

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Edward B. Cottingham, retired from the Fourth Judicial Circuit,  
James O. Spence, master in equity for Lexington County  
Case No. 2009-CP-32-05140

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**Appellate Case No. 2011197766**

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Deutsche Bank Trust Company Americas  
As Trustee for RALI2007QS8, Respondent,

H. Guy Gantt, Plaintiff Intervenor, Respondent,

vs.

Janice Cross, South Carolina National Bank, N.A., Defendants,

Of Whom Janice Cross is, Appellant.

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FINAL BRIEF OF APPELLANT

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## II

### STATEMENT OF ISSUES ON APPEAL

1. **Page 10. DID THE LOWER COURT ERR** when it permitted Edward B. Cottingham, a man without a valid oath of office, election and approval by the General Assembly at the time to sit as a judge on this case when he could not be properly sitting in his office to conduct its business or hear any case, or issue any judgments bearing the authority of that office and of the state? **FURTHER, DID THE COURT ERR** when the *ex post facto* “assignment” of Edward B. Cottingham occurred 17 days **after** the **August 1, 2011** hearing had already been held and the case “decided” on the record, and more than a week **after** the **August 8, 2011** “order” had already been issued, since the post-dated “assignment” applies to the **August 8, 2011** term of the **Court of General Sessions** for Lexington County, and cannot grant back-dated authority to Edward B. Cottingham to hear a case already decided 17 days earlier in the **Court of Common Pleas**?

2. **Page 14. DID THE CIRCUIT COURT ERR when** IT DEPRIVED APPELLANT OF HER RIGHT TO ANSWER THE SUMMONS, THE COMPLAINT AND THE AFFIDAVIT OF H. GUY GANTT TIMELY, ALL OF WHICH MR. COTTINGHAM REFUSED TO HEAR?

3. **Page 16. DID THE CIRCUIT COURT ERR when** it REFUSED HEARING AND REPEATEDLY OBSTRUCTED APPELLANT FROM PRESENTING HER SEVERAL MOTIONS AT THE AUGUST 1, 2011 HEARING, INCLUDING THE MOTION TO VACATE A VOID JUDGMENT, whose allegations and evidence when considered, if any were found in her favor, would operate to void the court's order granting foreclosure on the mortgage and eviction of Appellant, WHICH THE COURT COULD NOT KNOW WHEN IT REFUSED TO HEAR APPELLANT ON THESE MATTERS, AS THE JUDGE STATED IN THE BEGINNING OF THE MOTIONS HEARING HE WAS GOING TO DO?

4. **Page 36. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** Appellant has produced proof as a matter of **public record** showing that Respondent could not possibly have taken actual **possession and delivery** of the note and mortgage **as of the date the lawsuit was filed**, and so lacked standing to sue anybody, and the conflicting copies of the purported note cannot prove **when** or **if** Respondent ever received actual indorsement and possession of the original instruments?

5. **Page 39. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** Appellant presented *newly discovered evidence* proving that the "assignment of mortgage" is **fraudulent** since it was made **AFTER** the lawsuit was filed by a signer who *falsely represented himself* to be an officer of *a bogus assigning entity that has since confessed guilt* in the "robo signing" scandal directly affecting this case?

6. **Page 40. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** purported agents for Respondent **doctored** the copy indorsed in blank of the purportedly original note **eight months after suit was filed** in order to create the illusion of a specific indorsement to Deutsche Bank and a valid chain of title in purported compliance with the **June 8, 2010** order of the court?

7. **Page 42. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** the "assignment of mortgage" is in gross violation of the tax laws of the United States governing securitized asset trusts?

8. **Page 43. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** the trial court allowed Deutsche Bank to disobey a lawful subpoena issued by the court itself and thus **denied** Appellant her right to **enforced discovery** of her best evidence, **her best 30(b)(6) witness**, and her the right to face and examine

her opponent under oath in the venue in which it filed suit, while there was no action legally submitted by the court or the bank to quash the subpoena for any alleged failure to submit a proper subpoena or for any meritorious causes?

9. **Page 44. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** the transcript of the previous hearing showed the conclusions of the court were based partly on the testimony and authentication of debt instruments by a deposition witness the trial court had not been present to hear, and which **deposition** it had no knowledge of, despite Appellant's objections and exhibits and which plaintiff failed to bring to trial?

10. **Page 45. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** Appellant has shown that the state court **usurped** exclusive federal jurisdiction *ab initio* in violation of federal alienage diversity statutes at 28 USC 1332 in matters involving a jurisdiction of \$75,000 or more and that are between a Citizen of this state and a citizen of a foreign state such as Deutsche Bank?

11. **Page 47. DID THE CIRCUIT COURT ERR when** it acted with extreme bias and as an unqualified tribunal?

12. **Page 48. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** purported agents for Deutsche Bank and the trial court itself failed to obey state law at 36-3-501(b)(2) and the rules of Court, which mandates that "upon demand" of Appellant, the purported agents **MUST** produce "**REASONABLE EVIDENCE OF AUTHORITY**" that they represent Respondent?

13. **Page 48. DID THE CIRCUIT COURT ERR in refusing to overturn judgment when** a judgment cannot be final as to *res judicata* when it is based on fraud, fraud on the court, and a void judgment?

### III

## FACTS and STATEMENT OF THE CASE

Janice Cross, aggrieved party, appeals the “order” of Edward B. Cottingham, a man who had no oath of office at the time and who violated her fundamental right to due process of law in a matter decided on the record on **August 1, 2011**. The order should be *overturned* by this Honorable Court, and the matter remanded for a fair and evidentiary hearing before a properly seated circuit court judge and jury **for a reopening of this case.**

**There is no evidence that Deutsche Bank ever existed as plaintiff in this matter.**

**First**, upon the sworn statement of John David Cross as appears in Appellant’s “Emergency Request for a Stay of Eviction and Writ of Supercedeas” (**R. pp. 34-35**) on file with this Court, it is found that Mr. Cottingham’s oath had expired 11 years prior, on **June 30, 2000**, according to available records (**Exhibit 6, R. pp. 329-331**), yet he sat in judgment unsworn, unannounced as “special referee” at the August 1 *motions* hearing.

**Second**, the hearing transcript makes it abundantly clear that for whatever cause of confusion or mistake or error on Mr. Cottingham’s part, he **refused hearing** on Janice Cross’ (1) Motion to Vacate a Void Judgment (2) **and other motions**, when hearing **ALL** motions was the express purpose of the hearing, and when the errors of the trial court plus **newly discovered evidence** were what this Appellant was trying to show him in oral arguments in her MOTION TO VACATE A VOID JUDGMENT not in the written motion, when she was cut off from doing so, and when considered, may have acted to void the **January 11, 2011** foreclosure order and judgment of James O. Spence, Master in Equity for Lexington County, granting foreclosure in error. Yet, Cottingham states in his **August 8, 2011** order (**R. p. 11, lines 22-25**), “*At the hearing, Janice Cross presented*

*no credible evidence to bring into question the validity of the Foreclosure Order.  
Moreover, no credible evidence was presented which would warrant the issuance of an  
order by the Court staying or enjoining the enforcement of the Foreclosure Order.”*

**Third**, as shown in the MOTION TO VACATE, Appellant has shown as a matter of public record that Respondent did not own or possess the original mortgage and note “as of the date the lawsuit was filed,” a fatal error that cannot be cured (**Exhibit 1, R. pp. 289-291**). Therefore, on **November 12, 2009**, Joseph T. Merli of Columbia-based Finkel Law Firm LLC (SC Bar # 3943) signed a defective “mortgage foreclosure” complaint and filed it on **November 16, 2009**, though Respondent lacked standing in truth to sue. The “assignment of mortgage” was not issued until **November 17, 2009**, or the day AFTER suit was filed. This puts the lie to *allegation no. 2* that Respondent “owns and holds” the mortgage and note. **The trial court erred in basing its judgment on:**

- (1) a defective complaint *ab initio*
- (2) a fraudulent assignment of record that is **still fraudulent to this day**
- (3) a note copy that was doctored eight months after suit was filed
- (4) denial of fundamental due process surrounding the deposition.

## **LEXINGTON COUNTY RECORDS ARE STILL FALSIFIED**

**Exhibits 1, 2, 6, 9, and 10 constitute the crux of this case.**

**Fourth**, the Motion to Vacate a Void Judgment, plus Appellant’s other motions, contain evidence that the mortgage assignment of record is still fraudulent to this day. It bears the authorizing signature of “robo signer” **Jeffrey Stephan**, a low-level GMAC Mortgage employee who at the time worked in GMAC’s principal place of business in Fort Washington, PA. Stephan misrepresented himself to be a vice president of a bogus assigning entity which itself lacked standing to assign, and which has since confessed to

fraud – Virginia-based Mortgage Electronic Registration Systems Inc. (MERS).

**Fifth**, Appellant’s MOTION TO VACATE A VOID JUDGMENT shows newly discovered evidence covered under Rule 60(b) of the South Carolina Rules of Civil Procedure, showing that MERS has since stipulated to a U.S. Treasury Consent Order and has confessed to fraud directly affecting this case. This warrants a **re-opening** of this case (**Exhibit 10, R. pp. 342-355**). In addition, Deutsche Bank continued to trade on the instrument(s) even after foreclosure and ejectment. (**Exhibit 9, R., pp. 340-341**).

On **October 13, 2010**, the Attorney General of South Carolina joined 49 other AGs throughout the U.S. in condemning the “robo signing” scandal directly affecting this case. See **Exhibit GG (R. pp. 405-408) (R. p. 8)** in the case file known as the JOINT STATEMENT OF THE MORTGAGE FORECLOSURE MULTISTATE GROUP, page 1. *“This process of signing documents without confirming their accuracy has come to be known as ‘robo signing.’ We believe such a process may constitute a deceptive act and/or an unfair practice or otherwise violates state laws,”* the 50 States Attorneys General said.

The Chief Justice of South Carolina apparently agreed, when on **May 4, 2011**, she stopped all foreclosures in South Carolina for 90 days, the *State* newspaper reported.

**Sixth**, Appellant Janice Cross’ MOTION TO VACATE A VOID JUDGMENT shows the RALI trust is falsely identified in the public record to this day in the Assignment of Mortgage (**R. p. 291**) and other official documents as holder of the purported loan contract for whom Deutsche Bank Trust Company Americas as Trustee at the time of, and with the alleged power to exercise foreclosure in its name in this purported contract, was acting, that resulted in its fraudulent ownership of property unsecured by the original instruments. It is clear that the note and mortgage were never

**delivered** nor timely assigned to the RALI2007QS8 Mortgage Back Securities Trust.

“RALI” means “Residential Accredited Loans Inc., a GMAC Real Estate Investment Trust (REIT). Nor were they ‘assigned’ to Deutsche Bank Trust Company Americas until **years** after the RALI trust closing date of **June 30, 2007** for the Real Estate Mortgage Investment Conduit (REMIC) start-up period and of the Pooling and Servicing Agreement (PSA), as confirmed in the 424(b)(5) prospectus for this investment vehicle, the assignment being made **29 months later**. The phantom “assignment” is highly illegal.

As to the fundamental requirement of *delivery* of an instrument to show standing, this Honorable Court has already decided this issue in South Carolina National Bank v. Halter, 293 S.C. 121, 359 S.E.2d 74 (S. C. App. 1987), as later discussed in this brief.

