THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

Case No. 2014-001683

Wells Fargo Bank, N.A.,

Respondent,

v.

Dorothy Sistrunk, Appellant.

FINAL BRIEF OF APPELLANT

October 9, 2015

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Note: *Rule 208(b)(4), SCACR* clearly states in pertinent parts; "[T]he brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. After the Record on Appeal is prepared, these references shall be revised as provided by Rule 211(b)(1)."

STATEMENT OF ISSUES ON APPEAL

I only have a lay person's understanding of [**Fraud upon the Court**] and [**Abuse of Discretion**]; in the interest of justice, I must ask the Appellate Court's indulgence. I have no expertise in identifying judicial abuses. I do not know by definition and/or precedent what offense belongs in what category. If I have mistakenly placed an offense in an inappropriate category, I ask the court to place it where it belongs. **Did Judge Goodstein err by relying only on an attorney's argument for summary judgment purposes?** This is an issue and will be discussed; but, I do not know where it belongs.

> **(1)** Pro Se pleadings and filings should be reviewed liberally. *Howard v. U.S. Bureau of Prisons, 487 F.3d 808, 815 (10th Cir. 2007).* "[I]n addition, "[w]hen the substance of a legal claim is otherwise present, this court has indicated that 'confusion of various legal theories,' a technical pleading error, should not be dispositive in pro se cases." *Switzer v. Coan, 261 F.3d 985, 988 (citing Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)).* "[A]t the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the pro se litigant." *Hall, 935 F.2d at 1110.*
>
> **(2)** *Rule 8(f), SCRCP* clearly states in pertinent parts.... "[A]ll pleadings shall be so construed as to do substantial justice to all parties."

Since there are many abuses and violations associated with this action that occurred over a 6 year period, the questions must be written in different format; with more details, than the questions the Appellate Court might be accustomed to seeing and addressing. I will do the very best that I can to frame the issues, abuses and violations into questions as concisely as possible pursuant to *Rule 208(b)(1)(B), SCACR.* I will state the questions as the Appellant rather than in the first person (I, me or my).

> "[I]t is well established that "[a] pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).* "[T]his liberal treatment has limits, however, and we have "repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants." *Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005)*

I. ABUSE OF DISCRETION

A. Did the lower court judge abuse her discretion by improperly granting judgment when issues of fact, material facts and law still exist that mandate a jury trial or a review of the evidence in a trial without a jury?

B. Did the lower court judge abuse her discretion by denying the Appellant's Motion for a New Trial when witness testimony that has never been heard in court, evidence and exhibits that have never been seen or reviewed in court were excluded during 6 years of litigation that should have been presented to a jury or at the very least reviewed and ruled upon by a judge sitting without a jury?

C. Did the lower court judge err by denying the Appellant's Motion to Alter or Amend the Partial Summary Judgment Order when the documents clearly show Wells Fargo's Mortgage is falsely certified in violation of South Carolina law and does not comply with the filing requirements of **SECTIONS 26-3-40**(1) **and 30-5-30**(C) SC Code of Laws?

D. Did the lower court err by failing to consider Wells Fargo's mortgage, loan and fixed rate note are based on falsified documentation and values that constitute an illegal contract that is unenforceable in South Carolina due to illegal brokering, misrepresentation of material facts, concealment of material facts, omission of material facts and meets the statutory description of operating a fraud in **SECTION 40-58-70**(3)?

III. FRAUD UPON THE COURT

A. Did the lower court err by denying the Appellant's Motion to vacate the Partial Summary Judgment Order due to the Fraud upon the Court that was perpetrated by Wells Fargo, Elizabeth Scott Moise and James H. Burns for 2 years during the Stay/TRO, i.e., Administrative Order #2009-05-22-01 that falsely accused the Appellant; misrepresented material facts and were replete with false statements?

B. Did the lower court err by denying the Appellant's Motion to Alter or Amend the Partial Summary Judgment Order because the signed Order of March 27, 2014 that was drafted by Nelson Mullins Riley & Scarborough, LLP not only misstates and misrepresents facts, and material facts, the signed Partial Summary Order is replete with false statements; as well as, an outright lie?

C. Did the lower court judge and attorneys James H. Burns and Elizabeth Scott Moise commit Fraud upon the Court by changing the Appellant's Defensive Pleading from Defrauding or Swindling with falsified documents... to fraud?

