IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust as Trustee of the American Mortgage Investment Partners Fund I, Trust.....Respondent,

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc. and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

PETITION FOR REHEARING

This Petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing. Rule 240 governs motions and petitions generally.

This Court issued the decision in this matter on July 15, 2015. See Op. No. 2015-UP-353 (Ct. App. Filed July 15, 2105). Petitioner received this Court's Opinion No. 353 on July 201, 2015. This petition is therefore timely. See Rule 221(a), SCACR.

The principal purpose of this Petition is to preserve Melissa Furmanchik's (hereinafter "Appellant") ability to request further review of the arguments that she offered this Court on the merits. To that end, Appellant wishes to incorporate by reference all the arguments made before the Court and contained in her briefs. Appellant strongly but respectful disagrees with the decision to affirm the lower court's decision.

INTRODUCTION

Appellant brought this appeal seeking to overturn the lower court's determination on several grounds the most focal of which was when a note and mortgage take divergent paths the prosecuting lender[1] did not receive an interest in the mortgage and therefore

[1] At the time of trial the prosecuting lender was Selene RMOF REO Acquisition, LLC. During the course of appeal a motion to substitute the named Plaintiff in the underlying action was granted, therefore, Wilmington Savings Fund Society, FSB is now the named Respondent.

lack standing to foreclosure. This Court failed to properly address this issue along with the other issues raised on appeal. This Court should have properly evaluated the circumstances and reversed the lower court's rulings.

ARGUMENT

I. *THIS COURT IMPROPERLY DETERMINED THE LOWER COURT COULD GRANT SUA SPONTE* RELIEF.

This Court improperly determined the Master in Equity ("MIE") had the authority to grant relief under Rule 50, SCRCP. Under Rule 50, SCRCP, *sua sponte* relief is not available. See *State v. Dicapua*, 680 S.E.2d 292, 383 S.C. 394 (S.C. 2009)(citing *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214, 329 S.E.2d 736, 736 (1985) (" The sole issue is whether a trial judge *ex mero motu* can grant a new trial on a ground not raised by a party. We hold he cannot.")): *See also, Heins v. Heins,* 543 S.E.2d 224, 344 S.C. 146 (Ct. App. 2001)(a Family Court judge does not have the authority to alter or amend a judgment, *sua sponte,* once the judgment is more than 10-days-old); and *Ellis v. Niles*, 316 S.C. 516, 459 S.E. 2d 631, 634 n.5 (Ct. App. 1994), vacated in part, reversed in part, 324, S.C. 223, 479 S.E. 2d 47 (1996)("Rule 50(a), SCRCP provides that a motion for directed verdict may be made at the close of an opponent's evidence. Moreover, the rule apparently does not give a trial judge authority to direct a verdict *sua sponte.* Compare

Rule 19, SCrimP (specifically providing that court shall direct a verdict on motion of the defendant or on its own motion if there is a failure of evidence.))."

Rule 50(d), SCRCP, had no application, here. On June 20, 2013 a hearing was held before the MIE for Charleston County. On July 11, 2013, approximately 20 after the foreclosure hearting, the MIE sua *sponte* issued an Order stating "this court finds that the matter should be reopened for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement. This is done pursuant to Rule 50(d), SCRCP. This matter is to be reset for Monday, August 12 at 10:00 a.m." (R. p. 16-17). The Master in Equity improperly relied on Rule 50(d), SCRCP. Plaintiff failed to move for a directed verdict at the time of trial. Consequently, Rule 50(d) was inapplicable. Moreover, at the time the Court decided to act *sua sponte,* no verdict entered or ruling had been granted in favor of Plaintiff. So again, Rule 50(d) had not application.

