

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

JUN 30 2015

Maité Murphy, Circuit Court Judge

SC Court of Appeals

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

Melissa Jean Marks, .....Appellant,

v.

Nationstar Mortgage, LLC, .....Respondent.

APPELLANT’S REPLY TO RESPONDENT’S RESPONSE IN OPPOSITION TO  
APPELLANT’S PETITION FOR REHEARING  
AND MEMORANDUM IN SUPPORT

NOW COMES the undersigned pro se Appellant before this Honorable Court and respectfully submits Appellant’s Reply to Respondent’s Response in Opposition to Appellant’s Petition for Rehearing pursuant to Rules 221(a) and 240, SCACR. Appellant seeks to address Respondent’s omissions of material facts, erroneous conclusions, misapplications of law, and misinterpretations of Appellant’s statements as more fully explained herein as follows. In addition, Appellant incorporates all of her previous final appellate briefs, motions, returns, replies and the Record on Appeal that she submitted to this Court to date, the contents of which are fully restated herein by reference.

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ARGUMENTS

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## ARGUMENT

I. Contrary to Respondent's argument, Appellant properly filed a Petition for Rehearing with respect to the Court's Opinion of June 3, 2015, and attached documents in support of her arguments pursuant to Rule 240(c)(3), SCACR.

1. Rule 240(c)(3), SCACR, states in pertinent part, "or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions."

2. Appellant properly submitted her documents in support of her argument that this Court erred in affirming the trial court's finding that estoppel and res judicata bar her causes of action because those documents are not contained in the Record on Appeal or Appendix, so she was required to submit them as exhibits pursuant to Rule 240(c)(3), SCACR.

3. Appellant is not seeking a rehearing or reconsideration of this Court's Order of September 19, 2014, so Respondent's arguments in that regard are misplaced and irrelevant; Appellant is clearly seeking a rehearing with respect to this Court's June 3, 2015 Opinion that disposed of her appeal in favor of Respondent.

4. Appellant's arguments and exhibits were clearly intended to persuade this Court to reconsider its June 3, 2015 Opinion and to open this Court's eyes to see that Appellant has been proven right in her allegations and arguments, so her case does merit a complete and careful review of all her issues and arguments raised in both of her appellate briefs and the Record on Appeal.

5. Appellant is not precluded from providing case law and court rulings in support of her Petition for Rehearing, and this Court has the inherent authority to consider the case law and court rulings Appellant submitted, including the case law and

court rulings in her own bankruptcy case, so Appellant respectfully requests

Respondent's objection be overruled.

- II. Contrary to Respondent's argument, several months prior to the trial court's final judgment, the bankruptcy court acknowledged in essence that either the state court or bankruptcy court could remove an invalid lien from Appellant's real property.

6. During the hearing on Respondent's motion seeking permission to intervene in Appellant's state court action, Appellant explained to the bankruptcy court that her "intention is to bring this matter before the State Court because this is a lien issue and the State Court obviously would have jurisdiction on whether or not we've satisfied under state law and county law and procedure whether the lien is valid."

7. The bankruptcy court replied to the foregoing, "I think either party could remove it in the pending case, but I'm not looking to do it. I'm happy for you to do it wherever you want to do it." (R. p. 753)

8. Prior permission of the bankruptcy court was not necessary because Appellant as a Chapter 13 debtor always maintained standing to file a case, and after being informed of Appellant's pending state court action, the bankruptcy court allowed Appellant's state court action to proceed in state court without expressing any interest in seizing jurisdiction over the matter.

9. The trustee was present at the hearing and abandoned the state court action to Appellant by not objecting when given notice and the opportunity to object; instead, the trustee participated in the hearing and consented to allowing Appellant's state case to proceed.

10. Thus, Respondent is completely wrong that res judicata bars Appellant's state court action; due to the unique facts, circumstances, and arguments Appellant raised

in her pleadings.

11. Respondent's erroneous legal conclusions cannot be lawfully applied to Appellant's case in the same way they were applied in the cases to which Respondent cited because those cases have significantly different sets of facts, circumstances, and legal arguments that were put before the courts that rendered those decisions.

III. Contrary to Respondent's argument, Respondent's admissions and actions nullify the statement Respondent cited to in Appellant's former Chapter 13 plan because they prove Respondent is not and never was the secured creditor and had falsely claimed to be the secured creditor in its bankruptcy proof of claim and had misled the parties and the courts to believe it was the secured creditor.

12. In bankruptcy court, a creditor's proof of claim is considered *prima facie* evidence of its validity, so if no one knows of any reasonable basis for an objection or dispute, no one is going to object to claims prior to or during a Chapter 13 plan's confirmation, which is what happened in Appellant's case.

13. At the time of filing her bankruptcy case, Appellant notified her bankruptcy attorney that she is making her mortgage payments to Respondent, Appellant's bankruptcy attorney completed and filed Appellant's bankruptcy filings on her behalf, and the references to Respondent being the secured creditor were only intended to report who Appellant is paying.

