

5

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002373

H & R Block Bank, FSB,

Respondent

v.

Ziraili M Elbey, a/k/a/ Ziraili Mohassan El Bey, WKFC Living Trust Under Trust Agreement dated June 4, 2010 by and through its Trustee Wellesley K. Clayton and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, Defendants,

Appellant

Of Whom Ziraili M. Elbey is the Appellant.

**RECEIVED**  
OCT 16 2013  
SC Court of Appeals

**APPELLANT'S REPLY BRIEF**

Come now Appellant, Ziraili M Elbey, and a natural born woman on the land, not an attorney, hereby filed 23<sup>rd</sup> January 2014 an initial brief according to SCACR 208. On and for the record, Appellant received on Saturday, October 11, 2014 Respondent's initial brief in violation of SCACR 208(b)(1)(A)-(E).

SCACR 208(b)(2) states, "If a respondent does not include his own statement of the case, he shall be bound by the matters stated or alleged in appellant's statement of the case. If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case". Respondent agrees with Appellant's initial brief.

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

However, 1) Appellant responds in a timely matter to Respondent's initial brief according to SCACR 208(a)(3). 2) Appellant is awaiting this court's answer to a motion titled **Mandatory Judicial Notice of Adjudicative Fact Motion**, dated 24<sup>th</sup> September 2014, and 3) Appellant is awaiting a reply letter from the Clerk of Court addressing a letter sent from this court dated 5<sup>th</sup> September 2014 advising Respondent to submit its initial brief by 8<sup>th</sup> October, 2014. (See Exhibit "A")

October 14<sup>th</sup>, 2014

By: Ziraili M. Elbey  
Ziraili M Elbey, *In Propria Persona*  
9789 Charlotte Highway, #400-191  
Ft. Mill, South Carolina, 29707  
(803) 233-2665

Cc: File  
Brock & Scott, PLLC

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**TABLE OF CONTENTS**

Table of Authorities .....4  
Statement of Issues on Appeal.....8  
Statement of the Case .....8  
Facts .....11

**ARGUMENT**

1. DID THE LOWER COURT ERR IN GRANTING, NOT CHALLENGING, PLAINTIFF'S, H & R BLOCK BANK, FSB, JURISDICTION and STANDING TO FILE A LAWSUIT ACTION IN THE STATE OF SOUTH CAROLINA?...

CONCLUSION.....18

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**TABLE OF AUTHORITIES**  
**CASES**

*BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E. 2d 547 (Ct. App. 2012.)

*Bowen v. Needles Nat. Bank*, 94 F 925, 36 CCA 553, certiorari denied in 20 S Ct 1024, 176, U.S. 682, 44 LED 637

*Carpenter v. Logan*, 83 U.S. 271 (1873)

*Cost of Wisconsin v. Shaw*, 291 S.C. 435, 357 S.E. (2d) 20 (1987)

*Chet Adams Co. v. James F. Pederson Co.*, 413 SE 2D 827- S.C.: SUPREME Court (1992)

*Deutsche Bank Nat. Trust Co., v. Heinrich*, Dt 2011-CP-10-1060, Ninth Judicial Circuit Ct. Charleston, S.C., (July 2013)

*Dearman v. Trimmier*, 26 S.C. 506, 513, 2 S.E. 501, 505 (S.C. 1887)

*Doe v. Marion*, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004),

*Duckworth v. McKinney*, 58 S.C. 418, 36 S.E. 730 (1900)

*Farmers and Miners Bank v. Bluefield Nat Bank* 11 F 2d 83, 271 U.S. 669

*Fina Supply, Inc. v. Abilene Nat. Bank*, 726 S.W. 2d 537, (1987)

*Hodges v. Lake Summit Co.*, 155 S.C. 436, 447, 152 S.E. 658, 662 (S.C. 1930)

*Patterson v. Rabb*, 38 S.C. 138, 17 S.E. 463 (1893)

*Talbert v. Talbert*, 97 S.C. 136, 145, 81 S.E. 644 (S.C. 1914)

*Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001).