**FURTHER**, Respondent’s own note copies submitted as evidence **FAIL TO PROVE DEUTSCHE BANK HAD RECEIVED INDORSEMENT OF THE NOTE IN NOVEMBER 2009, OR AT ANY TIME REMOTELY CLOSE TO THAT TIME FRAME, FOR IT TO HAVE BROUGHT THIS ACTION WHEN IT DID!**

**Seventh**, the note copies are clearly fraudulent. As late as **June 21, 2010**, the purported note contained only the original single indorsement in blank and **NO INDORSEMENT TO DEUTSCHE BANK AS OF THAT DATE**. The purported note as it now appears is with a second indorsement stamped in **carbon toner** reproductive quality, and not blue ink original. The record shows that eight months **after** suit was filed, the instrument was allegedly conveyed to master servicer RESIDENTIAL FUNDING COMPANY LLC and a *specific indorsement* to Deutsche Bank inserted on the note copy **SOMETIME AFTER June 21, 2010** when purported agents for a phantom plaintiff doctored the original *blank indorsement* to create the illusion of a *specific*

*indorsement* to Deutsche Bank and a valid chain of title. **THESE ALTERATIONS CONSTITUTE ABSOLUTE PROOF THAT DEUTSCHE BANK HAD NO STANDING TO OPEN THIS CASE IN ITS OWN NAME** on November 16, 2009, or to sell property it did not own, or to eject this Appellant. The contradictory copies, if they are to be believed, show that **RESPONDENT HAD NO ALLEGED RIGHT, TITLE, OR INTEREST UNTIL AFTER June 21, 2010, OR 8 MONTHS AFTER FILING SUIT, AND 29 MONTHS AFTER THE TRUST WAS SOLD AND CLOSED!**

**Eighth**, fraud surrounds the deposition, deposition transcript, and exhibits that neither the Spence court nor Mr. Cottingham ever opened or considered. At the first hearing in this matter, held on **April 12, 2010**, Mr. Spence set a motions hearing for **June 8, 2010**, at which time he granted two companion motions by Janice Cross, both of which compelled Deutsche Bank to send the *legal document Custodian* of the original note, mortgage, **and loan application** with the instruments to a deposition *en camera* in Lexington, South Carolina for examination by Janice Cross under oath, and said he would be present to preside for important reasons he cited. The record, however, shows that James O. Spence recused himself, and the attorney of record and the trial court both ignored Appellant's repeated written requests to convene the original deposition timely, ***proving that no original note existed***, and so forced Appellant to draft a subpoena and set the deposition herself in self defense (**Exhibit 15, R. pp. 386-398**) for a copy of the lawful subpoena Appellant filed on **June 30, 2010**). When Appellant tried to keep the lawful deposition of **July 16, 2010** (the last Friday before the originally scheduled "trial" of **July 22, 2010**) as the Spence court had ordered (*June 8 transcript, page 23 (R. p. 191, lines 8-19)* and *page 73 (R. p. 199, lines 1-7)*), Spence intercepted her and her husband

and two witnesses (John Barker and Joe McQuarters – affidavits available on request) in the lobby of the Lexington county courthouse, and indicated he lacked authority to compel the **foreign bank** to appear in state court after all, and so reneged on his own order. There was no action legally submitted by the court or bank to quash the subpoena for any failure of a proper subpoena or for any meritorious causes. The court denied Appellant her right to enforced discovery of her best 30(b)(6) witness and evidence.

On **June 8, 2010**, Mr. Spence had instructed Appellant on how to obtain a lawful subpoena of the appropriate **Deutsche Bank executive** as her best 30(b)(6) witness, and so she did (*June 8 transcript page 50-51*) (**R. p. 195, line 7-p. 196, line 17**).

On **April 9, 2010**, Appellant clocked in to the case file her **Exhibit J (Exhibit 2, R. pp. 298-301)**, which is a copy of the purported promissory note indorsed in blank mailed to her by GMAC's Waterloo, Iowa office in a letter dated **January 7, 2010**. (**R. pp. 296-301**). **Exhibit J is the "smoking gun" in this case**. At the **June 8, 2010** motions hearing, Mr. Spence granted two of Appellant's motions compelling the *legal document Custodian* to appear in Lexington with the original instruments showing all indorsements **front and back** at a deposition to be held in his "conference room" on a Friday prior to the originally scheduled "trial" of **July 22, 2010**, a deposition over which he was to preside and would "*explain law*" and "*make ruling on objections*." He explained why: "*Because otherwise, if you get taking a deposition someplace and there is an objection from either side, you have to go find a judge to make a ruling. So I will be there to make an immediate ruling.*" (*June 8 transcript, page 23*) (**R. p. 191, lines 8-19**). See **Exhibit 13 (R. pp. 363-378)** for the motions granted. Appellant made repeated objections to the "bank witness" at deposition and to the fraudulent note copy, but Mr. Spence was absent.

On **August 11, 2010**, Janice Cross deposed GMAC “*senior litigation analyst*” Juan Antonio Aguirre of GMAC’s Dallas, Texas’ office at 2711 Haskell Drive, who presented a color copy of an instrument of some kind with *no natural embossing* and has alterations to Ronald Blankenship’s original **Exhibit A** of June 21, 2010, which is easy to see when the two Exhibits A are superimposed (**Exhibit 2, R. pp. 292-301**). The court relied on this altered, undated copy, which Cross denied by affidavit (**R. pp. 119-133**).

On **November 10, 2010** Mr. Spence admitted he was not “familiar” with the deposition he himself had ordered, nor did he consider the exhibits tagged at deposition.

Plaintiff’s failure to “bring the deposition” to trial as the court ordered is a fatal error that begs for this case to be **re-opened**. (*June 8, 2010 transcript, p. 68*) (**R. p. 198, lines 13-14**), THE COURT: “*For the trial, the person who filed the lawsuit has to bring the deposition,*” which it never did (pp. 79-80)(see **R. p. 200, line 10-p. 201, line 25**).

On **June 21, 2010** in a certified mailing, Ronald “Les” Blankenship produced the exact same copy of the purported note as his “**Exhibit A**” that GMAC produced on **January 7, 2010** and that this Appellant clocked in on **April 9, 2010** as her **Exhibit J** (“smoking gun”). On **June 30, 2010**, Appellant subpoenaed **Ronaldo R. Reyes**, Deutsche Bank Trust Company Americas vice president for corporate trust and investment banking, to produce the *legal document custodian* of the original instruments to be examined under oath at a **July 16, 2010** deposition in Lexington in keeping with the **June 8, 2010** order. July 16 was the last available Friday before the original “trial” date of **July 22, 2010**. Only when the subpoena was served did purported counsel begin scrambling to produce a “bank witness” in lieu of the legal Custodian as ordered. In a **July 2, 2010** letter (**R. p. 398**), he asked for more time to produce said “witness.” The court denied

Appellant her best 30(b)(6) witness and evidence, and reset the deposition and “trial.”

**Just three weeks later**, in a certified mailing (USPS no. 91 7108 2133 3933 6674 2411) dated **July 22, 2010 (R. pp. 307-313)**, Mr. Blankenship produced a **second Exhibit A** that showed alterations to his **first Exhibit A of June 21, 2010**, both tagged by the court reporter at the newly scheduled deposition. **The two Exhibits A cannot both be true!** When superimposed, the *forgery* is evident. **R. pp. 292 313** has exhibits tagged by the deposition reporter, but **ignored** by the Spence court and Cottingham court alike.

**Ninth**, S.C. Code Ann. § 33-15-101f (1986) (**R. p. 402**) is unconstitutional if a foreign-domiciled corporation Deutsche Bank (“German Bank”) can sue a South Carolina Citizen in a state court that usurps jurisdiction over **diverse parties**, only to have the state court bar the state Citizen from compelling the **Real Party** to show up, simply because the court lacks jurisdiction of that **foreign citizen**. This Court is bound by honor and by rule to decide serious constitutional challenges by this Appellant. On **June 8, 2010** Mr. Spence said Respondent must be registered to transact business in this state or to maintain an action in any court in this state, only to renege (*June 8 transcript, pages 37-38*)(**R. p. 193, line 22-p. 194, line 15**). Respondent is not so registered (**Exhibit 16, R. p. 401**).

**Ten**, Edward B. Cottingham repeatedly showed extreme prejudice in the matter.

**Eleven**, Appellant was deprived by the court of her right to answer the complaint of Respondent “**intervenor plaintiff**” H. Guy Gantt, served on Appellant a mere **five days** before the lower court set the **August 1, 2011** hearing. She was refused hearing.

**Twelve**, the lower court refused to compel alleged counsel to prove it represented Deutsche Bank as Appellant **demand**ed pursuant to S.C. Code Ann. § 36-3-501(b)(2).

**Alleged plaintiff never appeared; is not represented; and clearly does not exist!**

**Thirteen**, this case is rife with fraud and coverup of the frauds, including tax fraud. Fraud is a weak base for *res judicata*. Appellant populates this brief with case law that shows conclusively that *res judicata* cannot apply in this case.

For all these reasons, Appellant will show the Court why the order and judgment of Edward B. Cottingham should be overturned and the matter remanded and re-opened for an evidentiary hearing before a duly seated judge. The complaint is clearly defective on which this **sham legal process** rests, and the assignment and note copy are fraudulent. The complaint is false in allegation number 2: “*Plaintiff is the owner and holder of the note and mortgage covering real property, which is the subject of the foreclosure action herein*” (R. p. 25). **The truth is the real property was NOT secured by the instruments when suit was filed. Respondent could not possibly have held an interest in unassigned and undelivered instruments, and lacked standing to sue, to sell, or to eject.**

Therefore, Appellant’s home could not possibly be the “subject” of the foreclosure action, per Mr. Spence, or the subject of the eviction action, per Mr. Cottingham, which is cause to **re-open this case**. Brown v. VanKeuren, 340 Ill. 118, 122 (1930); United Student Aid Funds Inc. v. Francisco J. Espinosa 553 F. 3d 1193.

On **November 1, 2010**, Appellant filed a well-documented Rule 12(b) Motion to Dismiss supported by a 10-page “Summary of the Memorandum of Law in Support” (R. pp. 108-118). On **November 10, 2010**, the Spence court denied the motion, but guided opposing counsel while reading point-by-point from Appellant’s “Affidavit in Support of Dismissal of the Action” (R. pp. 119-133), and gave Mr. Blankenship while not under oath, opportunity to rebut Appellant’s affidavit, but **without the Custodian present whom Appellant had subpoenaed**, and without the deposition transcript and exhibits as ordered.

## IV ARGUMENTS

1. **ARGUMENT** regarding the First Issue on Appeal. **THE LOWER COURT ERRED when** it permitted Edward B. Cottingham, a man without the prescribed oath of office, election and approval by the General Assembly at the time to sit as a judge on this case when he could not be properly sitting in his office to conduct its business or hear any case, or issue any judgments bearing the authority of that office and of the state. **THE COURT ALSO ERRED** when the *ex post facto* “assignment” of Edward B. Cottingham occurred 17 days after the August 1, 2011 hearing had already taken place, and a week after the August 8, 2011 “order” had been issued, since the post-dated “assignment” applies to the **August 8, 2011** term of the **Court of General Sessions**, and cannot grant back-dated authority to hear a case already “decided” in the **Court of Common Pleas**.

If anything ought to be clear to this Court as it is unconstitutional, the *ex post facto* “assignment” by the Chief Justice of South Carolina on **August 17, 2011** of an unelected “judge” to the wrong court in this case invalidates both the “hearing” of **August 1, 2011** and the ensuing **August 8, 2011** “order” of Edward B. Cottingham.

**WITHOUT A VALID OATH OF OFFICE held by a judge who is first duly elected to a term of office and only then duly assigned or appointed by law** and who is properly sworn under Article VI Section 3 of the Constitution for the United States of America, the South Carolina Constitution at Article V Sections 4, 13, 18, and 27, and § 15-211 (Code of 1962) and § 2-19 of the S.C. Code of Laws, **a circuit court errs** and a judge is not properly sitting in his office under the law to conduct its business, or hear any case, or issue any judgment bearing the authority of that office and of the state. This organic argument is a **threshold issue** of law and due process governing this appeal.