14. Respondent filed a proof of claim in the bankruptcy court misrepresenting that it was the secured creditor; consequently, the interested parties and the bankruptcy court did not know and were not notified that Fannie Mae is claiming to own the mortgage and may have a claim as a secured creditor against Appellant in her bankruptcy case.

15. Generally, the bankruptcy court rules and procedures require all parties in

interest to be disclosed to the bankruptcy court and there are time limitations imposed.

16. No one ever provided Appellant with a notice, letter or explanation prior to confirmation of her Chapter 13 plan disclosing in plain English that Fannie Mae owns the mortgage and the date that occurred, Appellant had no reasonable basis to sit around dreaming up all the companies in the world who might own her mortgage prior to her plan's confirmation, so she did not suspect or discover that Fannie Mae was involved in the mortgage until post-confirmation of her plan.

17. Appellant was prompted to investigate and discover Fannie Mae's involvement as a result of Respondent's unreasonable behavior in refusing to send her billing statements or payment receipts unless she provided proof Appellant had reaffirmed the debt in the bankruptcy court, which she refused to do.

18. In addition, while trying to intervene, Respondent misled the parties, the bankruptcy court and state court when it claimed it was the holder of the note when it was not. All of this is explained in detail and evidenced in Appellant's briefs and the Record.

19. Respondent has since admitted to the state court that Fannie Mae owns the loan, note and mortgage, that if the loan were in default, Respondent would be the proper party to enforce the note, that the loan is not in default, and that it was not in possession of the note on or before the dates Appellant filed her bankruptcy and state cases, which means there was no transfer of the note and mortgage and all the rights and interests arising therefrom to Respondent on or before the operative dates.

20. There cannot be two secured creditors, two holders in due course of the same note, because a cause of action on a note shall not be split and to prevent that, partial assignees generally have no rights under Chapter 3 of the UCC pursuant to S.C.

Code Ann. 36-3-203(d).

21. Respondent did not join Fannie Mae as a party to either the bankruptcy case or state case, Respondent prevented Appellant from joining Fannie Mae in the state case, and Respondent was not claiming to be there representing or defending Fannie Mae's alleged rights or interests in the note and mortgage, so what Respondent is doing is clearly improper.

22. Appellant does not know where the alleged original note is today, it was being held by Respondent's former counsel for safekeeping, but wherever it is today, Respondent did not lawfully or contractually obtain the rights of a holder in due course by virtue of possession on or before the operative dates, and it is improper for Respondent to cite to inapplicable cases and statutes to obfuscate the truth.

IV. Contrary to Respondent's argument, since Appellant's contention is that Respondent is statutorily and contractually barred from obtaining the rights of a holder in due course with respect to the subject note in question, this Court must necessarily review all her issues, arguments and Record on Appeal to determine whether she is correct in light of the facts, evidence and law she submitted in support of her arguments.

23. Respondent admitted in its pleading before the trial court that if the loan were in default, it would be the proper party to enforce the note (R. p. 880), and since Respondent provided no contractual evidence that contradicts its own statement, it is reasonable to assume whatever applicable agreements that may exist between Respondent and Fannie Mae only authorize Fannie Mae's note and mortgage and rights and interests arising therefrom to be transferred to Respondent in the event of a default, which never occurred in this case.

24. In consideration of the foregoing, this Court must necessarily review Appellant's other issues and arguments and cannot rely solely on Respondent's appellate

brief and returns to Appellant's motions to determine the proper application of law to the facts, evidence and circumstances of Appellant's case.

- V. Contrary to Respondent's argument, this Court must necessarily review Appellant's issue of bifurcation because Appellant contends in her appellate brief the trial court erred by determining her fraud claim was barred, but in the event this Court agrees Appellant's fraud claim is barred, Appellant had shown the Court that illegal acts render the mortgage invalid; thus, Appellant's claim of illegal acts should not be barred and should be remanded to the trial court to be decided on the merits.

25. Respondent falsely claims that, "Thus, it is undisputed that Plaintiff discovered the alleged origination issues that form the basis for her fraud claim in 2007." Appellant most certainly and clearly disputes Respondent's misrepresentations of material facts in this regard.

26. Appellant explained in her pleadings she did not discover that Old South was not the actual lender who financed the purchase of her home until months after her Chapter 13 plan was confirmed in 2011 and not long before she filed her declaratory judgment action alleging fraudulent and illegal acts occurred during the origination of the mortgage in 2012.

27. In addition, Appellant did not discover Fannie Mae was involved in the origination of the mortgage until months after her Chapter 13 plan was confirmed.

28. Thus, Appellant did not discover the frauds and illegal acts she complained of or any reasonable basis or legal support for a cause of action until late 2011 to mid 2012.