*Williams v. Lawrence*, 194 S.C. 1, 8 S.E.2d 838 (S.C. 1940)

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**STATUTES**

S.C. Code Ann § 29-3-330

S.C. Code Ann § 33-15-101(a)

S.C. Code Ann § 33-15-102

S.C. Code Ann § 33-15-102(a)

S.C. Code Ann § 33-15-102(d)

S.C. Code Ann § 16-17-735 (2003)

S.C. Code Ann § 15-75-60 (2005)

S.C. Code Ann § 30-9-30 (2007)

S.C. Code Ann § 33-23-140(B)

S.C.UCC Code § 36-3

S.C. Code Ann §36-3-603(1)

S.C. Code Ann Section 1692e(2)(A)

FDCPA 15 U.S. C. §1601 as Amended

18 U.S.C. 241, 242, 1983, 1985, 1986

**OTHER AUTHORITIES**

Barnsdall Refining Corn. F. Birnam Wood Oil. Co. 92 26 817 S.C. 435, 357 S.E. 2d 20 (1987)

Cost of Wisconsin v. Shaw, 292 S.C. 435, 357 S.E. 2d 20 (1987),

GILBERTO SALDIVAR, SANDRA CANALES SALDIVAR, Chapter 13, Debtor(s). GILBERTO T SALDIVAR, et al., Plaintiff(s), v. JPMORGAN CHASE BANK, N.A., et al., Defendant(s). Case No. 11-10689, Adversary No. 12-01010. United States Bankruptcy Court, S.D. Texas, Brownsville Division (June 5. 1913)

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Heinrich v Deutsche Bank National Trust, SC Court of Common Pleas Order  
Docket No: 2011-CP-10-1060

H & H Glass Co. v. Wynne, 289 S.C. 389 S.E. 2d 523 346 (1986)

Hoover v. Hoover, 271 S.C. 177, 246 S.E. 2d 179 (1978)

Hot Roll Mfs. Co. v. Cerone Equipment Co., 38 A.D. 2d 339, 329 N.Y.S. 2d 466  
(1972)

U.S. v. Throckmorton, 98 U.S. 61, at pg. 65

Video Engineering Co. b. Foto-Video Electronics, Inc., 207 Va. 1027, 154 S.E. 2d  
7 (1967)

WELLS FARGO BANK, N.A., AS TRUSTEE FOR ABFC 2006-OPT3 TRUST,  
ABFC ASSET-BACKED CERTIFICATES, SERIES 2006-OPT3, Plaintiff, v.  
ROTIMI EROBOBO, THE CITY OF NEW YORK ENVIRONMENTAL CONTROL  
BOARD, "JOHN DOE" AND "JANE DOE" SAID NAMES BEING FICTITIOUS, IT  
BEING THE INTENTION OF Plaintiff TO DESIGNATE ANY and ALL  
OCCUPANTS OF THE PREMISES BEING FORECLOSED HEREIN,  
Defendants. 31648/2009. Supreme Court, Kings County. (April 29, 2013)

Whipp v. Iverson, 43 Wis 2d 166.

DESIGNATION OF MATTER INCLUDED IN  
THE RECORD ON APPEAL

- Plaintiff's Complaint
- Plaintiff's Summons and Notices
- Plaintiff's files a Lis Pendens
- Defendant's Answer – February 04, 2011
- Plaintiff's Certificate of Exemption/withdrawal from Arbitration & Mediation
- Plaintiff's Notice Required by the Fair Debt Collection Practices Act 15 U.S.C.
- Plaintiff's Notice of Right to Foreclosure Intervention
- Plaintiff's Notice of Motion and Motion for Summary Judgment
- Plaintiff's Notice of Hearing of Final Hearing
- Order of August 22, 2012
- Motion and Order of Stay due to Bankruptcy
- Motion and Order to Restore with Exhibit "A"
- Order of August 01, 2013