STATEMENT OF THE CASE

A. Introduction.

It is virtually impossible to properly adjudicate case #2014-001683 without an understanding and/or insight into the factual history of this case that occurred in 2007 and 2008 prior to litigation. The factual history of this case is in the court's records in verified pleadings that have never been contested in 6 years. Instead of the record, eyewitness testimony and affidavits of fact, Judge Goodstein relied on attorney arguments.

It is not easy condensing 6 years of abuses into 50 pages. In order to conserve paper and space, all caps will be used sparingly and subparts of uncontroverted and uncontested facts in verified pleadings will be single spaced. **Since allegations are stated with specificity and particularity, this "Brief" will be verified.** Much of the history of this case is in the **Statement of the Evidence** that is identified by the acronym [**SOTE** - R. Vol. IV-2] that is dated August 14, 2014, and filed in the lower court on August 15, 2014.

This appeal is before the Appellate Court, because the lower court ignored the facts and denied the Appellant's Motions for **(1)** A New Trial; **(2)** to Alter or Amend the Judgment; and **(3)** to Vacate the Partial Summary Judgment Order due to Fraud upon the Court by Officers of the Court that should also Rescind the Order of Reference..

> **(1)** *Black's Law Dictionary (4th ed. 1968), pg 706,* defines **Fact**, in pertinent parts as; "[A] thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. An actual happening in time or space or an event mental or physical..." "That which has taken place, not what might or might not have taken place."
>
> **(2)** *Diblik v. Marcy, 166 P.3d 23, 28 (Alaska 2007)* "[A] material fact is one "to which a reasonable man might be expected to attach importance in making his choice of action." It is a fact which could reasonably be expected to influence someone's judgment or conduct concerning a transaction. (quoting W. Prosser, Law of Torts § 108, at 719 (4th ed. 1971))"

(Fact: #1) For over 6 years, the lower court judge never conducted any hearings on the Appellant's *Demand for a Jury Trial* that was filed in August of 2008. {R. Vol. IV-2, pp. 1381-1385, ¶¶27-29} For over 3 years Judge Goodstein never scheduled a hearing for the Appellant's *Rule 41(b) Motion to Dismiss with Prejudice* that was filed in August of 2011. {R. Vol. IV-2 p. 1385, ¶30} For almost 3 years the lower court judge did not allow the Appellant's witness to give testimony at 3 of Wells Fargo's hearings. {R. Vol. IV-2, pp. 1387-1389, ¶¶35-38, Re: December of 2011 & September of 2012 & September of 2013}

As the facts will show, Judge Goodstein basically conducted hearings for Wells Fargo to facilitate its foreclosure and by doing so engaged in partiality and preferential treatment. Judge Goodstein disregarded the Appellant's right to defend, the Appellant's, evidence, objections, affidavits and exhibits in or attached to verified pleadings. {R. Vol. IV-2, pp 1291-1359, ¶¶1-13}. Such a court is defined as a Kangaroo Court.

> **(1)** *Black's Law Dictionary (5th ed. 1979) on pg 780*, defines **Kangaroo Court** as the following: "[T]erm descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal."
>
> **(2)** *Black's Law Dictionary (Revised 4th ed. 1968) pg 590*, states the following in pertinent parts... "**[D]ue process of law** implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively presumed against him, this is not due process of law. The essential elements of "due process of law" are notice and opportunity to be heard and to defend** in orderly proceeding adapted to nature of case, and the guarantee or due process requires that every man have protection of day in court and benefit of general law...." [**Boldness** and Underlining added for emphasis.]
>
> **(3)** "[P]ositive proof of the partiality of a judge is not a requirement, only the appearance of partiality." *Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988)* (what matters is not the reality of bias or prejudice but its appearance)

(4) "[j]udicial independence is predicated on "good faith" decision-making. It was never intended to include "bad-faith" decision-making, where a judge knowingly and deliberately disregards the facts and law of a case. This is properly the subject of disciplinary review, irrespective of whether it is correctable on appeal." *{The Long Term View, Massachusetts School of Law, Vol. 4, No. 1, 1997, pp. 90-97}*

(5) *United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985)* "[S]ection 455(a) of the Judicial Code, 28 U.S.C. Sec. 455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process. See H.R. Rep. No. 93-1453, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S. Code Cong. & Ad. News 6351, 6354-55. It is directed against the appearance of partiality, whether or not the judge is actually biased. See United States v. Murphy, 768 F.2d 1518, 1540 (7th Cir.1985); SCA Services, Inc. v. Morgan, 557 F.2d 110, 116 (7th Cir.1977). "[S]ection 455(a) 'requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned."