29. In addition, Appellant disputed Respondent's erroneous claim that she has not been damaged; a clouded property title and theft of money under false pretenses are actionable damages in this state, and in any event, a party does not have to prove

damages to file for and receive a declaratory judgment on the merits. S.C. Code Ann. 15-53-20; S.C. Code Ann. 15-53-30; and S.C. Code Ann. 15-53-130. (R. pp. 1,134-1,135)

30. Nevertheless, in the event this Court disagrees with Appellant, bifurcation would permit Appellant's allegations of illegal acts to proceed to judgment on the merits.

31. Appellant believes and alleges that a number of state statutes were violated or not complied with during the origination and recordation of the mortgage and the doctrine of *ultra vires* applies to render the subject mortgage contract void, unenforceable and non-transferable as a matter of law.

32. For example, Appellant had cited to the following case which describes the doctrine of *ultra vires* and the following statutes: Howard & Foster Co. v. Citizens' Nat'l Bank, 133 S.C. 202, 130 S.E. 758 (1926); S.C. Code Ann. 32-3-10; S.C. Code Ann. 16-9-10(A)(2); S.C. Code Ann. 16-13-10(A)(2); S.C. Code Ann. 16-13-230; S.C. Code Ann. 16-13-240; S.C. Code Ann. 37-22-190; S.C. Code Ann. 37-5-108; S.C. Code Ann. 37-22-110; and S.C. Code Ann. 33-14-105. (R. pp. 1,050-1,051; 434; 440-441; 41; 66)

33. Appellant's Second Cause of Action in her Complaint states: "Mortgage and Note Invalid and Unenforceable Due to Fraudulent or Illegal Acts" and explains why thereafter. (R. pp. 65-70)

34. In her Complaint, Appellant alleged in essence that Fannie Mae may have acted unlawfully in violation of its charter by originating a mortgage and lending money directly to a consumer in the primary mortgage market. (R. p. 69)


35. While her state court action was pending, Appellant continued to research the mortgage and discovered Fannie Mae's website page containing an admission that it had acquired Appellant's loan on October 1, 2007, which was during the time frame

Appellant was awaiting her closing date to sign the documents at her attorney's office on October 5, 2007, and confirms Appellant's foregoing suspicion and allegation in her Complaint. (R. p. 1,025)

WHEREFORE, Appellant respectfully petitions this Honorable Court to overrule Respondent's opposition, to grant Appellant a rehearing, to reverse its decision of June 3, 2015, to reverse the erroneous orders of the trial court she complained of, and to remand her case so it may proceed to judgment on the merits.

Respectfully submitted,

June 29, 2015



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Appellant/Plaintiff *Pro Se*

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM COLLETON COUNTY  
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Maité Murphy, Circuit Court Judge

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Appellate Case No. 2013-002555

Melissa Jean Marks, .....Appellant,

v.

Nationstar Mortgage, LLC, .....Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Reply to Respondent's Response in Opposition to Appellant's Petition for Rehearing and Memorandum in Support on the Respondent, Nationstar Mortgage, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on June 29, 2015, addressed to its attorney of record, Robert A. Muckenfuss, Esq., McGuireWoods LLP, 201 North Tryon Street, Suite 3000, Charlotte, NC 28202, and on Old South Mortgage Corporation, by depositing a copy of it in the United States Mail, postage prepaid, on June 29, 2015, addressed to its attorney of record, John F. Knobloch, Esq., King & Knobloch, P.C., 808 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464.

Respectfully submitted,

June 29, 2015



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JUN 30 2015

SC Court of Appeals

June 29, 2015

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Melissa Jean Marks v. Old South Mortgage Corporation, et al.  
Colleton County Court of Common Pleas  
Civil Action No. 2012-CP-15-00262  
Appellate Case No. 2013-002555

Dear Ms. Kitchings:

Enclosed please find for filing an original and six copies of Appellant's Reply to Respondent's Response in Opposition to Appellant's Petition for Rehearing and Memorandum in Support and Proof of Service. In addition, I am enclosing an extra copy of the pleading and request that you please file-stamp same and return it to me in the enclosed self-addressed, stamped envelope for my records.

I thank you and appreciate your assistance with this matter.

Sincerely,



Melissa J. Marks  
Appellant/Plaintiff *Pro Se*

Enclosures

cc: Robert A. Muckenfuss, Esq., Attorney for Respondent Nationstar Mortgage, LLC  
John F. Knobloch, Esq., Attorney for Defendant Old South Mortgage Corp.

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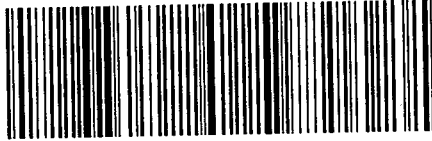
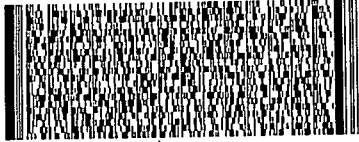
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