Assuming for the sake of argument the MIE inadvertently referenced Rule 50(d), SCRCP, when intending to cite Rule 59(d), SCRCP, the relief granted was not available. "Rule 59(d), SCRCP, provides that the court, upon its own initiative, may order a new trial 'not later than 10 days after entry of judgment...[a]fter giving the parties notice an opportunity to be heard on the matter.' This time limitation may not be extended." *C&S*

National Bank v. Easton, 310 S.C. 447, 427 S.E. 2d 640, 641 (1993). The relief granted by the MIE *sua sponte* was well past ten (10) days from the hearing. The Court lacked the authority to grant the relief and this Court erred in affirming the improper acts.

A. The Respondent did not address any issue raised challenging the MIE's sua sponte relief and therefore waive any opposition.

Respondent did not address any argument relating to Rule 50 or the case authority cited supporting the proposition that Rule 50, SCRCP, does not provided for sua sponte relief. There being no response to the argument, the argument should have been deemed resolved. R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App.2000) (deeming an issue abandoned if the appellant's brief treats it in a conclusory manner). Likewise, in the event the MIE's reference to Rule 50(d), SCRCP is considered an inadvertent clerical error and the proper citation was to Rule 59(d), SCRCP, Respondent failed to address the time limitations imposed under Rule 59(d), SCRCP. Respondent having failed to respond to the argument, the issue should be concluded. Thus, the MIE erred by acting outside his allowed authority under Rule 50(d), SCRCP or outside the allowed time period under Rule 59(d), SCRCP and this Court should have reversed.

II. THIS COURT ERRED WHEN IT AFFIRMED THE MIE'S DECISION THAT THE RESPONDENT COULD PROSECUTE THE FORECLOSE ACTION.

A. THE NOTE AND MORTGAGE TOOK SEPARATE PATHS MAKING THE TRANSFER OF THE MORTGAGE A NULITY.

In South Carolina, "generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U. S. Bank Trust Nat'l Ass'n v. Bell,* 385 S.C. 147, 662 S.E. 2d 424 (Ct. App. 2008); *see also Cleveland v. Bomar,* 178 S.C. 455, 183 S.E. 2d 34 (1936) (dismissing a foreclosure action because it was not brought in the name of the real owners of the note and mortgage.) Plaintiff asserts it is the holder of the subject Note(s) and therefore entitled to pursue the within matter.

Where a negotiable note is secured by mortgage, the note and mortgage are inseparable, and the assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity. *Carpenter v. Longan,* 83 U.S. 271, 21 L. Ed. 313, (1872); *In re Leisure Time Sports, Inc.* 194 B.R. 859, 861 (9th Cir. 1996) (stating that "[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures" and that, "[i]f the debt is not transferred, neither is the security interest"); *Kelley v. Upshaw,* 39 Cal. 2d 179, 192 (1952) (stating that assigning only the deed without a transfer of the promissory note is completely ineffective); *see also*

Restatement (3d) of Property (Mortgages) § 5.4 (stating that "[a] mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the *obligation* that the mortgage secures"); *South Carolina Nat. Bank v. Halter*, 293 S.C. 121, 359 S.E.2d 74 (S.C. App. 1987) (The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee, *Hahn v. Smith,* 157 S.C. 157, 154 S.E. 112 (1930), absent some indication that the parties also intended to transfer the debt. 59 C.J.S. Mortgages Section 359 (1949)).

Note 1, (R. pp. 280-289) demonstrates on its face that the originator of the Note was Wachovia Mortgage Corporation which endorsed it to Wachovia Bank, N.A. Thereafter, by allonge to Note 1 (which was unattached and raises questions as to its validity raised below) Note 1 was endorsed in blank by Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank N.A.

Here it is undisputed and the evidence shows the Assignments of Mortgage do not follow the endorsements of Note 1. The sequential transfers of Note 1 and Mortgage admitted into evidence are illustrated below:

NOTE 1	MORTGAGE
Wachovia Mortgage Corp.	MERS

↓	↓ **(Assignment 1)**
Wachovia **Bank, N.A.**	Wachovia **Mortgage**
↓	↓ **(Assignment 2)**
Blank	Selene Finance LP
	↓
	SRMOF 2009-1 Trust
	↓
	SELENE RMOF REO
	Acquisition, LLC