(6) In *Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972)*, the Court stated that "[I]t is important that the litigant not only actually receive justice, but that he believes that he has received justice." *Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989)*("[R]ecusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances.") "[W]e think that this language [*455(a)*] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." *Balistrieri, at 1202.*

(7) "[I]f a party is deprived of his substantial rights in a trial before an actually biased judge, the harm can be remedied (though not costlessly) by a new trial before an unbiased judge. But the harm to the public's perception of the judicial system when a judge who appears to be biased proceeds in a case is more difficult to correct." *United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985)*

(Fact: #2) On September 6, 2012, the Appellant was given 5 minutes to present her *Motion to Dismiss* [Vol. I-2, p. 176] at a Wells Fargo's hearing for sanctions and the Appellant's primary witness was ushered out of the Courtroom by the Security Guard. Not knowing Courtroom protocol, the Appellant's witness came forward to assist. {R. IV-2. pp. 1387-1388, ¶¶35-36} Due process is the legal requirement that Judges respect all the legal rights that are owed to citizens/litigants under a State's and/or the United States Constitution.

1. Abuse of Discretion.

The first element that led to this Appeal is the lower court judge abused her discretion. The lower court judge relied on attorney arguments and did not consider the the Appellant's evidence, affidavits, exhibits or statements of fact in verified or notarized pleadings that have never been contested, controverted, refuted or denied in over 6 years. [R. Vols. I-V] An Error of Law is manifest when the error is indisputable, obvious and warrants reversal on appeal. A failure to exercise discretion is also an Abuse of Discretion.

> "[A]n abuse of discretion arises where the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 799, 782 (1990).* "[A] failure to exercise discretion amounts to an abuse of that discretion." *Samples v. Mitchell, 329 S.C. 105,112, 495 S.E.2d 213, 216 (Ct. App. 1997).*

2. Fraud upon the Court that includes the *Massive Filing Fraud* of attorneys; James H. Burns & Elizabeth Scott Moise.

The second element that led to this appeal is the consistent and persistent pattern of dishonest conduct of Officers of the Court. During the Stay/TRO; from May of 2009 until May of 2011, the Appellant and the Appellant's husband witnessed and experienced the ***Massive Filing Fraud*** of attorneys, James H. Burns and Elizabeth Scott Moise and Judge Goodstein's failure to investigate Burns and Moise's ***Massive Filing Fraud***. {R. IV-2 p. 1364-1375, ¶¶19-22} Dishonest conduct by misrepresenting material facts, falsely accusing the Appellant..and....filing false statements from 5/2009 to 5/2011 by Officers of the Court is defined as "Fraud upon the Court" intrinsically..or..extrinsically. [Vol. II]

> **(1)** "[F]raud upon the court is committed when a representative of the court – mediators, evaluators, administrators, special appointees, lawyers, judges, referees or guardian ad litem, fraudulently present facts to the court that interfere with a just and equitable decision making process. This is an extremely serious crime, and so in dire opposition to the definition of justice that this crime is not subject to any statute of limitations." *{SEO Law Firm, Tampa, Fl.}*

> **(2)** "[R]egardless of the specific form of the allegation, the party relying on Rule 60(b)(3) must, by adequate proof, clearly substantiate the claim of misrepresentation, misconduct or fraud." *Zurich N. Am. v. Matrix Serv., Inc., 426 F.3d 1281, 1290.*
>
> **(3)** "[The fabrication of evidence by a party in which an attorney is implicated will constitute a fraud on the court." *Weese v. Schukman, 98 F.3d 542, 552-53 (10th Cir. 1996).*"[L]ess egregious misconduct, *such as nondisclosure to the court of facts allegedly pertinent to the matter before it*, will not ordinarily rise to the level of fraud on the court." *Id. at 553.*

Adequate proof was presented since 2009. If the misrepresentation of facts, false statements, misrepresentation of material facts, mischaracterization of facts, false accusations, dishonest conduct and in some instances outright LIES were being done by Wells Fargo, then for 6 years, Wells Fargo engaged in improper conduct; especially, during the Stay/TRO from 2009 to 2011, that is still defined as "Fraud upon the Court". [Vol II]

> *Sun World, Inc. v. Lizarazu Olivarria, 144 F.R.D. 384, 389 (E.D. Cal. 1992)* (holding that, when a litigant commits a fraud upon the court, "the inherent powers of the court support the sanction of dismissal and entry of default judgment"); *Pope v. Federal Express Corp., 138 F.R.D. 675, 683 (W.D. Mo. 1990), aff'd in part, vacated in part on other grounds, 974 F.2d 982, 984 (8th Cir. 1992)* (court has inherent power to sanction litigants for improper conduct) *Pope, 138 F.R.D. at 682* (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b)).

