to join the proper party, Fannie Mae, and not to allow the improper party, Nationstar, to remain in the case after misrepresenting to the court that it was the owner of the mortgage.

Plaintiff had complained of Nationstar's servicer frauds and abuses and explained to the court that Fannie Mae probably thought her account was in default and may not be receiving her payments. Plaintiff complained that Nationstar had refused to fully cooperate in discovery, had threatened to pursue a claim against her for an excessive amount in attorney fees and costs by filing notices against her in the bankruptcy court, and had prevented her from formally serving Fannie Mae with her complaint based on errors of law and fact. The court erred by failing to dismiss Nationstar as soon as its pattern of making false or unsupported claims and its apparent predatory intentions came to light.

Formal service of Plaintiff's summons and complaint would have ensured that the proper managerial authorities at Fannie Mae were given all that information and the opportunity to investigate and take whatever actions they felt were prudent to protect its interests personally through its own independent counsel. It should have been apparent to the court in light of Nationstar's conduct that there would be a conflict of interest rendering it inappropriate to allow Nationstar to proceed solo in the case without at least offering Fannie Mae and its own independent counsel a seat at the table as well.

IX. Contrary to Nationstar's argument or inferences, Plaintiff did not do anything improper; Plaintiff simply exercised her legal right to file her action in her local state court.

Plaintiff explained to the court in her motion for reconsideration of the court's Orders of February 27, 2013, that prior to filing her state court action, she had met with

her bankruptcy attorney and reported to him that she does not believe the mortgage is valid and does not believe Nationstar owns the mortgage. Plaintiff's bankruptcy attorney declined to litigate the matter but advised Plaintiff she could file an action *pro se* in state court. Plaintiff further explained that both of her bankruptcy attorneys still believe she has the right to litigate her action personally and state court is proper venue. Plaintiff further explained that her bankruptcy attorney indicated she believed the bankruptcy court's decision during Nationstar's motion for clarification meant that the bankruptcy court had granted Plaintiff permission to proceed with her action in state court. (Motion for Reconsideration at p. 1-2; 4)

In addition, Plaintiff revealed her intentions to the state court regarding her Chapter 13 plan in Exhibit 7 to her motion to dismiss Nationstar when she stated,

> "Procedurally, a debtor may opt to file a case first, such as Plaintiff did by filing this declaratory judgment action in state court, and then object to an exempt secured creditor's claim and amend the plan after obtaining a judgment showing that claim to be invalid."

This shows Plaintiff was planning to amend her plan if she prevailed in her state case.

In consideration of the foregoing, including the facts she disclosed her bankruptcy status and identified everyone who might claim an interest in the subject instruments in her complaint, the evidence shows Plaintiff was not trying to conceal anything from the courts that she had a duty to disclose or sidestep the bankruptcy court to try to get away with doing anything improper. Plaintiff's testimony in her pleadings shows that she reports and discusses material issues with her bankruptcy attorneys so as to remain in compliance with bankruptcy law to the best of her knowledge and belief.

Nationstar could have removed the matter to the bankruptcy court and chose not

to so, but even if Nationstar had done so, the bankruptcy court could have declined to hear the matter since it involved real property and had already been filed and was pending in state court.

In In Re Lee, 432 B.R. 212, 2010 U.S. Dist. LEXIS 44965 (D.S.C. 2010), the court opined as follows in pertinent part,

> "The bankruptcy court dismissed the state-law adverse possession claims without prejudice, stating only that it did so on the basis of judicial economy, and relying on its prior order to flesh out its rationale. The bankruptcy court's decision appears to be based on *28 U.S.C. § 1334*, which allows a district court to abstain from hearing state-law claims related to bankruptcy cases in the interest of justice, in the interest of comity, or out of respect for state law. Circuit courts to have considered permissive abstention consider several factors, including: (1) the extent to which state law issues predominate over bankruptcy issues; (2) the presence of a related proceeding commenced in state court or other nonbankruptcy court; (3) and the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties. *See In re Middlesex*, 292 F.3d 61, 69. Because state law predominates, the state-court action has proceeded to the court of appeals, and the timing of the bankruptcy action gives rise to an inference of forum shopping, the court finds that the bankruptcy court did not abuse its discretion in abstaining from hearing the adverse possession claims."

In consideration of the foregoing, Nationstar is incorrect that the only forum Plaintiff would have been permitted to prosecute her case was in the bankruptcy court. Since Nationstar had intervened and voluntarily submitted itself and the matter to the jurisdiction of the state court without ever filing an objection or notice of removal in the bankruptcy court, Nationstar should not be permitted now to successfully argue contrary its own admission in its answer at paragraphs 5-6 that jurisdiction and venue was proper in the state court.

X. To clarify in response to Nationstar's argument, the fact that an assignment of mortgage was not recorded at the register of deeds is relevant to determining the rights and legal standing of the defendants; Plaintiff complained that one would need to record a fraudulent assignment to transfer the mortgage at the register of deeds, but this issue is not the gravamen of her complaint.

In reviewing this Court's decision in Bank of Am., N.A. v. Draper, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), there are some significant differences in Plaintiff's fact pattern to consider that should render this decision inapplicable to Plaintiff's case. Plaintiff is not in default, and this is not a foreclosure case. Nationstar offered no concrete evidence proving or defining with specificity any rights or interest in the instruments that is not contingent on Plaintiff's default in making payments. Nationstar offered no concrete evidence that Fannie Mae had ever intentionally transferred any of its rights or interest in the instruments to Nationstar.

In Bank of Am., N.A. v. Draper , this Court noted that,

> "Draper originally executed the note to America's Wholesale Lender. Through a series of transfers and mergers, the Bank became the holder of the note. **Appellants do not dispute these transfers and mergers**." [Emphasis added.]

Whereas Plaintiff's pleadings in the instant case show that she did dispute the transfers, she does not believe there was ever any lawful transfer of the note and mortgage to any party considering the defects in the note endorsements, the absence of any other unrecorded assignments, and the mortgage was not lawfully obtained and recorded to begin with. Consequently, comparing Plaintiff's case with Bank of Am., N.A. v. Draper is like trying to compare apples to oranges. There are too many obvious differences that set Plaintiff's case apart and make it unique.

CONCLUSION

Plaintiff respectfully requests this Court to consider that to the extent she has chosen to remain silent in her reply brief as to some of the statements and arguments Nationstar included in its brief, her silence does not necessarily mean that she agrees with those statements and arguments. For the reasons stated and explained in both of Plaintiff's briefs, this Court should reverse the decisions and final judgment of the circuit court in its Orders entered on February 27, 2013, April 9, 2013, October 9, 2013, and November 6, 2013, and remand Plaintiff's civil action so that she will have the opportunity to proceed to a non-jury trial and judgment based on the merits of her case, or to a fair settlement between the parties if achievable, and order any and all other remedies or instructions as this Court deems just and proper.

Respectfully submitted,

February 24, 2014

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Appellant/Plaintiff *Pro Se*

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PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on the Respondent, Nationstar Mortgage, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on February 24, 2014, addressed to its attorney of record, Robert A. Muckenfuss, Esq., McGuireWoods LLP, 201 North Tryon Street, Suite 3000, Charlotte, NC 28202, and on Old South Mortgage Corporation, by depositing a copy of it in the United States Mail, postage prepaid, on February 24, 2014, addressed to its attorney of record, John F. Knobeloch, Esq., King & Knobeloch, P.C., 808 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464.

Respectfully submitted,

February 24, 2014

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