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

- Defendant's Discovered Evidence Supplement to Verified Motion to Vacate Quash Void Judgment
- Defendant's Newly Discovered Evidence Notice of Actual Fraud
- Defendant's Answer to Plaintiff's Motion and Order to Restore filed August 5, 2013
- Defendant's Motion to Vacate Judgment of Foreclosure and Sale filed August 6, 2013
- Defendant's Refusal to Plaintiff's Offer to Contract filed August 9, 2013
- Defendant's Motion to Amend and Set Aside or Void Judgment filed August 20, 2013
- Defendant's Release Deficiency Demand and Foreclosure Judgment filed August 21, 2013
- Defendant's Affidavit of Fact
- Plaintiff's Motion to Strike and for Sanctions
- Defendant's Objections/Answers Plaintiff's Notice of Motion to Strike and for Sanctions
- Defendant's Counter Notice of Motion and Motion to Strike and for Sanctions
- Order of November 14, 2013
- Transcript of October 24, 2013 Hearing with Exhibits
- Supplement Special Referee's Report and Judgment of Foreclosure and Sale
- Order filed November 27, 2013

1. Bank One, N.A. v. Dave, State of Michigan Circuit Court

Case# 03-047448-CZ, (2003)

2. Chet Adams Co. v. James F. Pederson Co., 413 SE 2D 827- S.C.:

SUPREME Court (1992)

3. Deutsche Bank v. Heinrich, Charleston, SC, Ct of Common Pleas,

9<sup>th</sup> District, Case. No. 2011-CP-10-1060, July (2013)

4. Deed of Full Reconveyance

A, Mortgage Satisfied, dated 3/17/2010.and, again on

B. Mortgage Satisfied, dated 2/19/2013

5. H & R. Block Bank, FSB, Certificate of No Record – The State of South Carolina

6. Examination of Assignments of Mortgage Conducted in the Essex

Southern District Registry of Deeds, by M McDonnell, CFE

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

7. Executive Summary – Forensic Professionals Group USA, Inc (2011)
8. Fannie Mae Loan Lookup Results
9. Full Securitization Audit for Elbey – Loan Securitization Audit Report
10. H & R Block Bank, FSB Assignment with Robo-Signers filed with County Register dated August 2010, but initially signed and pre-dated March 29, 2006
11. SC Chief Justices' Administrative Order issued June 5, 1992, sham document described by Special Referee to Foreclosure
12. Alleged Mortgage, Note & (Allonge attachment unknown to Appellant)

**STATEMENT OF ISSUES ON APPEAL**

- 1 DID THE LOWER COURT ERR IN GRANTING, NOT CHALLENGING, PLAINTIFF'S, H & R BLOCK BANK, FSB, JURISDICTION and STANDING TO FILE A LAWSUIT ACTION IN THE STATE OF SOUTH CAROLINA?

**STATEMENT OF THE CASE**

On January 14, 2011 H & R Block Bank, FSB,(hereafter referred to as, the bank) a mortgage servicer, not creditor filed a foreclosure action against Ziraili M Elbey. This error led to the eviction of Ziraili M Elbey leaving Appellant homeless. Respondent failed to comply with S.C. Code Ann. §33-15-102(a) (1990) by stating that Respondent, the bank is a business entity duly authorized to conduct business in the State of South Carolina. (Complaint pg. 1) Respondent, the bank lacked standing to maintain the suit because it was **not authorized** to do business in South Carolina as required by S.C. Code Ann § 33-23-140(B) (Supp. 36\*36 1986). The Respondent, the bank commenced a Lis Pendens

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

showing **Option One Mortgage Corporation**, original mortgage lender and creditor<sup>1</sup> extended credit to Appellant, dated March 29, 2006 in Book 1486, pg. 1 in Lancaster County Registry, hereinafter Mortgage and accompanying the Note. Lis Pendens in this case, further states, **Option One Mortgage Corporation**, the creditor and original mortgage lender transferred Mortgage and Note to Respondent, the bank by Robo-signed assignment Book 2265 and pg. 129, August 10, 2010. (Lis Pendens pg. 1.)

According to The Fair Debt Collection Practices Act (hereafter referred to as FDCPA) as amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996) § 803. Definitions [15 USC 1692a] **Option One Mortgage Corporation** may transfer an assignment, the transferee does not become the creditor by the FDCPA definition. The FDCPA "creditor" definitions does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another. This means that as stated in the initial filing of Summons, Notices and Complaint with the Court of Common Pleas in Lancaster, S.C. an err took place, meaning, 1) the bank was never, the creditor according to the FDCPA definition of a creditor, 2) the bank was not registered to conduct business in the state of South Carolina under S.C. Code Ann § 33-23-140(B), 3) the court never authorized a stay to determine whether the bank was qualified to transact business or encourage the bank to obtain a certificate of authority to eliminate the temptation to raise S.C. Code Ann § 33-15-102. (See Lis Pendens pg.1. Plaintiff's Notice Required by the Fair Debt Collection

---

<sup>1</sup> Definition the term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another. FDCPA § 803. Definitions [15 USC 1692a]

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Practice Act 15 U.S. C. §1601, As Amended pg. 1., and S.C. Certificate of No Record from S.C. Secretary of State.)