Rules 12 & 56, SCRCP do not require a lower court judge to do any fact finding. **(Fact: #3)** Consequently, for over 6 years, whenever Judge Goodstein conducted a hearings for Wells Fargo, she did not ask to see and did not review any evidence in the record, did review any evidence in the record, did not discuss any affidavits or exhibits in the record, or heard any testimony from the Appellant's witness. Material facts relative to civil action case #2008-CP-38-1024 were never discussed in court. {R. IV-2, pp. 1387-1401, ¶¶35-55} Judge Goodstein did not invite any questions from the Appellant or gave the Appellant any information or instructions on how to raise issues in court or....the

importance of objecting to statements made by Wells Fargo's attorneys James H. Burns and/or Brian A. Calub during the hearings. {R. IV-2. pp. 1387-1391, ¶¶36-42}

> **(1)** "[T]he trial judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish." *Breck v. Ulmer, 745 P.2d 66, 75 (Alaska 1987)* "[C]ourt errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." *Plaskey v CIA, 953 F.2nd 25.*
>
> **(2)** "[I]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training. While the right "does not exempt a party from compliance with relevant rules of procedural and substantive law," *Birl v. Estelle, 660 F.2d 592,, 593 (5th Cir.1981)*
>
> **(3)** "[T]rial courts possess "[a] discretionary range of control over parties and proceedings" that allows reasonable accommodations to self-represented litigants." *Blair v. Maynard, 324 S.E.2d 391, 396 (West Virginia 1984)* "[W]hen a trial judge is vested with discretion; but his ruling reveals no discretion was in fact exercised, an error of law has occurred." *Ballon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990).*

There is no information in South Carolina's Rules of Civil Procedure that tells a Pro Se litigant what to do if a Judge does not schedule hearings for motions, ignores objections, does not read verified pleadings, fails to explain the difference between a trial and a hearing and the expectations during each...or why a trial; with or without a jury, was denied or replaced with a no evidence hearing for a summary judgment motion.

Case #2014-001683 / 2008-CP-38-1024 is a precedent setting case because it is analogous to a Judge writing a court order that sends the witnesses to a crime and/or the victims of a crime to prison, while the perpetrators of the crime enjoy the benefits of never spending a day in court or prison; as well as, the financial rewards and/or advantages that were generated from their criminal enterprise/s. [R. Vol. V, pp. 1441-1759] Such an act by a sitting judge violates public policy, the rule of law and makes a mockery of justice.

B. Background Relative to the Mortgage Fraud Prior to Litigation.

(Fact: #4) The Appellant did not know the extent of the fraud associated with loan 0174072777 until Nelson Mullins Riley & Scarborough. LLP, sent the Appellant [R. Vol .V-2, pp. Bi-1756] in October or November of 2008. Pursuant to *Rule 208(b)(4), SCACR....*

> {See *Defendant Dorothy Sistrunk Objects to the Evidence Cited to Support the Plaintiff's Summary Judgment Order and Demands Placement on the Trial Roster*; pg 8, ¶ 17, that was filed on March 24, 2013.} [Also Vol. IV]

(Fact: #5) For 6 years, (August of 2008-July of 2014) Judge Goodstein did not conduct any hearing on any of the Appellant's judicial and/or evidentiary admissions in notarized and verified pleadings. Therefore, she had no idea as to the extent and nature of the various types of false accusations, misrepresentation of material facts, false documentation, fraudulent conduct, fraudulent concealment of material facts, dishonest conduct, false statements, forgery, forgery by substitution, concealment of material facts, and the various categories of fraud associated with loan #0174072777 that existed prior to December 21, 2007. {R. IV-2, p. 1292, ¶1}

This includes Wells Fargo's Insurance, Securities and Title Insurance Fraud, and the seller's, broker's and appraiser's Home Improvement Fraud, Mortgage and/or Bank Fraud due to **(Material Fact: #1)** no improvements were done at 423 Bayne Street; **(Material Fact: #2)** Jim H. Austin, III did not appraise the property on October 8th or 9th, in 2007 and **(Material Fact: #3)** the mortgage and note's value is falsified. The 423 Bayne St. described on [R. Vol. V-2] does not exist. Pursuant to *Rule 208(b)(4), SCACR;*