Assignment 1 appears to convey the Mortgage from MERS to the original Plaintiff Wachovia Mortgage Corporation. Thereafter, several months after this action was initiated, Assignment 2 appears to convey the Mortgage from Wachovia Mortgage Corporation to Selene Finance, LP. This second assignment conflicts with the chain of title depicted by the indorsements to Note 1. The first indorsement on Note 1 purports to transfer the Note from Wachovia Mortgage Corporation to Wachovia Bank, N.A. Then an indorsement by way of an unaffixed allonge reveals Wells Fargo Bank, N.A., successor

by merger to Wachovia Bank, N.A. indorses Note 1 in blank (potentially to Selene Finance, LP). The Mortgage and Note depart from each other at the second Assignment of Mortgage. Wachovia **Bank** and Wachovia **Mortgage** are two separate entities. Moreover, the Mortgage appears to have been assigned from Wachovia Mortgage Corporation directly to Selene Finance, LP, however at the time Wachovia Mortgage Corporation did not hold an interest to assign the mortgage because it had already transferred Note 1 to Wachovia Bank, N.A.

The departure of these two instruments deepens with the Assignments of Mortgage that have no parallel transfer of the Note. The two instruments take completely separate paths. As stated above a mortgage must follow the note it secures, without a transfer of the Note an assignment of the Mortgage alone is a nullity. *See South Carolina Nat'l Bank v. Halter*, 293 S.C. 121, 128, 359. S.E.2d 74, 77 (Ct. App. 1987). The independent transfers of the Mortgage are nugatory. The prosecuting Plaintiff did not established a right to enforce the Mortgage since a number of the assignments it relied upon were void as a matter of law. Consequently the mortgage stopped in its path not following the note and never making its way to the prosecuting Plaintiff. The Plaintiff under these circumstances never received an

assignment of the mortgage and was not entitled to foreclosure. This Court erred as did the Respondent by failing to address the issue raised relating to the impact of the divergent paths taken by the note and mortgage. It was improper for this Court to ignore established principles of law.

A recent case just decided by the Florida Court of Appeals in the past several months provides guidance on the issue of standing. In the case of Daniel v. Nationstar Mortgage, 2014 Fla. App. LEXIS 16734, (October 13, 2014) the Court determined that Nationstar failed to establish that the original plaintiff, Auora Loan Services LLC, had standing to foreclose at the time it filed the original complaint, and reversed the foreclosure. The Court noted that in order to prove standing to foreclose a mortgage, a plaintiff must show that it is the holder both of the mortgage and of the note the mortgage secures. Id. (citations omitted) "The plaintiff must prove it is a holder in due course of the note and mortgage both as of the time of trial and also [*2] that the (original) plaintiff had standing as of the time the foreclosure complaint was filed. Id. (citations omitted). "The plaintiff must prove not only physical possession of the original note but also, if the plaintiff is not the named payee, possession of the original note endorsed in favor of the plaintiff [*3] or in blank

(which makes it bearer paper)." Id. If the foreclosure plaintiff is not the original, named payee, the plaintiff must establish that the note was endorsed (either in favor of the original plaintiff or in blank) before the filing of the complaint. Id.

The appellate court reversed the lower court finding that Nationstar failed to establish standing to foreclose at the time the original complaint was filed having only entered into evidence the original of the note which had been attached to the amended complaint. The note contained two endorsements neither of which were dated and neither which established the endorsement in blank antedated the filing of the original complaint. The only evidence Nationstar presented on the question of standing was the testimony of one witness, Mr. Hyne, an employee of Nationstar who only testified that Aurora was in possession of the note at the time the complaint was filed, not that the note had been endorsed at the time the complaint was filed.

Here, as in Daniel the evidence as to standing was lacking. Respondent offered nothing to support when any of the alleged endorsements were made. Respondent offered nothing about Wachovia's ownership at the time the Complaint was filed. Respondent failed to establish the Respondent had an interest at the time of trial. Moreover, Respondent failed to address the impact of the note and mortgage taking

separate paths. As in Daniel, Respondent failed in its burden and foreclosure should be reversed.