The primary question in this case is whether the Special Referee for the S.C. Court of Common Pleas err in granting, not challenging Plaintiff's H & R Bank, FSB jurisdiction and standing to file a lawsuit action against Appellant in the State of South Carolina jurisdictional or whether it merely affects the bank's capacity to sue under S.C. Code Ann § 33-15-102? (S.C. Secretary of State's Certificate of No Record pg. 1.) And, further did the Special Referee err in accepting the authenticity of the Summons, Notices and Complaint submitted by the Brock and Scott, PLLC without noting violation of the SCRCP Rule 11 [see Transcript lines 1-25 on pgs.44-46], the Fair Debt Collection Practice Act Notice, and S.C. Code Ann Section 33-15-102? The Complaint states that the SC Court of Common Pleas has proper jurisdiction over the subject matter and the parties of this action. Did the Special Referee consider S.C. Code Ann § 33-15-102 and S.C. Code Ann § 33-23-140(B) as each S.C. Ann Code affected the bank not registered to do business in South Carolina to sue? The Special Referee allowed foreclose and accepted without query in numerous false, deceptive and misleading filings by Brock and Scott, PLLC as the Court of Common Pleas in Lancaster, SC foreclosed and evicted Appellant. The Special Referee continued signing court Orders submitted by the banks counsel, Brock and Scott, PLLC, debt collectors also under the FDCPA submitting false, deceptive, or misleading documents to the Lancaster Court of Common Pleas FDCPA 15 U.S.C. Section 1692e(2)(A). This

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

is also a violation under 18 U.S.C. 241, 242, 1983, 1985, 1986. (See bottom pg. 1 of initial filing FDCPA Notice)

**FACTS**

- ❖ **Option One Mortgage Corporation** is the original lender and creditor as defined under the FDCPA as Amended.
- ❖ Brock and Scott ,PLLC (hereafter referred to as B&S), counsel for the bank is a Debt Collector, under the Fair Debt Collection Practice Act, as amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996).
- ❖ H & R Block Bank,FSB is a Debt Collector, under the FDCPA, as amended
- ❖ Respondent, H & R Block Bank, FSB did own Appellant's Mortgage and Note.
- ❖ Fannie Mae did not own Appellant's Mortgage and Note
- ❖ Freddie Mae did not own Appellant's Mortgage and Note
- ❖ FHLMC did not own Appellant's Mortgage and Note  
(Compliant states that Appellant's Mortgage and Note was owned by H & R Block Bank, FSB, owned or guaranteed by Fannie Mac or owned by FHLMC. Who owns it? Again, Compliant pg. 3. )
- ❖ B & S (Complaint pg. 3 # 14) states that Plaintiff is not the holder of the Mortgage and Note.
- ❖ H & R Block Bank, FSB is not registered to conduct business in the state of South Carolina. The S.C. Secretary of State issued a Certificate of No Record for this bank.

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

- ❖ H & R Block Bank, never attended any of the S.C. District Federal Bankruptcy court 241 hearings as “CREDITOR” for Appellant’s mortgage and note. (Noticed by USPS)
- ❖ B & S never attended any of the S.C. District Federal Bankruptcy court 241 hearings to represent, the bank as “CREDITOR” for Appellant’s mortgage and note. (Noticed by USPS)
- ❖ Appellant’s Bankruptcy was discharged by order January 14, 2013. A “no asset” case.
- ❖ B & S after Bankruptcy discharged moved the S.C. Court of Common Pleas to restore the previous foreclosure order using sham inserts to support order
- ❖ That lawyers Brock & Scott, PLLC for Respondent, H & R Block Bank, FSB moved in the lower court to restore previous court order dated August 01, 2012 based on the following:
  - 1.Appellant’s was discharged by order of Bankruptcy Court dated January 14, 2013, and
  2. Pursuant to a Family Court Order issued by Chief Justices’ Administrative Order issued June 5, 1992 stating in the interest of judicial economy, justice and equity and for the good cause.  
  