> {See *First Amendment to Answer to Complaint with Counterclaims*, [R. Vol. I-1, pp. 110-122], that was filed on July 31, 2008; [R. Vol. V-1, App. Ex.s 8-14, pp. 1525-1531]; WF's Ex.s WF00001-26, [R. Vol. V-2, pp. 1623-1648]; & [R. Vol. IV-2. p. 1325, ¶9**(a)** *Affidavit of George M. Sistrunk Background and History the Signed Broker's Agreement,*] [R. Vol. I-2, pp. 256-257, ¶¶17-18], that was filed on August 15, 2011; hereafter referred to as GMSA-SBA}

In addition to the aforementioned frauds that were never contested, denied, controverted or refuted in 6 years of litigation, there is also **(Material Fact: #4)** the uncontested, never refuted or denied, Illegal Predatory Lending Scheme and **(Material Fact: #5)** Document Fraud by Wells Fargo's underwriters and the so-called broker, David Terrell. Both falsified income and documents to avoid compliance with **SECTION 37-23-40**(1)-(2) SC Code of Laws. {R. Vol. IV-2, p. 1295, ¶4**(a)**; subparts **(1)-(4)**; pp. 1334-1336; ¶12; subparts **(4)-(5)** & subparts **(A)-(J)**; Re: [R. Vol. V-2, pp. 1652-60]}

Finally, before litigation began in June of 2008, there is also the uncontested, never refuted or denied **(Material Fact: #6)** Notary Fraud that also occurred. {Vol. V-2, pp. 1680, 1682 & 1719} This was done by employees at the Player Law Firm, located at 1415 Broad River Road, in Columbia, South Carolina on 12/21/2007. Wells Fargo is deemed present at the closing via the Player Law Firm. {R. Vol. IV-2, pp. 1336-43, ¶12 & subparts **(7)**, **(9)** & subpart **(26)**}

> **(1)** *FBI 2007 Mortgage Fraud Report:* "**[M]ortgage Fraud** is defined as the intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan."{R. Vol. IV-2, pp. 1296-97, ¶4(a)-(e)(1) & p. 1359, ¶14 subparts **(24)-(25)**}
>
> **(2)** *FBI 2007 Mortgage Fraud Report:* "**[I]nflated Appraisals** - An appraiser acts in collusion with a borrower and provides a misleading appraisal report to the lender. The report inaccurately states an inflated property value." Pursuant to *Rule 208(b)(4), SCACR*...
>
> > {See *Statement of Uncontested Facts and Material Facts in Support of Motion and Legal Memorandum of Law and Authorities to Vacate the Plaintiff's Judgment Order Pursuant to Rule 60(b), SCRCP for Extrinsic Fraud Upon the Court by Officers of the Court..*, [R. Vol. IV-1, pp. 1136-37, ¶8 & subparts **(a)-(h)**; that was filed on May 28, 2014.}
>
> **(3)** *12 CFR § 1731.2(c)* states in pertinent parts.. *"**[M]ortgage fraud*** means a material misstatement, misrepresentation, or omission relied upon by an Enterprise to fund or purchase or not to fund or purchase a mortgage, including a mortgage associated with a mortgage-backed security or similar financial instrument issued or guaranteed by an Enterprise. Such

mortgage fraud includes, but is not limited to, a material misstatement, misrepresentation, or omission in identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent." {R. Vol. IV-2, pp. 1295-97, ¶4 & subparts **(a)-(e)**}[Emphasis Added]

(4) *Triple A Mgmt. Co., Inc. v. Frisone, et al., 81 Cal. Rptr. 2d 669, 679 (Cal. Ct. App. 1999)* ("As a general rule, knowledge acquired by an agent within the course and scope of his agency duties is imputed to the principal. Imputation is based on the theory that the agent will disclose to his principal that which he is obligated to disclose."){R. Vol. IV-2, p. 1407}

(5) "[a] misrepresentation may make a contract voidable if it is either fraudulent or material." *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* "[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. *See Restatement (Second) Contracts § 163 (1981)* ("It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.")."

Based on Wells Fargo's documents, Wells Fargo never had a legal mortgage loan. When combined with the Appellant and the Appellant's husband personal knowledge of the events; as the following uncontested and never refuted material facts will show, Wells Fargo's filed documents not only identify the **Mortgage Fraud**, they also identify the individuals and/or firms that participated in it. {R. Vol. IV-2, pp. 1355-57, ¶13**(a)-(i)**}