The record is clear from **Exhibit 6** (R. p. 330) as stated in Cross’s “Emergency Verified Petition for a Stay of Eviction” (R. pp. 34-35) that Appellant’s husband John Cross discovered that Edward B. Cottingham had no verifiable oath of office on

**August 1, 2011** when he judged this case in contempt of the Constitution(s) and statutes.

John David Cross swore under oath that he was told in person by Patricia Hamby, the South Carolina Director of Authentication, Notaries, Boards and Commissions, that she had no record of a valid oath of office for Edward B. Cottingham, and that the only oath that she *did* have of record expired on **June 30, 2000**. There is no higher authority binding upon this Court and upon the Supreme Court of South Carolina than the very Constitutions to which the members have sworn an oath. With all due respect, any attempt by this Court or by the Supreme Court to “whitewash” the oath issue, or to cover for one of their own, or to **post-date** an assignment **before** the election and approval of Edward B. Cottingham, or that falls nine days **after** a term of court had commenced or was over, or that falls 17 days **after** the **August 1, 2011** hearing date in this case, and any attempt to postdate an “assignment” either to the **Court of General Sessions** or the **Court of Common Pleas** without first satisfying these fundamental laws, are repugnant to the rule of law and the Constitution. **It also violates state statutes.** Appellant has an inalienable right to be heard by a properly seated and unbiased circuit court judge. Bias alone disqualifies a judge and voids a judgment. Bracey v. Warden, 520 U.S. 899 (1997).

On **August 1, 2011** Edward B. Cottingham impersonated a judge without having been elected by both houses of the General Assembly under the laws. Therefore, he could not have been duly “assigned” by Judge Toal after-the-fact of the hearing (**Exhibit 17, R. p. 404**) This pretender to office proceeded to “order” Sheriff James R. Metts, the highest duly elected Constitutional law enforcement officer for the People of Lexington county, to eject Appellant and her husband and their possessions unlawfully from their home in **acting outside the scope of his authority** and has injured this Appellant and her husband

without cause. The record shows Edward B. Cottingham vacated his office as a circuit court judge in the year 2000, and his six-year term of office had not been duly renewed.

The South Carolina Constitution requires that a circuit judge must be duly approved and elected by both houses of the General Assembly before he can be duly “assigned” or “appointed” by the Chief Justice, including “retired” judges. Mr. Cottingham was not qualified under the very Constitutions to which he must swear an oath, nor was he in compliance with Section 2-19 or Section 15-211 (Code of 1962) of the South Carolina Code of Laws. The circuit court exceeded its *statutory* authority and should be reversed. See Rosenstiel v. Rosenstiel, 278 F. Supp. 794 (S.D.N.Y. 1967).

### CONSTITUTIONAL AUTHORITIES

**“ . . . all . . . judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution . . . ”**

-- The Constitution for the United States of America, Article VI. Section 3

“The Chief Justice shall set the terms of any court and shall have the power to assign any ‘judge’ to sit in any court within the unified judicial system.”

-- The Constitution of the State of South Carolina, Article V Section 4

“For each circuit a judge or judges shall be elected by a joint public vote of the General Assembly . . . He shall hold office for a term of six years . . . The General Assembly may by law provide for additional circuit judges, to be assigned by the Chief Justice. Such additional circuit judges shall be elected in the same manner and for the same term as provided in the preceding paragraph of this section for other circuit judges . . . “

S.C. Const. art. V, § 13

“All vacancies in the . . . Circuit Court shall be filled by elections as prescribed in Sections 3, 8, and 13 of this article . . . “

S.C. Const. art. V, § 19

“The General Assembly must elect the judges and justices from among the nominees of the (Judicial Merit Selection Commission) to fill a vacancy on these courts. No person may be elected to these judicial positions unless he or she has been found qualified by the commission.”

S.C. Const. art. V, § 27

The circuit court also exceeded its *Constitutional* authority, both state and federal. On **August 31, 2011**, this Court provided Appellant with a copy of an “order” signed by South Carolina Supreme Court Chief Justice Jean Toal showing a post-date of **August 17, 2011** for assigning Edward B. Cottingham to a term of the Court of **General Sessions** for Lexington County for the week of **August 8, 2011 (R. p. 404)**. With all due respect to this Court and the Supreme Court, this Appellant had raised the oath issue about the time the Chief Justice’s “order” is post-dated, and would show the Court certain facts : **First**, the order of the Chief Justice does not apply to the **Court of Common Pleas**, and so cannot apply to this case. **Second**, the order of the Chief Justice is post-dated by nine days **after** Edward B. Cottingham had already presided over cases in the **Court of General Sessions**, including a murder trial, according to the Senate Judicial Merit Selection Committee office. The *ex post facto* order is to the wrong court. Neither can it apply to the Court of General Sessions. **Third**, the assignment by the Chief Justice occurred 17 days after Mr. Cottingham had already decided **this case** on the record on **August 1, 2011** without authority. See hearing transcript, p. 32 (**R. p. 180, lines 24-25**), ***“Prepare me an eviction notice to the sheriff of Lexington county. I want them evicted !***

**Fourth**, the Constitution of this State at article V, § 4 does not grant the Chief Justice unilateral authority to elect a circuit court judge. **Retired judges are required to undergo the same process of election as all other judges, the law states.** Section 4 merely empowers the Chief Justice to “assign” a “judge” to a term of court, **once he has been duly elected** by the General Assembly. Mr. Cottingham’s term had “expired” 11 years ago (**R. p. 330**), and he had **not** been elected or approved when he judged this case illegally. The power of election is reserved by our State Constitution to the People :

Section 13 – “For **each circuit a judge** or judges **shall be elected** by a joint public vote of the General Assembly . . . **He shall hold office for a term of six years.** . . . The General Assembly may by law provide for additional circuit judges, to be **assigned** by the Chief Justice. **Such additional circuit judges shall be elected in the same manner and for the same term** as provided in the preceding paragraph of this section for other circuit court judges . . . “

Section 19 – “**All vacancies** in the . . . **Circuit Court shall be filled by elections** as prescribed in Sections 3, 8, and 13 of this article . . . “

Section 27 – “The **General Assembly must elect** the judges . . . “

S/he may assign a judge, but cannot elect or approve him under either charter. An “assignment,” therefore, *sans* a Constitutional election, is not lawful. The election of judges scheduled by the General Assembly for **February of 2012** is a mock election if it includes Edward B. Cottingham *ex post facto*. Since Edward B. Cottingham had not been duly elected or approved by the People under the Constitution and state statutes found at Section 2-19 and Section 15-211, Code of 1962, the order of the Chief Justice cannot be right, and ALL orders and judgments of Edward B. Cottingham can only be void.

**The void order of Edward B. Cottingham in this matter is due to be vacated.**

2. **ARGUMENT** regarding the Second Issue on Appeal. **THE LOWER COURT ERRED WHEN IT DEPRIVED APPELLANT OF HER RIGHT TO ANSWER THE SUMMONS, THE COMPLAINT AND THE AFFIDAVIT OF H. GUY GANTT TIMELY, ALL OF WHICH MR. COTTINGHAM REFUSED TO HEAR.**

Appellant was denied by the lower court the right to due process allotted to her by the Constitution, the rules of court and the summons itself to answer timely the summons, complaint and the affidavit of *movant* H. Guy Gantt and to be heard, even though on **July 15, 2011** she had filed a VERIFIED NOTICE TO ALL PARTIES (**R. pp. 88-92**). On p. 9 of the **August 1** hearing transcript, Cross stated, “*I stated that I was going to take the full 30 days based on the summons*” (**R. p. 161, lines 11-12**). The Gantt suit has never been

heard, although his suit and motion to intervene are both based on frauds by Respondent or its agents. The “order” on page 2 (**R. p. 10, line 22**) admits of Gantt’s “*proposed* Complaint,” a misnomer that has denied Appellant due process. A complaint served is not a proposed complaint. *Like the Spence order on which the Cottingham order is predicated, the Cottingham eviction “order” is wrong on its face: The “subject” of the foreclosure action could not be the home, since the mortgage and note were never secured by it.* Gantt sued on **June 15**, but withheld service for three weeks until **July 9** (**Exhibit 3, R. pp. 314-328**) to Appellant’s detriment, and the court set a date on **July 14** (**R. p. 327**) for an **August 1** hearing before William P. Keesley. Instead, Mr. Cottingham showed up, and in a different courtroom than Cross was noticed of and almost couldn’t find in time. He refused to hear Appellant’s “Constructive Notice and Demand for Abatement of the Proceedings” (**R. pp. 38-44**) for insufficiency of process and insufficiency of service of process (SCRCP 12(b)(4)(5), and for continuance of the action (**R. pp. 81-85**). Appellant was routinely cut off by Cottingham (**R. p. 167, lines 20-25**), who re-directed the issue from lack of process to Cross being “notified” of the *hearing* itself (**R. p. 159, line 11 - p. 160, line 22**). *MS CROSS: “No, we were not duly notified as a matter of fact. We were given five –”* This is one of many quotes reflecting Appellant’s understanding of the hearing’s purpose -- the right to present ALL her motions, including time to rebut the Gantt complaint. This denial is cause to vacate Mr. Cottingham’s void order. Janove v. Bacon, 6 Ill. 2d 245, 249, 218 N.E. 2d, 706, 708 (1953). See Wilson v. Moore, 13 Ill. App. 3d 632, 301 N.E. 2d 39 (1<sup>st</sup> Dist. 1973). Despite the abuses, Cross answered Gantt timely on **August 8** (**R. pp. 93-107**), the date of the Cottingham order, **an order that is due to be vacated for a fair hearing on the suit of H. Guy Gantt.**

3. **ARGUMENT** regarding the Third Issue on Appeal: **THE CIRCUIT COURT ERRED IN REPEATEDLY OBSTRUCTING APPELLANT FROM PRESENTING HER SEVERAL MOTIONS AT THE AUGUST 1, 2011 HEARING, INCLUDING THE MOTION TO VACATE A VOID JUDGMENT, whose allegations and evidence when considered, if any were found in her favor, would operate to void the court's order granting foreclosure on the mortgage and eviction of Appellant, WHICH THE COURT COULD NOT KNOW WHEN IT REFUSED TO HEAR APPELLANT ON THESE MATTERS, AS THE JUDGE STATED IN THE BEGINNING OF THE HEARING HE WAS GOING TO DO.**

The lower court denied Appellant due process of law when it obstructed her right to be heard. In the transcript of the **August 1** hearing on which the **August 8** order being appealed is based, Edward B. Cottingham stated on page 5, "*First, I have read these proceedings in detail. Spent the morning doing it*" (**R. p. 157, lines 24-25**). And on pages 11-12 (**R. p. 163 line 22-p. 164 line 4**) he states, "*I am going to hear whatever she has on the emergency hearing and hear any other motions today regarding this issue. I want it resolved one way or the other. I will give everybody a full chance to be heard. But if you've got any other motions or petitions, let me hear them. I want to hear your position now, please." The hearing transcript shows this is exactly what Appellant Cross proceeded to do under Mr. Cottingham's direction. The introduction to his **August 8** order makes it clear he was ruling on ALL the motions that he stated in the beginning of the hearing he was going to hear, including the Motion to Vacate a Void Judgment.*

*"The above matter came before me on the 1<sup>st</sup> day of August for a hearing on 1) the following pleadings of the Defendant Janice Cross: Complaint for an Emergency Hearing and Injunctive relief, Complaint and Demand for Quiet Title, Motion to Vacate a Void Judgment, Constructive Notice and Demand for Abatement of the Proceedings, and Declaration in Support of Continuance of the Action"* (**R. p. 9**) -- And anything else awaiting hearing, as he stated, "*I am going to hear whatever she has on the emergency*

*hearing and hear any other motions today regarding this issue.*” He pretends to hear Cross’ verified complaint and “emergency” petition for injunctive relief. *“I understand your position. . . . but go ahead. I want you to state your position fully”* R. p. 163 line 22-25. Yet the record shows that each time Appellant tried to present her position as invited by the court on her MOTION TO VACATE as well as her “Emergency Petition for Injunctive Relief” or other motions, and began to point out what was asserted in the motions as grounds to vacate, including **fraud, fraud on the court and newly discovered evidence**, on page 25 (R. p. 177, lines 15-24) the court stopped her for no apparent reason and stated, *“I’m not saying that you can or cannot bring that complaint in another matter, but that is a separate issue. It’s not an issue that you can raise before me . . . in this emergency proceeding. What else do you have? I understand what you’re saying, but today is not the forum to present that argument.”* On pages 26-27 (R. p. 178 line 25 – p. 179 line 3), Mr. Cottingham states regarding the fraud alleged in the motion that Appellant Cross tried to raise, *“If you have any allegations of fraud that you think are provable, there are forums to present that case, but it’s not today. What else do you have, Ms. Cross?”* **Indicating Mr. Cottingham’s confusion on what he was in-fact to be ruling on.** He **erred** on Rule 60(b). Yet again, per his order of August 8, 2011, he was ruling on ALL the motions as stated in the beginning of the hearing he was going to hear.