(S.C. Code Ann. §16-17-735(2003); S.C, Code Ann. § 15-75-60 (2005)  
[Transcript. p.39, line1- 25], [Transcript p.40, line 1-7]

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

- ❖ B & S for Respondent knowingly file a frivolous complaint in violation of Rule 11, SCRCF [see Transcript lines 1-25 on pgs.44-46]. In addition to the above violation of Respondent's lawyers, and, the Special Referee declared the above Family Court Order reference in Respondent's August 01, 2013 Motion to and Order to Restore case 2011-CP-29-00035 in the lower court. Both lawyers and Special Referee agreed this insert and action on the part of the lawyers was a "sham motion and administrative order". This legal action was signed by the Special Referee in the lower court and described by the Special Referee as sham pleading defined by the S.C. Code Ann. §16-17-735(2003); S.C, Code Ann. § 15-75-60 (2005). Let it be known that the Appellant has been injured by the Respondent and their lawyers by sham legal process as defined by the criminal statute; and S.C. Code Ann. § 30-9-30 (2007), (prohibiting the filing of sham legal process and providing for civil remedies including actual damages, punitive damages, costs and attorney's fees against those who file sham legal process)<sup>2</sup> [Transcript. p.39, line1- 25], [Transcript p.40, line 1-7]
- ❖ That Special Referee denied the hearing of Appellant's amended motion to [see Transcript p.39, line1- 25], [Transcript p.40, line 1-7] dismiss on the grounds of Rule 12(b)(6), SCRCF as Plaintiff lacked the necessary standing to file lawsuit, plus Mortgage Assignment was signed by nationally known Robo-Signers

---

<sup>2</sup> The statutory provisions are available on the South Carolina General Assembly's website, [www.scstatehouse.gov](http://www.scstatehouse.gov).

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

❖ Appellant denied due process. (see Transcript pgs.47-49, lines 1-25).

**ARGUMENTS**

I It has been previous held by the court of appeal in *Postal v. Mann*, 308 S.C. 385, 418 S.E. 2d 322 (S.C. App. 1992, it was well settled that parties are judicially bond by their pleadings, and by any allegations, statements, or admissions contained in therein. Plaintiff admitted in its Complaint that it is doing business South Carolina, but did not indicate that they are “transacting business in interstate commerce”. See Carolina Code 33-15-101(a) states that “[a] foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State”. [see Defendant’s “R” exhibit no. 1] placed a copy of a securities instrument within this claim and not have or being The holder in due course as required under the South Carolina UCC’s code violated Title 18 sections 470 to 473 and 474. In *Fina Supply, Inc. v. Abilene Nat. Bank*, 726 S.W. 2D 537, (1987), it says “Party having superior knowledge who takes advantage of another’s ignorance of the law to deceive him by studied concealment or misrepresentation can be held responsible for that conduct.” “In the federal courts, it is well established that a national bank has no power to lend its credit to another by becoming surety, indorser, or guarantor for him.” *Farmers and Miners Bank v. Bluefield Nat’l Bank*, 11F 2d 83, 271 U.S. 669: “a National Bank has no power to lend its credit to any person or corporation.” *Bowen v. Needles Nat. Bank*, 94 f 925, 36 cca 553, certiorari denied in 20 S. Ct 1024, 176, U.S. 682, 44 LED 637.