(Material Fact: #7) The Seller - Thomas Jacobs – Illegal Loan Brokering: WF00014-27. Initiated the fraud in factum and inducement, concealed material facts and misrepresented material facts to obtain money from a federally chartered and insured bank. Lied to the Appellant and to South Carolina's Department of Consumer Affairs (SCDCA). Participated in **Mortgage Fraud** as defined by 12 C.F.R. § 1731.2(c) along with David Terrell, Jim H. Austin, III, Debra C. Galloway, Stephanie Hammond and Wells Fargo's Underwriters. {R. Vol. IV-2, pp. 1308-10, ¶10, subparts **(1)-(13)**, pp. 1330-33, ¶11, subparts **(1)-(4), (11)-(12), & (21)-(22)** & pp. 1331-33, ¶12, subparts, **(1)-(22)** & **Notes #1-#4**, pp. 1333-41}

(Material Fact: #8) Wells Fargo's 0174072777 loan, mortgage and fixed rate note were not brokered pursuant to South Carolina...or..Federal law.{R. Vol. IV-2 pp. 1333-59, ¶¶12-14} Thomas Jacobs was not and still is not a licensed broker

or loan originator pursuant to **SECTIONS 40-58-20**(40); **40-58-30** (A)-(B) & **40-58-50** (E)(1) SC Code of Laws. {R. Vol. IV-2, pp. 1406-16, ¶¶67-83}

(Material Fact: #9) The original application that was done for Thomas Jacobs on 11/26/2007 was handwritten with 1950 handwritten in the year built box. The year built is absent on Wells Fargo's WF00030 & WF00033 [R. Vol. V-2, p. 1652 & p. 1655]. In addition, all the applications are typed and not handwritten. Hence, none can be certified as a genuine reproduction or copy. {R. Vol. IV-2, pp. 1333-36, ¶12 & subparts **(1)-(5)(A)(J)**}

(Material Fact: #10) Thomas Jacobs and Wells Fargo misrepresented Golden gate Mortgage as a lender in violation of **SECTION 40-58-70**(1)-(3) SC Code of Laws. {R. Vol. IV-2, p. 1333, ¶12 & subpart **(1)**, Re: [R. Vol. V-2, pp. Bi-Bviii]}

(Material Fact: #11) The "So-called" broker - David Terrell/Golden Gate Mortgage, Inc./Goldengate Mortgage - **Document Fraud:** WF00030-32 & 66-73. Forged signatures, falsified income, concealed material facts and misrepresented material facts to Wells Fargo in order to obtain money from a federally chartered and insured bank. In addition, used a credit report without authorization (a 15 U.S.C. § 1681n(a) violation), outright lied to Wells Fargo and SCDCA and is a participant in **Mortgage Fraud** along with the Seller, the Appraiser, Wells Fargo's underwriters and the Player Law Firm; most notably, attorney Debra C. Galloway and Stephanie Hammond. {R. Vol. IV-2, pp. 1333-36, ¶12 & subparts **(4)-(5)**}

(Material Fact: #12) The signature forgeries are easily identified on R. Vol-V-2, pp. 1685-86, 1696 & 1702-09. The traced signatures on pp. 1652-54 are more difficult to identify and detect. The Forged Residential Loan Applications with their Falsified Income and No Year-Built information, the Falsified Appraisal, Satisfaction Completion Certificate, Altered and Forged Sales Contract, and the Unauthorized Credit Report were relied upon by Wells Fargo, for lending purposes. To this very day, Wells Fargo still relies on the Seller's, Appraiser's and Broker's mis-represented material facts and concealed material facts after verbal and written notification and documentation of the falsifications. {R. Vol. IV-2, pp. 1293-94, ¶2**(c)**; subparts **(1)-(11)**; pp. 1333-54, ¶12 & subparts **(1)-(47)**}

(Material Fact: #13) David Terrell was not at 423 Bayne Street on 11/26/2007 to offer and/or accept any application from the Appellant pursuant to **SECTION 40-58-20**(36) SC Code of Laws and the Appellant was not at Millwood Avenue in Columbia, South Carolina. A magnifying glass will reveal the telltale waviness in the signatures on these applications. According to handwriting experts, this indicates a signature was traced. {R. Vol. IV-2, pp. 1334-36, ¶12 & subparts **(4)-(5)**}

(Material Fact: #14) The Appraiser - Jim H. Austin, III - Appraisal Fraud, Forgery by Substitution and Document Fraud: R. Vol. V-2, pp. Bi-Bviii & p. 1700. Concealed material facts, misrepresented material facts, outright LIED on his Appraisals and Satisfaction Completion Certificate and a participant in **Mortgage Fraud** along with the Seller, the Broker, Wells Fargo's Underwriters

and the Player Law Firm; most notably, attorney Debra C. Galloway and Stephanie Hammond.{R. Vol. IV-2, pp. 1333-34, ¶12 subparts **(1)-(2)** and pp. 1336-43 & subparts **(7), (9) & (26)**}