The transcript is clear that for whatever cause of confusion or mistake or error on the part of Edward B. Cottingham, whether intentionally or by mistake or error, he **refused hearing** on Janice Cross’ **MOTION TO VACATE A VOID JUDGMENT and several other motions whose evidence, when considered, may have acted to void the January 11, 2011 Spence order and judgment of foreclosure.** Yet Mr. Cottingham

alleges in his “order,” ***“At the hearing, Janice Cross presented no credible evidence to bring into question the validity of the Foreclosure Order. Moreover, no credible evidence was presented which would warrant the issuance of an order by the Court staying or enjoining the enforcement of the Foreclosure Order”*** (R. p. 11 lines 19-22).

Mr. Cottingham rightly states, *“All of the pleadings of the Defendant Janice Cross attempt to attack - the validity of the foreclosure Order and/or to stay or continue the enforcement of the Foreclosure Order”* (R. p. 11 lines 19-22). **Thus, if any were found in her favor under the rules of court as clearly seen from the preponderance of the evidence, would operate to void the foreclosure and block eviction on those grounds, A FACT WHICH THE COURT COULD NOT KNOW WHEN IT REFUSED TO HEAR THE APPELLANT ON THESE MATTERS AS MR. COTTINGHAM STATED IN THE BEGINNING OF THE HEARNG HE WAS GOING TO DO!**

The transcript does not show that the court declined to hear oral argument on these crucial motions because its determinations from the written arguments made oral argument unnecessary, which may have been its prerogative, but instead, each time Appellant began to present her motions and her arguments, the court states erroneously, *“I’m not saying that you can or cannot bring that complaint in another matter, but that’s a separate issue. It’s not an issue that you can raise before me— THE COURT -- in this emergency proceeding. ....I understand what you’re saying, but today is not the forum to present that argument.”* *...If you have any allegations of fraud you think are provable, there are forums to present that case, but it’s not today....?”* (**R. p. 177, lines 15-22; R. p. 178, line 25 – p. 179, line 3**). However, if fraud and newly discovered evidence were not to be heard on THAT day under Rule 60(b), then **when WAS it to be**

**heard** BECAUSE THIS WAS THE **MOTIONS HEARING** FOR THESE MOTIONS?

The record also shows that Mark Wierman, a Bar attorney who has produced no evidence of a contract proving that he represents Respondent as Appellant has **demande**d he do pursuant to S.C. Code Ann. § 36-3-501(b)(2) (1986), did **usurp** the authority of this Appeals Court with regard to Appellant's COMPLAINT AND DEMAND FOR QUIET TITLE, by moving the lower court on **August 12, 2011** to dismiss her complaint four days **after** Cottingham had issued his order and 12 days **after** Cross had announced her intention in open court to appeal the order, an order that included the *Complaint and Demand for Quiet Title* (**R. p. 9, line 3** and **R. p. 178, lines 17-22**) that is under the jurisdiction of this Court. Appellant served her Notice of Appeal on **August 26, 2011**. The lower court proceeded nonetheless to set a hearing for **October 14, 2011** (**R. p. 288**) on Mr. Wierman's motion to dismiss (**R. pp. 79-80**). Appellant has a *right* to appeal under SCACR 201. The testimony of *counsel* is not sufficient to sustain a motion for summary judgment or motion to dismiss. *Trinsey v. Pagliaro* D.C. Pa. 1964, 229 F. Supp. 647. The right to a hearing in **open court** is essential to due process. See *Geisinger v. Vose*, 352 F. Supp 104, US Dist. (1972). The U.S. Supreme Court said in *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972): "The right to **prior notice** and **a hearing** is central to the Constitution's command of due process. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to **protect his use and possession of property** from arbitrary encroachment – **to minimize substantively unfair or mistaken deprivations of property** . . ." *Fuentes v. Shevin*, 407 U.S., at 80 –81 . . ." *United States v. James Daniel Good Real Property*, 510 U.S. 43; 114 S. Ct. 492 (1993). See also *Johnson v. Zerbst*, 304 U.S. 458,

58 S. Ct. 1019 (1938); Pure Oil Co. v. City of Northlake, 10 Ill. 2d 241, 245, 140 N.E. 2d 289 (1956); and Hallberg v. Goldblatt Bros., 363 Ill. 25 (1936). Without warning or even the hint of warning that the case would be considered or determined ....[a decision was entered]... This is not the fair hearing essential to due process. **It is condemnation without trial.**” Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292 (1937). “For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are **entitled to be heard**; and in order that they may enjoy that right they must first be **notified**.” Baldwin v. Hale, 1 Wall. 223, 233. See Windsor v. McVeigh, 93 U.S. 274 ; Hovey v. Elliott, 167 U.S. 409 ; Grannis v. Ordean, 234 U.S. 385. It is equally fundamental that the right to notice and an opportunity to be heard “must be granted at a meaningful time and in a meaningful manner.” Armstrong v. Manzo, 380 U.S. 545, 552 “If it were shown at a hearing that the appellants had defaulted on their contractual obligations, it might well be that the sellers of the goods would be entitled to repossession. But . . . that is immaterial here. **The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing.** “To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case, due process of law would have led to the same result because he had no adequate defense upon the merits.” Coe v. Armour Fertilizer Works, 237 U.S. 413, 424. It is enough to invoke the procedural safeguards of the 14th Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing on the contractual right to continued possession and use of the goods.”

The facts and the law *do* matter, and judicial action by judges or the like must be

in accord with those presented to the court. This is to assure due process of law and equal protection under the law. “For [judges or the like] are told that **“we may not draw on our merely personal and private notions;”** our judgment must be grounded on “considerations deeply rooted in reason and in the compelling traditions of the legal profession...” by “the community’s sense of fair play and decency;” by the “traditions and conscience of our people;” or by “those canons of decency and fairness...” Rochin v. California, 342 U.S. 165 (1952). “Thus the **procedures** by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied. Speiser v. Randall, 357 U.S. 513 (1958). “[T]he decision maker’s conclusion...**must rest solely on the legal rules and evidence adduced at the hearing.** Ohio Bell Tel. Co. v. PUC, 301 U.S. 292 (1937); United States v. Abilene & S. R. Co., 265 U.S. 274, 288 -289 (1924). To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, cf. Wichita R. & Light Co. v. PUC, 260 U.S. 48, 57 -59 (1922)...” Goldberg v. Kelly, 397 U.S. 254 (1970).

FURTHER, Appellant would show the court, **“[D]ue process requires an opportunity to confront and cross-examine adverse witnesses.** For example, see ICC v. Louisville & N. R. Co., 227 U.S. 88, 93 -94 (1913); Willner v. Committee on Character & Fitness, 373 U.S. 96, 103 -104 (1963).” Goldberg v. Kelly, 397 U.S.254 (1970). The record shows that Appellant’s right to a fair hearing on the merits of her motions and to examine adverse witnesses was cut off in midstream by the unconscionable refusal of the court to hear her MOTION TO VACATE A VOID JUDGMENT and other motions, whose evidence when considered may have acted to

void the order and judgment of James O. Spence granting foreclosure on a mortgage that could not possibly have secured the real property, AS MR. COTTINGHAM STATED IN THE BEGINNING OF THE HEARING THAT HE WAS GOING TO HEAR.

**And for the cause of mistake or error, the order of the lower court of August 8, 2011 is due to be reversed, and the matter remanded for a reopening of this case toward the adjudication of justice in all matters.** As noted, the law in matters of due process cares not whether Appellant had any meritorious allegations or defenses, but only THAT SHE DID NOT HAVE THE RIGHT IN COURT TO DO SO. But in point of fact, this Court may judge for itself if remanding this case would change the outcome.

The record in this case clearly shows that Janice Cross' MOTION TO VACATE A VOID JUDGMENT was based ON RULE 60(b)(2), RULE 60(b)(3), AND RULE 60(b)(4) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE

RULE 60-RELIEF FROM JUDGMENT OR ORDER states, "**b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, **the court may relieve a party or his legal representative from a final judgment, order, or proceeding** for the following reasons:

- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;

The rule further states, "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken."

**So the motion was timely brought.**

As shown in the motion, Appellant has proof as a matter of public record (**Exhibit 1, R. p. 291**) that Deutsche Bank did not own and hold the original note or mortgage on

the date suit was filed. **The “assignment of mortgage” of record is bogus, and the copy of the alleged note criminally doctored eight months after Complaint was filed.**

It contradicts the “chain” of title on the note. Master in Equity Spence in the hearing of **November 10, 2010** should have dismissed the case on these grounds alone requiring Respondent to re-plead from the beginning. The transcript shows the **confusion** of the Spence court. On pages 20 and 21 the court states (**R. p. 249, line 16 – p. 250, line 9**): *”All right. Thank you. All right. The next issue I have is there is an allegation made that there is no jurisdiction over . . . well, let me backup. **There is also a claim that the assignment was made after the lawsuit was filed. The assignment of the note and mortgage was filed, was executed after the lawsuit was filed and that since it was not filed until after the lawsuit, then the plaintiff did not have standing to file the lawsuit.**”* It is here that counsel admits, *“BLANKENSHIP: **Your Honor, the date on the assignment of mortgage is one day after the complaint was filed.**”* But then he is allowed by the court to **alter** the issue in midstream -- not to the **date of the assignment** itself -- but to the **date it was filed** of record. *“Your Honor, under South Carolina law, the assignment of mortgage is not required to be recorded prior to filing a lawsuit. It’s just not. **The assignment of mortgage is for protection of lenders down the road. It has nothing to do with the standing.**”* Only part of which may be true, part false, BUT DOES NOT RESOLVE THE QUESTION OF STANDING TO SUE RAISED BY THE RECORD.

Yet the Spence court knowingly allowed itself to be **diverted** from the true legal issue and to be substituted and glossed over in continuing right along past this critical issue of **standing** (**R. p. 250, lines 13-15**): *” COURT: Alright, this is what I want to make clear that I understand. What your argument is from the previous question and answers*

were.” And Master in Equity Spence accepted Mr. Blankenship’s explanation as a non-issue, and moved on, when the issue clearly was not whether the assignment had to be filed before the suit could be brought in the name of the assignee, but **whether it could be brought by them before they WERE THE ASSIGNEE and had legally received any right, title and interest in the “loan” to acquire standing to bring an action to enforce the instruments, when the answer is categorically NO, DEUTSCHE BANK DID NOT OWN AND HOLD THE ORIGINAL INSTRUMENTS ON THE DAY SUIT WAS FILED, AND LACKED ALL RIGHT, TITLE AND INTEREST TO SUE. IT COULD NOT HAVE HAD STANDING AS ASSIGNEE TO FILE SUIT.**

The leading case law on this subject is Judge **Christopher A. Boyko’s** 2007 ruling in U.S. District Court in Cleveland, Ohio involving 14 cases brought by **Deutsche Bank**. Judge Boyko ordered the bank to produce evidence that it had a valid assignment of the mortgages “**as of the date the Complaint was filed,**” or he would dismiss those cases, which he did (**Exhibit 14, R. pp. 379–385**). The Spence court acknowledged the Boyko judgment to be correct when it granted Cross’ motions citing this important law, “*I am familiar with those cases . . . I’m familiar with all that law*” (transcript p. 57)(**R. p. 197, lines 11-15**). Yet, his **January 11, 2011** judgment reflects confusion on this case law and a ***diversion*** from the true issue of standing (**R. p. 15, lines 10-12**): “16. *Defendant Cross, in a previous motion to dismiss this action, argued that Plaintiff did not have standing to foreclose on the property because the assignment of mortgage was not recorded prior to the filing date of this action*” **Which is not at all what Cross argued,** but whether such assignment had yet been made to the new party empowering it to sue. The court then goes on at page 3 .....in part: “[transfer of an instrument vests in

*the transferee such rights as the transferor has therein . . . .“ see Twelfth RMA Partners LP v National Safe Corp.. 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999) (“In South Carolina, it is well established that an ‘assignee ... stands in the shoes of its assignor.’ When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract as the assignor. Under the UCC in South Carolina, a ‘[t]ransfer of an instrument vests in the transferee such rights as the transferor has therein”) . . . (R. p. 15, lines 17-23). **The lower court ignored the glaring fact that when suit was brought, NO ASSIGNEE EXISTED TO BRING SUIT!!!!***

Then the trial court made the **erroneous determination**. “17. Further, the fact that the **assignment of mortgage was dated after the date that the complaint in this case was filed is irrelevant**” (R. p. 15, lines 24-25). The court went on to support its erroneous judgment with a legal conclusion (#17) that is irrelevant to its determination. “In general, it is best to have **assignments of mortgages recorded in the public record, and the current trend within the equity courts is to require a plaintiff to have those recorded assignments in place prior to a final disposition and sale. However, such a requirement is not the law in South Carolina. See Cook 96 S.E. at 487**” (R. p. 15, lines 25-28).