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

II. In South Carolina, a mortgage is a mere security for a debt. *Williams v. Lawrence*, 194 S.C. 1, 8 S.E. 2d 838 [S.C. 1940]; *Patterson v. Rabb*, 38 S.C., 138, 17 S.E. 463 (1893); *Blackwell v. Blackwell*, 289 S.C. 470, 346 S.E.2d 731 [S.C. ct. App. 1986]. A mortgage is different from other instruments in that, in order for it to be a valid instrument, there must be a debt or obligation of the mortgagor for which it is given as security. *Williams v. Lawrence, supra*. If there is no debt, then there is no valid mortgage. *Duckworth v. McKinney*, 58 S.C.418, 36 S.E. 730 [1900]. In *Carpenter v. Deutsche Bank National Trust v. Heinrich* in the Ninth Judicial Circuit, docket no.: 2011-CP-10-1060, It is clear that to have standing in a foreclosure case, a Plaintiff must not only be the holder and owner of the original Note, but also the Mortgage as well. Plaintiff claimed possession of the original Note with an Allonge which is indorsed in blank, at the time of the Summary Judgment August 2013. Plaintiff claims that the note is a negotiable instrument under the South Carolina Uniform Commercial Code §36-3 et seq. which would entitle them sue in foreclosure action. However, Plaintiff according to the Summons, Notices, and the Complaint is seeking foreclosure on the mortgage that is attach to real property as opposed to simply suing on the note. The idea that the Mortgage follows the Note is one which has been repeatedly confirmed by the “South Carolina recognizes the ‘familiar and uncontroverted proposition’ that ‘the assignment of a note secured by a mortgage carries with it an assignment of mortgage. Plaintiff in its claims at the final hearing, October 24, 2013 clearly stated that it own the Note and the Mortgage, and presented so called original copies of the Mortgage and so called original copies of the Note. However, in

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

*Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 2 71, 21 L.Ed. 313 (1872), clearly support the notion that the Plaintiff must clearly **own the Note and the Mortgage** to foreclose on the property. This holding has long been recognized in state of South Carolina law as well. *Talbert b. Talbert*, 97 S.C. 136, 145, 81 S.E. 644, 647 (S.C. 1914); *Patterson v. Rabb*, 38 S.C. at 467; and *Dearman v. Trimmier*, 26 S.C. 506, 513, 2S.E. 501, 505 (S.C. 1887).

III Plaintiff failed to show that it owned the Mortgage and clearly misrepresented being the creditor at the time the initial Summons, Notices, Complaint and FDCPA notice as amended was filed, January 14, 2011. Plaintiff merely contends to be the holder and has the right to enforce the Mortgage and the Note in the ( Summons, and Notices, pgs. 3-4). The state court of appeals made a recent decision in *BAC home Loan Servicing, L.P. v Kinder*, 398 S.C. 19, 731 S.E.2d 547 (Ct.App. 2012). “[T]he assignment of the mortgage does not need to be recorded, and failure to do so has no effect on the rights of assignee.” The Assignment in this case was colorable, having been made without consideration, of bank authorities signing the Assignment, and for the purpose of evading a disability of the assignor to sue, or of enabling H & R Block Bank, FSB, to confer jurisdiction on a particular Court and ask specifically an err by Special Referee.

*Hodges v. Lake Summit co.*, 155 S.C. 436, 447, 152 S.E. 658, 662 (S.C. 1930- quoting from 5<sup>TH</sup> C.J., 940).One might distinguish the facts of *BAC Home Loan*

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

*Servicing, L.P. v. Kinder* from this case as the Assignment of Mortgage was defective and ineffective with Robo-signers as bank officials, plus fails to meet the definition as a creditor to sue Appellant; *Kinder* was after the foreclosure was already complete and the issue at dispute in that case was surplus funds going to the Assignee. Filing ineffective assignment is not the issue in this case, but ownership of the Mortgage and Note. Let it be clear, that to have standing in this foreclosure case, Plaintiff must not only be the holder and owner of the original Note, but also the Mortgage as well, *Heinrich v deutsche bank National Trust Co, Charleston, S.C. Court of Common Pleas 9<sup>th</sup> Judicial Circuit Docket No: 2011-CP-10-1060*. Plaintiff failed in its Complaint in this case to meet this criteria. Plaintiff lacks the standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b)(6) SCRCF in law appears to be appropriate. Plaintiff filing is not the issue, but ownership of the Note, standing in this foreclosure case. It is clear that to have standing in this case, Plaintiff must not only be holder and owner of the original Note, but also the Mortgage as well. The Plaintiff's initial Complaint, Summons and Notices in this case fails to meet this criteria. DID THE LOWER COURT ERR IN GRANTING, NOT CHALLENGING, PLAINTIFF'S, H & R BLOCK BANK, FSB, JURISDICTION and STANDING TO FILE A LAWSUIT ACTION IN THE STATE OF SOUTH CAROLINA?