(Material Fact: #15) Jim H. Austin, III, never showed up to appraise 423 Bayne Street on October 8th , or 9th , in 2007. The Appellant's husband was there on those dates cleaning up the property. {R. Vol. I-2, pp. 256-257, ¶17; R. Vol. IV-2, p. 1325, ¶9(a)}

(Material Fact: #16) The **Appraisal Fraud** is obvious to anyone with personal knowledge of the events and 423 Bayne Street. **Reason:** On October 7th, 8th , and 9th , 2007, the driveway and yard at 423 Bayne Street were covered with leaves, the hedges were overgrown and no car was parked in the driveway during the dates and times in question. There are no overgrown hedges and a driveway covered with leaves in Jim H. Austin, III's photographs of the property and this does not include the property deterioration that is obvious to any person of reasonable intelligence. {R. Vol. IV-2, pp. 1313-14} Re: Vol. V-1, pp. 1536-37.

(Material Fact: #17) The property description is a complete fabrication; as well as the $75,000.00 value. **Forgery by Substitution** can be clearly seen on R. Vol. V-2, pp. 1623-48, the "so-called" ***NEW*** Appraisal from Wells Fargo. (This is the same appraisal that was done for the Seller – Thomas Jacobs – verified by Vol. V-2, p. 1649, the 7-59 file [#] & Vol. V-2, pp. 1623-26) The Appellant was not the property owner on October 7, 8, or 9, 2007 {Review Vol. V-2, p. 1638 & Vol. V-1, p. 1584}

(Material Fact: #18) The Closing Attorney - Debra C. Galloway & S. Hammond - Notary Fraud: R. Vol. V-2, pp. 1680, 1682 & 1719. Stephanie Hammond was not in the Appellant's presence at any time on December 21, 2007. Debra C. Galloway also violated *24 CFR Part 35 - Subpart A,* by closing a mortgage loan without any evidence of compliance with this regulation. {R. Vol. IV-2, pp. 1336-38, Re: [R. Vol V-2, pp. 1661-98]; & pp. 1324-25, Re: [R. Vol. V-1, pp. 1543-44]} Wells Fargo is deemed present at the closing via its agent – the Player Law Firm. {R. Vol. IV-2, ¶12; & subpart **(29)(A)-(B)**}

Debra C. Galloway falsely certifying Wells Fargo's mortgage is an illegal act. False certification by a Notary Public is prohibited by **SECTION 26-1-95** SC Code of Laws, hence, Wells Fargo's mortgage violates **SECTION 30-5-30**(C) SC Code of laws.

(Material Fact: #19) Wells Fargo's Underwriters - Forged Initials, Falsified Income & Used an Unauthorized Credit Report: R. Vol. V-2, pp. 1651, 1652-60 & 1687-95 (a 15 U.S.C. § 1681n(a) violation). Participated in the Fraud along with the Broker, the Appraiser, the Seller and the Player Law Firm's Debra C. Galloway and Stephanie Hammond because of forgery, unauthorized use and falsifying documents. {R. Vol. IV-2, p. 1337-38, ¶12 & subparts **(14)-(16)**, p. 1344}

B. Background relative to the Appellant's husband prior to litigation.

As the following facts illustrate and verify, the reason why the Officers of the Court, Brian A. Calub, Elizabeth Scott Moise and James H. Burns have been committing **Fraud upon the Court** for over 6 years by misrepresenting material facts, falsely accusing the Appellant and misstating material facts and Judge Diane Shafer Goodstein abusing her discretion is because there has never been a real search for the facts or truth. [Vol. I, p. 40]