This **error** of the Spence court was what Appellant Cross was trying to show Mr. Cottingham in arguing her motions when she was cut off from doing so. **The judgment hereby appealed in this matter should be overturned and the case ordered reopened.**

**BUT FURTHER**, the “Motion to Vacate a Void Judgment” plus Appellant’s other motions contained evidence that the “assignment of mortgage” is **fraud ab initio** in that the “assignment” bears the name and authorizing signature of a “robo signer” named **Jeffrey Stephan**, now or formerly a low-level GMAC Mortgage LLC “signing dummy”

who at the time worked in GMAC's principal place of business in Fort Washington, Pennsylvania. The record shows that Stephan impersonated a "vice president" for a bogus assigning entity (MERS) which has since confessed to frauds directly affecting this case. This is *newly discovered evidence* under Rule 60(b) that was unavailable until **April 12, 2011** when MERS signed a U.S. Treasury Consent Decree (**Exhibit 10, R. pp. 342-355**).

Further, Mr. Stephan's 2009 assignment is bogus since it is made on behalf of a **defunct company**. Homecomings Financial LLC went out of business on **September 24, 2007**, according to the 10-K report, page 6, at the self authenticating SEC website <http://www.sec.gov/Archives/edgar/data/1400095/000119312508070045/d10K.htm>

Appellant's "Motion to Vacate a Void Judgment" contains *newly discovered evidence* under Rule 60(b)(2) showing that Jeffrey Stephan and MERS were involved in fraud during the 27 months since this wrongful foreclosure action was commenced on **November 16, 2009** under Rule 3, but never ratified under SCRCP 17a for the failure of an injured party to appear and state facts sufficient to constitute a cause of action. **This matter should be remanded on these procedural grounds alone.** The United States Treasury through the Office of the Comptroller of the Currency issued a Consent Order against MERS for illegal activities directly affecting *this* case. On **April 12, 2011**, MERS "stipulated" and "agreed" to the Consent Order and agreed to stop the illegal practice of "robo signing" committed by low-level "assignors" such as GMAC's Jeffrey Stephan. Mr. Stephan is the *exact same* "robo signer" in this case. Appellant's **Exhibit 10** is also available in full on the self authenticating website [www.occ.treas.gov](http://www.occ.treas.gov).

**The newly discovered Consent Order and MERS' agreement with it, means that MERS has confessed to fraud in this case.** Jeffrey Stephan also confessed to fraud

separately in the matter. See Appellant's **Exhibit EE (R. pp. 419-429)** in the lower case file obtained from [www.4closurefraud.com](http://www.4closurefraud.com) for a copy of his **December 10, 2009** deposition in Palm Beach, Florida in a case brought (coincidentally) by GMAC Mortgage LLC against Anna M. Neu et als in which Stephan confesses under oath on page 5 just 23 days after his bogus assignment in this case that he is a GMAC employee, not a MERS VP (**R. p. 424, lines 2-4**). On page 41 (**R. p. 426, line 22**), he admits, "***I do not work for MERS!***" Stephan and GMAC Mortgage LLC were sued by the Ohio AG on **October 6, 2010** for the same illegal activities against Ohioans that he committed in this case See **Exhibit HH** in lower case file (**R. pp. 433-452**) from the self-authenticating website <http://www.ohioattorneygeneral.gov/GMACLawsuit> FURTHER, on **May 3, 2011**, the U.S. Attorney for the Southern District of New York sued **Deutsche Bank Ag** for \$1 billion for "lying" and "mortgage insurance fraud." **R. p. 432, [kelleydrye.com/complaint](http://kelleydrye.com/complaint)**.

**THE SPENCE COURT HABITUALLY RENEGED.** He ordered a substitute deposition that was never brought by plaintiff to trial, **a fatal error that calls for re-opening this case.** Since Respondent had no standing to file suit, it **could not** acquire standing on **March 28, 2010** when Mr. Spence unlawfully conveyed Appellant's beneficial interest to H. Guy Gantt. Appellant raised the **threshold issue** of **standing** as seen in her **November 1, 2010** 12(b) Motion to Dismiss, her 10-page Summary of the Memorandum of Law in Support of the Motion to Dismiss, and the Affidavit of Janice Cross in Support of Dismissal of the Action, which were read at the **November 10, 2010** motion hearing (**R. pp. 119-133**). See transcript, p. 25 (**R. p. 254, line 12 – p. 255, line 7**)

*"THE COURT: There is also claims that Jeffrey .. do you know who Jeffrey Steven is? BLANKENSHIP: Your Honor, Jeffrey... I think it's Stefan ,, is ,, you may*

have seen, Judge, in the (news) papers and press this issue of the robo-signer. Jeffrey Stefan is the gentleman who testified at a couple of depositions in a couple of different cases, one in Florida, I think, and one in New York, that he had signed thousands of affidavits per month. That's who that is, He is an employee, or at least at one time, was an employee of GMAC and he is the original robo-signer."

THE COURT: Alright and he signed, documents in this case

MR. BLANKENSHIP: The only document that he signed, Your Honor, was the assignment, He signed no affidavits whatsoever.

THE COURT: All right. So it was just the assignment? \_\_\_\_

MR. BLANKENSHIP': Just the assignment."

The transcript shows at this point that the Spence Court ignored the documents and deposition supporting Appellant's case, including Jeffrey Stephan's confession. See **Exhibit EE (R. p. 424, lines 2-4 and p. 426, line 22)** in the original case file, pages 5 and 41. The Spence court ignored the legal fact that the assignment of mortgage was, and **still is** fraudulent, and could never convey any rights, title, power or interest to Deutsche Bank or to Respondent H. Guy Gantt. **The matter legally should have been dismissed by the Spence Court.** See Farmer's Bank v. Bradham (1924) 129 S.C. 270, 123 S.E. 835.

Appellant's "Motion to Vacate a Void Judgment" shows that the RALI 2007QS8 trust identified **in the public record** and falsely affirmed in the mortgage assignment as actual holder of the "contract" for which Respondent was acting in error, had no claim to ownership of the home. Black's Law Dictionary, 4<sup>th</sup> Ed., says, "**NO ONE CAN GRANT OR CONVEY WHAT HE DOES NOT OWN.** Seymour v. Canandaigua & N.F.R. Co., 25 Barb., N.Y., 284, 301; Saltus v. Everett, 20 Wend, N.Y., 267, 32 Am.Dec.541.

FURTHER, the Pooling and Servicing Agreement (PSA) at the SEC website at [www.sec.gov/Archives/edgar/data/1400095/000140009507000008/qs8ssfinal.htm](http://www.sec.gov/Archives/edgar/data/1400095/000140009507000008/qs8ssfinal.htm), as well as the contract that governs the “loan trust” known as the 424(b)(5) Prospectus, found at the self-authenticating website of <http://www.secinfo.com/d1zj61.u1d6.htm>, show that the RALI 2007QS8 trust was sold and closed on or about **June 30, 2007**. According to the common practices of this industry, if a loan is placed into a trust with a closing date in **2007**, and since the trust indentures require all original instruments to be placed into that trust and follow a certain **chain of ownership** until it ended up in that trust by a **date certain** in compliance with the PSA and Prospectus, any assignment made after that closing date is one *specialty made*, and even fraudulently made, to facilitate foreclosure.

Deutsche Bank is well aware in its own MEMORANDUM of July 28, 2008 (p. 2 in **Exhibit LL, R. p. 415 lines 15-16**) that belated assignments violate U.S. securities laws : “ . . . *Securitization trusts typically become the owners of, and take title to, mortgage loans at the time the securitization trusts are formed*” (emphasis in the original), **not 29 months later** as reflected in the “assignment of mortgage.” GMAC deponent Juan Antonio Aguirre also admits under oath that the instruments must be transferred when the loan trust closes, **not 29 months later**. See page 18 lines 22-24 of the August 11, 2010 deposition transcript (**R. p. 220 lines 22-24**) : “ . . . *my understanding is those [original documents] go to the custodian who owns the loan at that time, yes.*” According to the above authorities for these investment vehicles, Mortgage-backed trusts contain very specific provisions regarding **possession** of original mortgages, notes and assignments and usually include **the form** each document custodian must sign verifying physical **delivery** and acceptance. Appellant has seen no such form

produced by the document custodian, and believes none exists. Her subpoena of the document custodian was obstructed by the Spence court after it had ordered the custodian on **June 8, 2010** to appear at deposition. **The belated assignment is still illegal!!** Section 860 of the IRC gave the parties **90 days** to deliver the original note and mortgage into the REIT and associated REMIC, not 29 months as purportedly happened in this case.

**This is securities fraud and tax fraud.** The “assignment” is highly illegal.

THEREFORE, the *phantom assignment* of the mortgage in dispute to Respondent Deutsche Bank to enforce its purported rights of contract in this mortgage was made solely to facilitate foreclosure and **proves no ownership of the purported Cross’ loan whatsoever on which Deutsche Bank may rest its claim. On the basis of the illegal assignment alone, the matter should be reversed and the case re-opened.**

Based on S.C. Code Ann. § 36-3-302, Respondent lacked STANDING TO ENFORCE THE RIGHTS OF CONTRACT, and the resulting foreclosure on a mortgage unsecured by Appellant’s home is an **illegal act** jeopardizing clear title and possession of the property that is the subject of this dispute. THE WRONGFUL FORECLOSURE was “on the mortgage,” and Respondent held no right, title or interest in the instruments “**as of the date the lawsuit was filed**”. The original complaint is defective to this day.

AGAIN, **this error of the Spence court** was the very thing that Appellant was trying to show Edward B. Cottingham in arguing her “Motion to Vacate a Void Judgment” when she was cut off from doing so, and so the judgment appealed should be overturned and the case ordered reopened.