B. POSSESSION OF A NOTE DID NOT ESTABLISH THE FORECLOSING ENTITY'S RIGHT TO PROSECUTE THE FORECLOSURE ACTION.

This Court erred in failing to recognize salient facts. Separate from the path of the Note and Mortgage is the proper transfer of the Note. The Note was not properly transferred.

S.C. Code Anno. §36-3-301 (2008) provides: "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument." A holder is "a person who is in possession of a document or 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". S.C. Code Anno. §36-1-201(20)(2003); *see also* Frederick M. Hart & William F. Willier, *Negotiable Instruments Under the Uniform Commercial Code,* § 12.02(1) at 12-13 to 12-15 (2012) ("The first requirement of being a holder is possession

of the instrument. However, possession is not necessarily sufficient to make one a holder.").

Possession is not necessarily sufficient to make one a holder, as the Plaintiff postulates and the lower court determined. Selene was required to prove both physical possession and the right to enforcement through either a proper indorsement or a transfer of negotiation. S.C. Code Ann. §36-3-201(a) (2008) ("Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder."); *See Bank of New York vs. Romero*, Op. No. 2014-NMSC-007, 320 P. 3d 1 (Feb. 13, 2013, S. Ct. N. M.). Selene failed in its burden of proof.

Note 1 presented as Exhibit "1" was initially made in favor of Wachovia Mortgage Corporation. As testified by Plaintiff's witness, the last page of the Note contains several indorsements which are either cancelled or marked void. The one indorsement not altered is undated and from Wachovia Mortgage to Wachovia Bank, N.A. Selene's witness further testified there is no indorsement on the Note from MERS (R. p. 215, lines 14-17); there is no endorsement on the Note to Selene Finance L.P. (R. p. 215, lines 18-20); there is no indorsement on the Note to SRMOF 2009-1 Trust (R. p. 215, lines 21-23);

and there is no indorsement on the Note to Selene RMOF REO Acquisitions, LLC (R. p. 215, line 24 – R. p. 216, line 1). There being no indorsement on the Note to Selene, Selene lacked standing and right to enforce the note.

C. THE ALLONGE WAS NOT PROPERLY AFFIXED THEREFORE THE WAS NO ENDORSED IN BLANK.

On the last page of Note 1 reference is made to an allonge. An unaffixed page is entitled "Allonge for the Purpose of Endorsement." The allonge however was not affixed to the Note. (R. p. 210, line 12 – R. p. 211, line 3)[2]. No testimony was offered to suggest that at any time the allonge was affixed to the Note. The allonge not being affixed renders it invalid and inconsequential. The allonge not being affixed means Note 1 is specially endorsed and not in blank. (i.e. the last page of Note 1 specially indorsement was to Wachovia.); See S.C. Code Ann. §36-3-205(a) (2008)(If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to who it makes the instrument payable, it is a "special indorsement.") The Note is not bearer paper and remained with the last entity to

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[2] "Affixed" to the instrument demands that the paper be actually attached to the instrument, meaning some form of physical connection securing the paper to the instrument. See. S.C. Code Anno. §36-3-204 (2008); *See also, In re McFadden*, 471 B .R. 136, 173 (D.S.C. 2012). The attachment requirement serves two purposes: preventing fraud and preserving the chain of title to an instrument. *See Southwestern Resolution Corp. v. Watson,* 964 S.W.2d 262 (Tex.1997).

which it was indorsed, Wachovia. Note 1 by indorsement never made its way to Respondent; therefore this Court erred in inferring the Respondent was the real party in interest.

D. RESPONDENT HAD NO EVIDENCE OF A TRANSFER OF THE NOTE.

As an alternative to simply saying I am in possession, one could attempt to establish pursuant to S.C. Code Anno. §36-3-301(ii) (2008) that it was given the rights as a holder. In order to establish rights as a nonholder, Respondent would have had to prove both possession and the transfer of such rights. This argument is not available to Respondent however. Here, as discussed infra there was no proper indorsement; the testimony of Respondent's witness was that she had no knowledge or documentation that showed how the Note came into Respondent's possession (R. p. 213, line 1 – R. p. 214, line 3). Respondent lacked standing.