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**CONCLUSION**

In sum, Section 33-15-102(a) requires a foreign corporation transacting business in this State to obtain a certificate of authority before it can maintain a proceeding in any court in this State is the law. **Section 33-23-140(B)**, the predecessor of **Section 33-15-102(a)**, provided that a **foreign corporation** could not maintain a suit until it was authorized to do business in this State is the law. H & R Block Bank, FSB is not only, not registered to transact business, but H & R Block Bank, FSB is not a creditors as proclaimed by their counsel, or either as defined under the FDCPA as amended, and as purported by their counsel, Brock and Scott PLLC in initial filing, Notices, and Complaint. H & R Block Bank, FSB Further, was a “no show” as creditor at all SC District Federal Bankruptcy 241 hearing for all creditors. Brock and Scott PLLC should be sanctioned as a licensed law firm in the state of South Carolina under Rule 11, SCRPC for false, deceptive and misleading and fabricated documents. And, the prevailing party, Appellant, Ziraili M Elbey should be compensated for being evicted, loss of house, monthly storage and other personal expenses. Further, the Circuit Court’s should void Appellant’s foreclosure and eviction order which have led to eviction and Homelessness of this Appellant and grant quiet title to Appellant.

Compensate - Sanction – Reverse - Remand

**APPELLANT'S REPLY BRIEF**  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002373

**RECEIVED**  
OCT 16 2014  
**SC Court of Appeals**

H & R Block Bank, FSB,

Respondent

v.

Ziraili M Elbey, a/k/a/ Ziraili Mohassan El Bey, WKFC Living Trust Under Trust Agreement dated June 4, 2010 by and through its Trustee Wellesley K. Clayton and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, Defendants,

Appellant

Of Whom Ziraili M. Elbey is the Appellant.

**PROOF OF SERVICE**

I certify that Brock & Scott, PLLC, Attn: Chad Burgess, 3800 Fernandina Rd., Ste 110, Columbia, South Carolina, 29210 received a copy of the **APPELLANT'S REPLY BRIEF** by depositing a copy of it in the U.S. Mail, postage prepaid, on October 14<sup>th</sup>, 2014 addressed to above counsel listed and this Appellate Court.

October 14<sup>th</sup>, 2014

By: Ziraili M. Elbey  
Ziraili M Elbey, *In Propria Persona*  
9789 Charlotte Highway, #400-191  
Ft. Mill, South Carolina, 29707  
(803) 233-2665

APPELLANT'S REPLY BRIEF  
THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**Certificate of Appellant**

RECEIVED

OCT 16 2014

SC Court of Appeals

The undersigned hereby certifies that the **APPELLANT'S REPLY BRIEF** contain all material as listed and copies previously submitted and proposed to be included by any of the parties and not any other material.

October 14<sup>th</sup>, 2014

By: Zirah M. Elbey  
Zirah M Elbey, *In Propria Persona*  
9789 Charlotte Highway, #400-191  
Ft. Mill, South Carolina, 29707  
(803) 233-2665

Five (5), Designation of Matters (**not all**) attached to this Appellant's Reply Brief  
Listed below: Easy Reference

- # Plaintiff's Summons
- # Plaintiff's Notices ( Lis Pendens, Notice Required by Fair Debt Collection Practices Act 15 U.S.C SEC 1601, as Amended, Certificate of Exemption/withdrawal from Arbitration and Mediation,
- # Plaintiff's Complaint
- # Clerk of Court's September 5<sup>th</sup> Letter to Counsel,( Exhibit "A")
- # SC Secretary of State Mark Hammond's Certificate of No Record for Plaintiff H & R Block Bank, FSB, (Exhibit "B")

Case # 2013-002373

10/14/2014

Attention Clerk of Court

RECEIVED

OCT 16 2014

SC Court of Appeals

Please find one copy of the Appellant's Reply Brief as stated in Rule 208 SCACR.

Kindly file all documents with this brief & make it available for the judges.

Please indicated what is due next as I still have a motion pending and a oppositor to be read.

Thanks in advance.

You may respond to me in writing in the next 10 days. Please use self-addressed envelope included