The Spence court seems to sense there is a problem with this assignment and the belated indorsements made to the note copy (**November 10, 2010** transcript, page 21 line

16 through page 23 line 5 (**R. p. 250, line 16-p. 252, line 5**): “*THE COURT: The note was made, the allonge was signed over to Plaintiff, and **then it was assigned to them?***”

*MR. BLANKENSEIP: That’s right, Your Honor.*

*THE COURT All right, So we have an allonge and . . . which means you have the note. You’re then saying that the assignment of the note and mortgage that’s recorded was ,, it was recorded a day after the lawsuit?*

*MR. BLANKENSIUP: Yes, Your Honor.*

*THE COURT: All right. When was it dated?*

*MR. BLANKENSNIP: Actually, Your Honor, let me back upon that. It was recorded December 1, 2009. **It was dated November 17, 2009.***

*THE COURT: All right. **When was the lawsuit filed?** On page two of the memo [a reference to Appellant’s “Affidavit of Janice Cross in Support of Dismissal of the Action” - **R. p. 120, para 13**], *paragraph 13, it states: “Jeffrey Stevens made a false affidavit and assignment on November 17, 2009.”* *MR., BLANKENSHIP: Your Honor, my records indicate that the complaint was filed November 16th.**

*THE COURT: All right. **So the complaint was filed on the 16th and the assignment was done a day later and then sent for recording after that, but it had ... the allonge had been signed prior to that?***

*MR. BLANKENSIIP: Your Honor, I don’t know when the, I don’t know that the stamp on the note, the allonge, I don’t know that there is a date on it. All it is, Your Honor, it’s a stamp pay to the order of. It’s just transferring the note. Those allonges or these stamps. are not dated. . . . **I don’t know when they were stamped.** [Appellant’s Note: The evidence of record shows that Judy Faber’s stamped indorsement, plus the*

belated insertion of the line “Residential Funding Company LLC” on the original indorsement of Gloria Peters, were both **added** sometime between **June 21, 2010** and **July 22, 2010** based on Blankenship’s two separate and distinct **Exhibits A** served on Appellant by certified mailings. Cross received Respondent’s doctored Exhibit A of **July 22, 2010** by certified mail no. 91 718 2133 3933 6674 2411 (**Exhibit 2, R. pp. 292-313**).

*THE COURT: All right, So hypothetically then, it would be your argument that as long as the note had been transferred pursuant to the allonge and you had possession, as long as the recorded assignment is done at any time before judgment is entered...*” (**R. p. 252 lines 6-11**). Although the court muses upon these hypotheticals, **the actual record** of this case shows that the bank’s own “evidence” FAILS TO PROVE THAT DEUTSCHE BANK HAD RECEIVED INDORSEMENT OF THE NOTE IN NOVEMBER 2009, OR AT ANY TIME REMOTELY CLOSE TO THAT TIME TO BRING THIS ACTION.

On **April 9, 2010**, Cross clocked in her original **Exhibit J** which she had obtained from GMAC Mortgage LLC in Waterloo, Iowa in a letter dated **January 7, 2010**. (**Exhibit 2, R. pp. 296-301**). GMAC attested to **Exhibit J** as being a true and correct copy of the note **at that time** showing the single indorsement of Gloria Peters, Assistant Secretary for Homecomings Financial LLC, a Delaware corporation, the original “lender” of record. According to the letter, Deutsche Bank Trust Company Americas in Santa Ana, California “owned the loan,” and Appellant was told to contact them, which she and her husband did in several phone conversations with **Ronaldo R. Reyes**, vice president for corporate trust and investment banking, the officer who receives subpoenas for the bank.

At the first hearing held on **April 12, 2010**, Master in Equity Spence in chambers set a motions hearing for **June 8, 2010**, at which time he granted two companion motions

by Janice Cross (**Exhibit 13, R. pp. 363-378**). The first motion explicitly forbade duplicates based on **Rule 1003** of the Federal Rules of Evidence where a “genuine question” is raised as to the “authenticity” of the original, or where admitting a duplicate would be “unfair” to this Appellant. “*I will construe this as a motion to produce,*” Mr. Spence stated. “*He’s going to produce the original note, the original assignment, all those documents . . . as we’ve already discussed.*” See June 8, 2010 transcript, page 19, lines 3-8 (**R. p. 190, lines 3-8**). The second motion compelled the document Custodian to appear with all pages of the original note showing all indorsements **front and back**.

On **June 21, 2010**, Ronald “Les” Blankenship mailed to Janice Cross by certified mailing a memorandum of law and served his original **Exhibit A** showing the same single indorsment of Gloria Peters that Appellant clocked in on **April 9, 2010**. On **June 30, 2010**, Appellant served her subpoena as authorized by the Spence court on **June 8, 2010**, only to be obstructed by the court. On or about **July 22, 2010**, or one month after submitting his original **Exhibit A**, Blankenship served Appellant by a certified mailing with a clearly **doctored** Exhibit A, the alterations produced eight months after filing suit.

Neither Mr. Spence nor Respondent’s ‘counsel’ made any attempt to quash the lawful subpoena, but in a letter dated **July 2, 2010 (R. p. 398)**, counsel began scrambling for a deposition after all by substituting a “bank witness” for the document custodian the court had ordered to appear. The court helped Mr. Blankenship, and re-set the trial date.

On **August 11, 2010**, Appellant deposed GMAC “bank witness” and “*senior litigation analyst*” Juan Antonio Aguirre of GMAC’s Dallas office, and avers that Mr. Aguirre perjured himself by presenting a color copy of an instrument of some kind that showed **alterations** to Mr. Blankenship’s **first Exhibit A of June 21, 2010**, in carbon

toner quality and matched Mr. Blankenship's doctored **Exhibit A of July 22, 2010**.

Respondent's original **Exhibit A of June 21, 2010** purporting to be a true and correct copy of the note in question in its current form as of that time, also reveals the same single blank indorsement "Without Recourse Pay to the Order of" made in blank by Gloria Peters, leaving a blank space above her signature. This indicates in law that any true owner and holder of the instrument could "possibly" hold the rights of enforcement.

**So, why did Respondent alter the note copy if it held the original in blank?**

As a bearer instrument, the Note can be negotiated through the transfer of possession alone. See S.C. Code Ann. § 36-3-201. Moreover, the party in possession of a note indorsed in blank, *may* qualify as a "holder" for purposes of the code (S.C. Code Ann. § 36-3-301 and § 1-201(21)(a).) However, the specific language "pay to the order of" is draft language as appears on a negotiable instrument known as a standard bank check, indicating that Ms. Peters cashed the negotiable instrument at the Federal Reserve window, based on FRB publication "Modern Money Mechanics" found in the case file. However, as pointed out in the hearing transcripts, no reasonable person has any possible way of knowing when the blank indorsement by Ms. Peters was made, and no way of knowing who held and owned the original instruments when suit was filed, **if anyone!**

**There is no evidence or certification of any kind as to the date of indorsement.** Therefore, the mere copy proves nothing at all as to any claim to **delivery** and possession by the trust. And the evidence that Respondent was the owner and holder of the original at the time this action was filed or at the time of the unlawful sale of the property is open to serious question that only a forensic audit can put to rest once for all.

In the doctored Exhibit A introduced for the first time on **July 22, 2010**, the

original blank indorsement of Gloria Peters has been **filled in** and made payable to RESIDENTIAL FUNDING COMPANY LLC. This late insertion to the original indorsement of Gloria Peters is self-evident, particularly when the two Exhibits A are superimposed. **Someone made a forgery out of Gloria Peters' original indorsement.**

**Then, a second stamped indorsement in carbon toner reproductive quality** (not blue-ink original) was added, this time of Judy Faber purporting to be a Vice President of RESIDENTIAL FUNDING COMPANY LLC, making indorsement finally to Deutsche Bank Trust Company Americas as Trustee, **but not to the particular loan trust.** Appellant had apprised all parties in writing ahead of time, and then objected on the record to the counterfeit documents she and her husband both witnessed at deposition.

According to the motion hearing transcript of **November 10, 2010** on page 32, (**R. p. 261, lines 8-15**), Mr. Spence admitted that he had not seen the deposition evidence:

*COURT: "Number 28 [item 28 from Appellant's Cross' "Affidavit of Janice Cross in Support of Dismissal of the Action"] claims that the August 11<sup>th</sup> 30(b)(6) deposition that the use of a [mere] color copy of the alleged note and mortgage . . . and that there was perjury. **Now, I'm not entirely sure, because I haven't seen any depositions. I'm not aware of what went on at the depositions, obviously.**"*

Appellant has been denied her right to have a lawfully seated judge rule on her objections at deposition and at trial. Mr. Spence's failure, and Mr. Cottingham's failure, to open the deposition transcript or to consider the exhibits have denied this Appellant due process of law. **This thoroughly documented case is full of objections, fraud and newly discovered evidence** which Mr. Cottingham ignored when he "familiarized" himself with it *in a single morning* ("three boxes full"), only to "judge" that Mr. Spence

followed procedure and that Janice Cross had produced “no credible evidence” that would overturn a void judgment. *The Cottingham “order” is clearly based on a void judgment, and is due to be vacated by this Court.* Austin v. Smith, 312 F 2d 337, 343 (1962). See also English v. English, 72 Ill. App. 3d 736, 393 N.E. 2d 18 (1<sup>st</sup> Dist. 1979).

4. **ARGUMENT** regarding the Fourth Issue on Appeal. **THE CIRCUIT COURT ERRED in refusing to overturn judgment when** Appellant has produced proof from the **public record** showing that Respondent could not possibly have taken **possession and delivery** of the note and mortgage ***as of the date the lawsuit was filed***, and so lacked standing to sue, and the conflicting note copies cannot prove **when** or **if** the bank ever received actual indorsement and possession of the original instruments.

As previously shown, Respondent has never possessed the original instruments.

There is **no contract between the parties**, no breach, **no delivery and possession**, and no subject matter jurisdiction. The leading case law is in the **October 31, 2007** Opinion and Order of U.S. District Court Judge **Christopher A. Boyko** in the Northern District of Ohio, Eastern Division, in which **Deutsche Bank** had falsely sued 14 mortgagors (**Exhibit 14, R. pp. 379-385**). The lower court erred in usurping subject matter jurisdiction. Appellant did not contract for the debt sued upon. Judge Boyko ordered the “German Bank” to produce proof that it held a valid assignment ***“as of the date the Complaint was filed,”*** or that he would dismiss all 14 cases, which he did. This case fits the Boyko cases. On **June 8, 2010** Mr. Spence stated (t’script, page 57)(**R. p. 197, lines 11-15**), “ . . . . *I’m familiar with the case in Ohio*” . . . “*I’m familiar with all of that law.*”

This Court is also well aware of the threshold requirement of **possession and delivery** before standing can be established. S.C. Code Ann. § 36-1-201(20) (1986) defines “Holder” as a person who is in possession of a document of title or an instrument

or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank. **Deutsche Bank could not have had possession when suit was filed.** FRAUD denies standing to a purported holder in due course. S.C. Code Ann. § 36-3-302 (1986) restricts the meaning of the term – “. . . **holder in due course** means the holder of an instrument **if**: 1. The instrument when issued or negotiated to the holder **does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete** as to call into question its authenticity.” **Federal Rules of Evidence 1003** disallows duplicate notes from being admitted into evidence to the same extent as an original when (1) a **genuine question** is raised as to the *authenticity* of the original, or (2) in the circumstances it would be **unfair** to admit the duplicate in lieu of the original.

The lower court agreed with Rule 1003 when it granted Appellant’s motions. Thus, its judgment is *unfair* as it is *void*. S.C. Code Ann. § 36-3-203(b) (1986) denies standing in this case, since “the transferee cannot acquire rights of a holder in due course by a transfer . . . **if the transferee engaged in fraud or illegality** affecting the instrument.”

**THIS COURT** already decided the threshold issue requiring delivery and possession of the original instruments in order to establish standing. See the 1987 case law precedent where the South Carolina Code of Laws Annotated has the following South Carolina Reporter’s Comment at the end of § 36-3-203(b). “In South Carolina National Bank v. Halter, 293 S.C. 121, 359 S.E.2d 74 (**S. C. App. 1987**), the court asserted that a legal interest in promissory notes could be transferred only by negotiation of the notes under former § 36-3-202. Under the current statute, ownership of an instrument can be transferred without negotiation. In South Carolina National Bank v. Halter, **the purported assignee of the note never obtained possession of the notes.**

Under current law, **the lack of possession would not only preclude the assignee from taking by negotiation** under § 36-3-201(a) **but would also preclude the assignee from taking by transfer** under § 36-3-203(a). For a person to qualify as a transferee of an instrument, the instrument must be **delivered** to that person. Section 36-1-201(14) defines delivery of an instrument as a "voluntary transfer of possession." Delivery in this case simply has not occurred. Therefore, the **original complaint** in this matter is **void** and a nullity wherein Respondent allegedly alleged in allegation no. 2, "The Plaintiff is owner and holder of the note and mortgage covering real property, which is the subject of the foreclosure action." Based upon Deutsche Bank's own documents -- both the "assignment of mortgage" and the doctored note copy -- the bank could not possibly have taken actual delivery until **November 17, 2009**, or after the suit was filed, and 29 months after the loan trust was sold and closed. Such a transfer is highly illegal as it is phantom.