E. THE LACK OF ANY INDORSEMENT ON NOTE 2 DEPRIVED RESPONDENT OF ANY RIGHT TO ENFORCE THE NOTE.

In addition to Note 1 (R. p. 280-289), Plaintiff submitted testimony relating to Note 2 at the time of the second hearing. (R. p. 337-352). At the second hearing held on August 12, 2013, again Ms. Clark was the only offered witness. Ms. Clark testified that Exhibit 2A was a mortgage modification dated August 31, 2006 (R. p. 261, lines 13-16).

She further testified that Exhibit 2C was a combination of Exhibits 2A and 2B.(Sometimes referred herein as "New Note or Note 2") (R. p. 267, line 25 – R. p. 268, line 3); that Mr. Furmanchik signed the mortgage modification but Mrs. Furmanchik had not (R. p. 266, line 20 – R. p. 267, line 24); that the document starting on Page 265 is identified as and entitled as a Fixed Adjustable Rate Note which is not signed by Mrs. Furmanchik (R. pp. 337-352)(R. p. 267, lines 10-17); that the Fixed Adjustable Rate Note is a brand new note (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 3); the new Fixed Adjustable Rate Note has no allonge (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 8); the new Fixed Adjustable Rate Note has no endorsement (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 21); and that Wachovia never endorsed or assigned the new Fixed Adjustable Rate Note to any other entity (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 21). There being no assignment of mortgage or indorsement of Note out of Wachovia, Respondent never received any interest in Note 2. Respondent had no right of enforcement as to Note 2. The Court erred in implying such was a correct determination.

III. RESPONDENT FAILED TO OFFER ANY PROPERLY ADMISSIBLE EVIDENCE.

A. THE WITNESS PRESENTED LACKED SUFFICIENT KNOWLEDGE TO TESTIFY.

Rule 602, SCRE, states: "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony..." Respondent's witness lacked sufficient knowledge to testify.

In this case Respondent's witness did not testify in such a manner as to establish personal knowledge or to lay a proper foundation for the admission of Respondent's Exhibits. The witness offered to testify, testified she was an employee of Selene Finance, LP, and held the title of Contested Default Case Manager. (R. p. 184, lines 19-25). The witness acknowledged she was not an employee of the presently named Plaintiff, Wachovia, or Wells Fargo (R. p. 209, line 20- R. p. 210, line 11). The witnessed acknowledged the Note and Mortgage were originated by Wachovia Mortgage Corporation. The witness testified that that the signature page of the Note contains several endorsements, such of which are marked void and/or cancelled, but she did not know why the endorsements were marked void and/or cancel. The witness testified that the documents in question were not created by Selene Finance, LP or Respondent. The witness testified she had no evidence or testimony that established the chain of title of Note. She offered no testimony which would establish how or when Plaintiff became in

possession of the Note. Upon direct examination the witness testified that she is a default case manager whose duties include "review loans where there are differences to attempt to resolve those issues" and testify at trials. Upon cross-examination the witness testified that see is not the custodian of records for Selene Finance, LP, but also equivocated changing her testimony to state that her duties and functions do include custodian of records for the documents in question. (R. p. 211, lines 4-23). Notably the witness never testified how records were retained; the means of retention of records by Plaintiff or her employer; computer systems used by Plaintiff or her employer; the reliability of any computer system of Plaintiff or her employer; how data is entered or maintained by Plaintiff or her employer; or procedures used for obtaining records. Respondent failed to establish the witness had the required personal knowledge as required by Rule 602, SCRE to testify or authenticate the documents. See *Hundley ex rel. Hundley v. Rite Aid of South Carolina Inc.*, 339 S.C. 285, 529 S.E. 2d 45 (Ct. App. 2000)("generally under Rule 602, SCRE [a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). This Court contrary to its decision in *Deep Keel, LLC v. Atlantic Private Equity Group*, Op. No. 5320

(June 17, 2015) determine the evidence was not hearsay. This Court along with the lower court erred in admitting the testimony of Ms. Clark.

B. Respondent failed to establish and exception to the hearsay rule.

Rule 803(6), SCRE, states "A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." Rule 901, SCRE, states "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

Plaintiff failed to a lay a proper foundation for the documents to be considered business records pursuant to Rule 803(6), SCRE, or that Plaintiff's witness could testify a custodian of records or other qualified witness pursuant to 803(6), SCRE. "A business record without evidence about the manner in which it is prepared or the source of its

information does not meet the requirements in S.C. Code Section 19-5-510 or Rule 803(6), SCRE. Business records entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept..." *State v. Rice*, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007). The Court erred in admitting the exhibits offered by Plaintiff in contradiction to the provisions of Rule 803, SCRE. Neither a proper foundation nor an exception to hearsay was established by Plaintiff for any document entered into evidence. Plaintiff's witness admitted that neither the Note nor Mortgage was originated by her employer or the entity for which she was testifying. (R. pp. 280-318). She had no knowledge as the assignments entered into evidence. (R. pp. 319-326). She offered no evidence of how the records were created or maintained, the source of the information, where maintained or when they were created. She certainly offered not a single shred of evidence that allowed for the admission of documents clearly created by Wells Fargo an entity with which she testified she had absolutely no relationship. (R. pp. 335-336 (Wells Fargo Demand letter), and R. pp. 327-334) (Wells Fargo Account History)).The Court erred by admitting these documents into evidence.

The Court further erred in allowing Exhibits 2 A, B and C into evidence at the continuation hearing or reopening hearing. Notwithstanding assuming for the sake of argument that Plaintiff did seek to admit the Exhibit 2C through evidence of a proper witness at the August 12, 2013 hearing, said evidence should not have been admitted because Plaintiff did not produce the original. Rule 1002, SCRE, states "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." Rule 1003, SCRE, states "A duplicate is admissible to the same extent as an original unless (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." In this case both a genuine question as to authenticity of the original and circumstance that it would be unfair to admit the duplicate in lieu of the original are both present. The Court erred by admitting Note 2 which Plaintiff's witness did not testify to in the original hearing.

Finally as the court noted in the August hearing "Did we go into the document 2B then? That was the one in issue? . . . 2B is the one I let in and we never did talk about. That's the only reason I reopened this thing, is to talk about 2B." However, then the

Court asks "Is that the original?" Plaintiff states that it is not, saying "The original we're waiting on in West Columbia." Here there are clearly questions as to authenticity, it would be highly prejudicial to accept a duplicate, Plaintiff was well aware the documents were the remaining issue, and yet with over a month in between the two hearing Plaintiff failed to present the original documents at the second hearing.

CONCLUSION

For the reasons given, this Court should reverse its decision of July 15, 2015 and the decision of the lower court and determine the Respondent failed to establish or proof a right to foreclose.

MARY LEIGH ARNOLD, P.A.

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July 28, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

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v.

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Of whom Melissa Furmanchik is the.....Appellant.

PROOF OF SERVICE

I certify that on this 28th day of July 2015, I have served Appellant's Petition for Rehearing on opposing counsel of record by depositing a copy a in the United States Mail, postage prepaid, addressed as follows:

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July 28, 2015

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

RE. Selene RMOF REO Acquisitions, LLC v. Melissa Furmanchik, et al.
Case No.: 2010-CP-10-5825
Appellate Case No.: 2014-000906

Ms. Kitchings:

With regard to the above referenced matter the Appellant, submits the following to the Court:

1. Petition for Rehearing; and
2. Proof of Service.

The Court's consideration in this matter is greatly appreciated.

With kind regards,

MARY LEIGH ARNOLD, PA

Mary Leigh Arnold

CC:
Jason Wyman, Esq.


2 LBS 1 OF 1
SHP WT 2 LBS
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