The original complaint, therefore, is defective *prima facie*, and the real property was, and still is, unsecured. Thus, the Appellant's "home" at 402 Shady Lane in Cayce could not *possibly* have been "***the subject of the foreclosure action***," as Mr. Cottingham wrongly concludes on page 1 of his "order." (**R. p. 9, lines 15-17**). There was no contract, which denied Deutsche Bank, and by extension H. Guy Gantt, any standing in law to move against this Appellant or her home, and denied the circuit court jurisdiction based on SCRCF 12(b)(1)(2)(3)(4)(5)(6). The lower court erred in usurping jurisdiction of the subject matter and parties, only to deny Appellant's Rule 12(b) "Motion to Dismiss."

**The court erred in refusing to overturn judgment for lack of jurisdiction.**  
**Fredman Bros. Furniture v. Dept. of Revenue**, 109 Ill. 2d 202, 486 N.E. 2d 893 (1985).

5. **ARGUMENT** regarding the Fifth Issue on Appeal. **THE CIRCUIT COURT ERRED** in refusing to overturn judgment when Appellant presented ***newly discovered evidence*** proving that the “assignment of mortgage” is **fraudulent** since it was made **AFTER** the lawsuit was filed by a signer who ***falsely represented himself*** to be an officer of ***a bogus assigning entity that has since confessed guilt*** in the “robo signing” scandal directly affecting this case.

On **April 12, 2011**, or 35 days after the March 7, 2011 unlawful “sale” of Appellant’s home, agents for Deutsche Bank confessed to wrongdoing in the “robo signing” scandal so widely reported in national media and that clearly applies to this case. See **Exhibit II (R. pp. 454-472** for selections) in the case file for published news articles. Several incriminate the ***exact same cast of players*** involved in this case -- GMAC, MERS, and GMAC “robo signer” **Jeffrey Stephan**. See the self-authenticating websites:

1. [www.abcnews.com/print?id=11693595](http://www.abcnews.com/print?id=11693595) for article titled **“GMAC Mortgage Halts Evictions, Foreclosed Home Sales”**

2. **“‘Robo signer’ played quiet role in huge number of foreclosures”** – see [www.washingtonpost.com/wp-dyn/content/article/2010/09/22/AR2010092206650.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/09/22/AR2010092206650.html)

The scandal has clogged South Carolina courts. On **May 4, 2011** Chief Justice Jean Toal suspended all foreclosures in South Carolina. *The State*, B6, May 4, 2011.

See **R. pp. 342-354** for newly discovered evidence in which MERS confessed guilt in the “robo signing” scandal affecting this case. See also **R. p. 424, lines 2-4** and **p. 426, line. 22** where Jeffrey Stephan testified under oath in GMAC MORTGAGE LLC v. Ann Neu et als. ([www.4closurefraud.com](http://www.4closurefraud.com)) that he is not a MERS’ VP, but a GMAC hire.

On February 20, 2011, U.S. Bankruptcy Judge for the Eastern District of New York **Robert E. Grossman** in *Select Portfolio Servicing Inc. v. Ferrel L. Agard* judged that MERS’ vague status as “nominee” is not a valid agency relationship and imparts no vested authority to MERS to assign notes and mortgages. (See also **R. pp. 473-4978**).

Additional *newly discovered evidence* shows that “unidentified” investors continue to trade on the instruments, despite the “foreclosure on the mortgage.” (**Exhibit 9, R. p. 341**) This is fraud. Under the laws of replevin, Respondent cannot have both the land and home, on the one hand, and continue to trade on the instruments. It must return them. **For these reasons, the case should be remanded for an evidentiary hearing.**

6. **ARGUMENT** regarding the Sixth Issue on Appeal. **THE CIRCUIT COURT ERRED in refusing to overturn judgment** when purported agents for the bank **doctored** the copy indorsed in blank of the purportedly original note **eight months after suit was filed** to create the illusion of a specific indorsement to Deutsche Bank and a valid chain of title in compliance with the lower court order of **June 8, 2010**.

A judge errs in refusing to overturn judgment when Appellant showed that purported agents for Deutsche Bank represented on **January 7, 2010** and again on **June 21, 2010** that a mere copy of the purported note indorsed in blank was evidence of ownership as A TRUE AND CORRECT COPY OF THE NOTE AS IT STILL CURRENTLY APPEARS yet with no evidence as to the certification of its date of copy, **thus proving nothing as to ownership as of the date suit was filed.** The copies are not sufficient proof to support the claim of possession of the original note **either** (1) *when the loan trust closed in 2007*, or (2) *as of the date suit was filed in 2009*. This is particularly true since subsequent copies showed that **THE ‘ORIGINAL NOTE’ WITH BLANK INDORSEMENT WAS DOCTORED EIGHT MONTHS AFTER SUIT WAS FILED** so as to now have the appearance of a *specific indorsement* along with the addition of a second indorsement stamped in carbon toner quality, not in blue ink. These fraudulent acts cannot by law support standing for Deutsche Bank **or for H. Guy Gantt**. See Martin v. Hunter’s Lessee 14 U.S. 304 and Fredman Brothers Furniture v. Dept. of Revenue, 109 Ill. 2d 202, 486 N.E. 2d 893 (1985). The belated alterations in this case

violate S.C. Code Ann. § 36-3-302 (1986), § 36-3-407, and § 36-3-203(b), all of which *exclude* both Deutsche Bank and Residential Funding Company LLC from the definition of “holder in due course” if: (1) the note was altered, or “if the instrument when issued or negotiated to the holder *bears such apparent evidence of forgery or alteration* and is so irregular or incomplete, as to call into question its authenticity” (2) if the transferee engaged in fraud – “. . . the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.” Section 36-3-310 also denies standing – “If the obligee is the person entitled to enforce the instrument **but no longer has possession of it because it was lost, stolen, or destroyed**,” in which case, “*the obligation may not be enforced to the extent of the amount payable on the instrument.*”

The lower court is simply not competent to make a forensic determination. Mr. Cottingham errs in saying “*no credible evidence*” exists to overturn the trial court’s order.

**FURTHER**, there are four distinct possibilities of what happened to the “note” in this case, **none of which prove that Deutsche Bank Trust Company Americas has ever held any right, title and interest in the note and mortgage or in the real property.**

1. **First**, is the idea that the **January 7, 2010** copy produced by GMAC showing the single draft indorsement in blank by Gloria Peters is a copy of the true original at the time suit was filed, which Appellant clocked in to the case file on April 9, 2010 as her **Exhibit J**. If it is, then it proves nothing as to Respondent’s standing to sue.

2. Or **secondly**, Ronald “Les” Blankenship’s **original Exhibit A** of **June 21, 2010** is a copy of the true original as it still existed eight months after suit was filed. If so, then it proves nothing as to Deutsche Bank’s standing on November 16, 2009 to file suit.

3. Or **thirdly**, Ronald Blankenship's **doctored Exhibit A** that he produced on **July 22, 2010** for the first time, or three weeks after receiving a lawful subpoena, is a copy of the original as it existed when suit was filed, but gives no evidence whatsoever as to *when* the indorsement in blank by Gloria Peters was illegally converted into a *specific indorsement* to Residential Funding Company LLC and the indorsement by Judy Faber was added stamped in carbon toner reproductive quality, not in blue-ink original.

4. Or **fourthly**, some unidentified person(s) doctored the copy of the note to create the illusion of a valid chain of title so as to fraudulently procure for the state court and for Deutsche Bank jurisdiction of the subject matter that neither one held by law.

**EACH POSSIBILITY PROVES DEUTSCHE BANK LACKED STANDING TO SUE, AND THAT IT NEVER HELD ANY RIGHT, TITLE OR INTEREST IN INSTRUMENTS THAT WERE NEVER SECURED BY APPELLANT'S HOME !**

The copies raise a *genuine question* on the *authenticity* of the original.

**Edward B. Cottingham's "order" should be reversed and the case remanded.**

7. **ARGUMENT** regarding the Seventh Issue on Appeal. **THE LOWER COURT ERRED in refusing to overturn judgment when** the "assignment of mortgage" violates the tax laws of the United States governing securitized asset trusts.

Deutsche Bank still owes the taxes. **26 USC 860** allowed the depositor (RESIDENTAIL FUNDING COMPANY LLC) **90 days** to deliver the original instruments into the Real Estate Mortgage Investment Conduit (REMIC) for income tax purposes, not **29 months**. The "assignment," therefore, is a fraudulent conveyance. The bank is aware of the frauds. In an **October 8, 2010** Memorandum, it ordered all agents to "CEASE AND DESIST" all bogus assignments: "*Securitization trusts typically become the owners of, and take title to, mortgage loans at the time the securitization trusts are*"

formed, the bank stated in the **July 28, 2008** Memo, page 2, **Exhibit LL, R. p. 415**. The PSA at [www.sec.gov/Archives/edgar/data/1400095/000140009507000008/qs8ssfinal.htm](http://www.sec.gov/Archives/edgar/data/1400095/000140009507000008/qs8ssfinal.htm) (**R. p. 412**) as well as the 424(b)(5) Prospectus at the self-authenticating website of <http://www.secinfo.com/d1zi61.u1d6.htm> show **the trust was created in 2007 and closed in 2007**. Asset trusts are prohibited under IRC from acquiring “loans” after the closing date of the trust, as evidenced by a 100% penalty tax imposed on such transactions.

According to these authorities under the very strict rules of its operation to protect investors, it is impossible that the trust held title to the mortgage, since **the assignment was made 29 months after the start-up period**. Therefore, under IRC § 860F and IRC § 860G, the Asset Trust currently owes a 100 percent penalty tax for an assignment made to the trust 29 months after the REMIC start-up period. Under IRC §61, all payments into the Trust on notes and mortgages not so protected by assignment to the Trust prior the REMIC start-up period represent gross income and are subject to federal income taxes.

Thus, the bogus assignment in dispute for Respondent to enforce the rights of a contract was made solely to facilitate foreclosure. There is no contract on which the bank may rest its claim. **Deutsche Bank should be enjoined from enforcement in its name.**

8. **ARGUMENT** regarding the Eighth Issue on Appeal. **THE CIRCUIT COURT ERRED in refusing to overturn judgment when** the trial court allowed Deutsche Bank to disobey **a lawful subpoena** issued by the court itself, and thus **denied** Appellant her right to **enforced discovery** of her best evidence, **her best 30(b)(6) witness**, and her right to face and examine her opponent under oath in the venue in which it filed suit, while there was no action legally submitted by the court or the bank to quash the subpoena for any failure to submit a proper subpoena or for any meritorious causes.

As stated previously, the Spence court instructed Appellant on how to issue a lawful subpoena compelling the correct Deutsche Bank official to send the ***legal document Custodian*** for a deposition to be held in his chambers on a Friday before the

originally scheduled *ex parte* trial on **July 22, 2010**, (transcript, page 80)(**R. p. 201, lines 8-25**), only to ignore Appellant's written requests to set the deposition, and then obstruct Appellant's lawful subpoena (**R. pp. 386-398**). The lower court denied Appellant her unalienable right to enforced discovery and the right to face *her opponent* bearing proof of claim for examination under oath in the venue it filed suit. This denied Appellant her best evidence and her best 30(b)(6) witness absent any legal action by the trust or the court to quash the subpoena for any meritorious reason. An injured party has never appeared with proof of injury or stated facts sufficient to constitute a cause of action, **and clearly does not exist**. The subpoena also compelled Respondent to produce certain accounting documents showing **proof of loss**. Appellant was denied her best evidence. Appellant disputed the debt timely under 15 USC 1692 (**R. pp. 144-151**) and demanded the general accounting ledger for proof that a loan was made and a real party injured, but was denied. **Accordingly, this case should be re-opened for an evidentiary hearing.**

9. **ARGUMENT** regarding the Ninth Issue on Appeal. **THE LOWER COURT ERRED in refusing to overturn judgment when** the transcript of the previous hearing showed the conclusions of the court were based partly on the testimony and authentication of debt instruments by a deposition witness the trial court had not been present to hear, and which **deposition** it said it had no knowledge of, despite Cross's objections and exhibits, which deposition plaintiff failed to bring to trial.

As previously shown, the transcript of the November 10, 2010 hearing shows the court said it had no knowledge of a deposition it based its judgment upon. Mr. Spence admits on page 32 (**R. p. 261, lines 12-15**) that he was unfamiliar with a deposition that he ordered, and then re-ordered, "*Now, I'm not entirely sure, because I haven't seen any depositions. I'm not aware of what went on at the depositions.*" Again, on June 8, 2010, he explained the critical importance of having a judge present at deposition, "*Because*

otherwise, if you get to taking a deposition someplace and there is an objection from either side, you have to go find a judge to make a ruling. So I will be there to make an immediate ruling.”(June 8 transcript, page 23)(R. p. 191, lines 8-19). Appellant made repeated objections. The ignorance of the deposition by the Spence court and the Cottingham court mocks justice and denied this Appellant her right to due process of law. **“For the trial, the person who filed the lawsuit has to bring the deposition”** (which never happened), Mr. Spence stated (June 8 transcript, p. 68)(R. p. 198, lines 13-14). The ignorance of the lower courts of a deposition and exhibits on which it **twice** based its erroneous judgments is confirmed by John Cross in his sworn statement after witnessing the unopened transcript in the court record on **August 19, 2011**, as already stated. The snap judgment by Cottingham that the trial court followed law and procedure is absurd. **His order should be reversed, and the matter re-opened for an evidentiary hearing.**

10. **ARGUMENT** regarding the Tenth Issue on Appeal. **THE CIRCUIT COURT ERRED in refusing to overturn judgment when** Appellant showed the state court **usurped** exclusive federal jurisdiction *ab initio* in matters involving a jurisdiction of \$75,000 or more that are between a Citizen of this state and a citizen of foreign state.

Jurisdiction can be challenged at any time. Appellant did challenge timely. Since there is no contract, ***the trial court never acquired jurisdiction of the subject matter and diverse parties.*** It usurped *in personam* jurisdiction, yet obstructed Appellant’s subpoena, clearly indicating it could not compel a foreign litigant to appear (JP Morgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd. (01-651) 536 U.S. 88 (2002)). Appellant answered the original complaint timely on **December 11, 2009**, but was not notified until late March of the **February 18, 2010** “order of reference” based on SCRCP 53 for alleged failure to respond. Appellant objected timely on **April 9, 2010** to the Rule 53

“order.” This matter is federal *ab initio*, according to 28 USC 1332. Appellant moved the trial court timely in her Rule 12(b) motion to dismiss the case due to lack of jurisdiction of the subject matter and parties, but was denied. **The lower court is in error.**

**28 USC 1332** – JURISDICTION AND VENUE – DISTRICT COURTS;

JURISDICTION – Section 1332 – Diversity of citizenship; amount in controversy; costs

(a) The district courts *shall have original jurisdiction of all civil actions* where the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs, and is between – 1. **citizens of different States;**

2. citizens of a State and **citizens or subjects of a foreign State.**

Respondent is based in New York and operates from Santa Ana, California. Its Global Ultimate Parent on Dun and Bradstreet is in Frankfurt, Germany. Deutsche Bank means “German Bank.” In Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), the U.S. Supreme Court set three conditions precedent before a state court can claim jurisdiction:

- (1) it must have jurisdiction of the subject matter
- (2) it must have jurisdiction of the parties
- (3) the parties must be “**all citizens of the same state**”

Thus, the trial court erred *ab initio* on the threshold issue of jurisdiction. In the immortal words of Justice Johnson in Martin v. Hunter’s Lessee, 14 U.S. 304, “*It is an acknowledged principal of, I believe, every court in the world that **not only the decisions, but everything done under the judicial process of courts not having jurisdiction are, ipso facto, void.***” Accordingly, S.C. Code Ann. § 33-15-101f(1986) is **unconstitutional** (see 11<sup>th</sup> Amend.) if it permits a **citizen of foreign state** that is not registered to transact business in this state (**R. p. 401**) or to maintain an action in any court in this state, to sue

a Citizen of this state, while this Citizen is obstructed by this state from compelling her foreign opponent to appear, just because the court lacks *in personam* jurisdiction. The transcript shows the trial court believed Respondent must be so registered (**R. p. 193, line 22-p. 194, line 15**) and instructed Appellant on how to subpoena a Deutsche Bank officer (**R. p. 201, lines 8-25**), only to renege. **The lower court's order is due to be reversed.**

11. **ARGUMENT** regarding the Eleventh Issue on Appeal. **THE CIRCUIT COURT ERRED** by acting with extreme bias and as an unqualified tribunal.

Edward B. Cottingham acted with extreme prejudice. Himself not duly seated by law, he “ordered” the constitutionally elected sheriff for Lexington county to eject Appellant and her husband from their home. “*I want them out of there!*” (t’script, p. 33, **R. p. 181, line 12**) he said angrily. At the Aug. 1 “hearing,” four Lexington county sheriff’s deputies menaced a woman without cause who is all of five-feet one-inches tall, weighs 120 pounds, and has never been a menace to anyone in her 55 years of life, impairing her ability to defend herself in a hostile setting. One sat close at a diagonal and glared at her nonstop for the entire 40-minute “hearing,” refusing to stop when asked. Another approached her from behind, his hand on his holstered gun in intimidation. On page 32 (**R. p. 180, lines 11-14**), Cottingham states, “*It’s clear to me that what is going on here is you’re just using one delaying tactic after another to keep the owner of that property from possession and he’s entitled to it!*” On page 32, “*Prepare me an eviction notice to the sheriff of Lexington County and I want them evicted . . . these proceedings have gone on long enough!*” (**R. p. 180, line 24-p. 181, line 6**). On page 33 (**R. p. 181 lines 12-18**), “. . . *I want them (the Crosses) out of there! . . . here you have an honest purchaser . . . and you are trying to deny him access to his own property.*” **Ms. Cross:** “*I*

*object to that, judge, because that is (just) absolutely not correct.*” (April 29, 2011 Cross filed an “Affidavit of Non-Abandonment” - **R. pp. 335-339**). On page 14 (**R. p. 166, line 20**), he stated angrily, *“It’s been going on long enough!”* On p. 35, “. . . but I’m telling you that I want the sheriff to evict! This has gone on long enough!” (**R. p. 183, lines 6-7**).

**The biased order is due to be reversed.** Bracey v. Warden, 520 U.S. 899 (1997)

12. **ARGUMENT** as to the Twelfth Issue on Appeal.. **THE CIRCUIT COURT ERRED** in **refusing to overturn judgment when** purported agents for Deutsche Bank and the trial court itself failed to obey state law at 36-3-501(b)(2) and the rules of Court, mandating that “upon demand” of Appellant, the agents **MUST** produce “*reasonable evidence of authority*” that they represent a Respondent that simply does not exist..

Appellant repeatedly demanded that purported counsel for Deutsche Bank exhibit “**reasonable evidence of authority**” that he represents the bank. On **June 21, 2010** Cross filed a CONSTRUCTIVE NOTICE AND DEMAND FOR PRODUCTION for proof (**R. pp. 137-143**), including accounting ledgers. However, the lower court and “counsel of record” both ignored the law and the rules. *The real party never appeared, and so never stated a claim, never ratified commencement of the action, is not “represented” by anyone, and does not exist.* Appellant stands deprived of her property by a “shell game” and a *sham legal process* moved entirely by GMAC and Finkel Law Firm. Ronald Blankenship assisted GMAC’s Juan Antonio Aguirre in perjured testimony at deposition. If not, *why has the bank ‘hired’ a new attorney to cover up these crimes?* Neither does Mark Wierman represent Deutsche Bank. Appellant asks this Court to rule Mr. Blankenship into court to show cause why he should be released from this case.

13. **ARGUMENT** as to the Thirteenth Issue on Appeal. **THE LOWER COURT ERRED** as to *res judicata*. A void judgment cannot be final based on fraud on the court.

Appellant expects Respondents to oppose her with the shop-worn cry of “*res*

*judicata*” and *stare decisis*. **The alchemist’s doctrine of *res judicata*, however, cannot lawfully transform a void judgment into a valid one.** Fraud is a weak support for *res judicata*. It should be simple for Respondent to produce the originals for forensic analysis, and patently “unfair” to Appellant if they refuse. Rules 60(b)(2), 60(b)(3) and 60(b)(4) of the S.C. Rules of Civil Procedure *exist for a reason*. They prescribe conditions for vacating a “**final**” judgment. The U.S. Supreme Court already decided this issue. Theirs is the Supreme Law of the Land. In the majority opinion in United Student Aid Funds, Inc., v. Francisco J. Espinosa, 553 F. 3d 1193, Clarence Thomas explained the nature of a **void judgment** and when an aggrieved party may seek relief from a “final” judgment. When there is *fraud*, a judgment cannot be *final*, but is void *prima facie*. “**Rule 60(b), however, provides an exception to finality,**” Justice Thomas wrote for the majority, “that allows a party to seek relief from a final judgment, and request **reopening** of his case under a limited set of circumstances,” *id.* at 528. Specifically, Rule 60(b)(4) *authorizes the court to relieve a party from a final judgment if “the judgment is void.”* “A void judgment is a “legal nullity . . . “Although the term ‘void’ describes a result . . . it suffices to say that a void judgment is one so affected by a fundamental infirmity that *the infirmity may be raised even after the judgment becomes final.*”

Rule 60(b)(4) applies in rare instances where a judgment is premised either on a certain type of **jurisdictional error** or on a **violation of due process** that deprives a party of **notice** or the **opportunity to be heard**, he stated. In Commissioner v. Sunnen, 333 U.S. 591, 597 (1948), the Court ruled that *res judicata* can only apply “**absent fraud**” and other defects. **It cannot apply in this case.** See also Gonzales v. Crosby, 545 U.S. 524, 529 (2005). The fraudulent conveyance should not be allowed by this Court to stand. See

Farmer's Bank v. Bradham (1924) 129 S.C. 270, 123 S.E. 835; and Von Elbrecht v. Jacobs, 286 S.C. 240, 332 S.E. 2d 568, 1985 S.C. App. LEXIS 414 (S.C. Ct. App. 1985).

Appellant asks the Court to adopt the wisdom of the Alabama Court of Civil Appeals in its case cited in Patterson v. GMAC MORTGAGE, LLC, Ala. Civ. App. 2011. Both cases are identical to this case and to the Boyko **Deutsche Bank** cases. The Court held that GMAC and Bank of America Home Loans both lacked standing to foreclose, **because they had not been assigned the mortgage before initiating foreclosure.** "We further held that, because the *foreclosure* and the *foreclosure deed* were invalid, BAC did not acquire legal title to Sturdivant's house through the foreclosure deed and thus BAC **did not own an interest in the house when it commenced its ejectment action.** We further held that, because BAC did not own any interest in Sturdivant's house when it commenced its ejectment action, BAC did not have standing to bring that action and, consequently, **the trial court never acquired subject-matter jurisdiction over the ejectment action.** Because BAC did not have standing to bring its ejectment action, we held that the judgment of the trial court was *void*, and **we vacated that judgment.** Moreover, because a *void judgment* will not support an appeal, we dismissed the appeal."

V  
CONCLUSION

Accordingly, this Court should reverse and remand the lower court judgment for an evidentiary hearing and a re-opening of this case before a properly seated judge.

**Janice Cross SO MOVES  
THIS HONORABLE COURT.**

Executed on March 20<sup>th</sup>, 2013

Respectfully submitted,

by: Janice Cross  
Janice Cross, Real Party in Interest