> **(Fact: #6)** Thomas Jacobs never dealt with the Appellant. Thomas Jacobs dealt with the Appellant's husband – George M. Sistrunk. This is why excluding his testimony and not allowing him to testify and present evidence has resulted in this Miscarriage of Justice and the Errors of Fact and Law that led to this appeal. There are many mistaken beliefs associated with Civil Action Case 2008-CP-38-1024 that are repeated in Judge Goodstein's Court Orders. The Appellant did not meet Thomas Jacobs in late September of 2007, it was the Appellant's husband.
>
> **(Fact: #7)** On Friday, September 14, 2007 the Appellant was at work at the Wolfe House in Orangeburg, South Carolina and knew nothing about 423 Bayne Street, when a notice arrived at 5074 Coburg Lane in Bolentown, a subdivision of Orangeburg, South Carolina, relative to a Certified Letter from her landlord, Tommy Mitchell. {R. Vol. IV-2, p. 1305, ¶8 & subpart **(11)**, Re: Exhibit 18}
>
> **(Fact: #8)** On Saturday, September 15, 2007, the Appellant's husband went to the post office in Orangeburg, South Carolina to sign for and get the letter. Opening the letter, the Appellant discovered her family had 30 days to move. Exhibit 18 is dated September 7, 2007. The family had to be out of 5074 Coburg Lane by October 8, 2007. Accordingly, the Appellant's husband began looking for an apartment or house to rent on the same day. {R. Vol. I-2, p. 252, ¶¶ 2-5}
>
> **(Fact: #9)** During the week of September 17, 2007, the Appellant's husband got a copy of the Times and Democrat newspaper and began calling the phone numbers in the classified ad section under apartments to rent and houses to rent. If no one answered, he left a message to call him back. By Wednesday or Thursday during the same week, the Appellant's husband received a call from a man that identified himself as Thomas Jacobs. {R. Vol. I-2, p. 252, ¶2}
>
> **(Fact: #10)** Thomas Jacobs told the Appellant's husband, not the Appellant, that he (Thomas Jacobs) had several houses for lease or sale in the Orangeburg area that the Appellant's husband could lease, if the Appellant's husband were willing to fix one of them up. On Monday, September 24, 2007, the Appellant's husband met Thomas Jacobs at the Huddle House Restaurant in Orangeburg, South Carolina. {R. Vol. I-2, p. 252, ¶¶3-4}

(Material Fact: #20) After looking at 4 houses, The Appellant's husband decided to work on 423 Bayne Street, the former home of Pastor-Evangelist Bond Ceal Dantzler and his friend Bradford C. Lucas. {R. Vol. IV, p. 1335, ¶12 subpart **(5)(H)** & R. Vol. I-2, pp. 252-53, ¶5} A verbal agreement was entered into; that allowed the Appellant's husband to cleanup 423 Bayne Street in exchange for rent payments and a reasonable monthly rent. {R. Vol. IV-2, pp. 1308-10, Exhibit 36, ¶1 [R. Vol. V-1, p.1533]} Thomas Jacobs accepted the terms. {R. Vol. IV-2, pp. 1308-10, Ex. 36, ¶1, Sent. #2, p. 1533} The Appellant's husband began cleaning up and repairing 423 Bayne Street on Tuesday, September 25, 2007. {R. Vol. I-2, p. 253, ¶7 & *cf* [R. Vol. V-2, pp. 1613-48}

C. Background relative to the Appellant prior to litigation.

(Fact: #11) On Monday, October 1, 2007, the Appellant had to rush her son to The Regional Medical Center (hereafter TRMC) in Orangeburg, South Carolina because of a severe respiratory infection. The infection was so bad, it required constant care. {R. Vol. IV-2, pp. 1337-38, ¶12 & subpart 13**(A)-(B)**} The failure of Wells Fargo and Judge Goodstein to search for truth is also illustrated and verified by the following facts.

(Fact: #12) On Monday night, October 1, 2007, The Appellant's husband arrived at TRMC with an unsigned lease agreement from Thomas Jacobs {Exhibit 30} and with information that Thomas Jacobs (R. Vol. V-2, pp. 1636-49, 1651, 1710, & 1712-16 - seller and property owner) said they could buy 423 Bayne Street, rather than rent it or lease it. {R. Vol. I-2, p. 255, ¶12-13} The Appellant's husband could not do it because he was still recovering from a recent operation. {Vol. V-1, p. 1582}

(Fact: #13) On October 2, 2007, while at the TRMC, the Appellant called Thomas Jacobs' assistant and completed a loan application over the phone. The assistant identified herself as someone that worked for Thomas Jacobs. **(Fact: #12** *supra*) {R. Vol. IV-2, pp. 1337-38, ¶12 subpart 13**(A)-(B)**}

(Fact: #14) On October 3, 2007; while at the TRMC, the Appellant son's respiratory infection worsened. The Appellant and her son were transported to Richland Palmetto Health (hereafter RPH) in Columbia, South Carolina on October 7, 2007. While at RPH, the Appellant was notified by her husband, that Tommy Mitchell {Exhibit 18}, their former landlord, wanted them to stay at 5074 Coburg Lane until his agent arrived to inspect the property and pickup the keys. {R. Vol. IV-2, pp. 1319-20, **Note #19: (A)** & subparts **(1)-(2)**}

(Fact: #15) From October 3, 2007 until discharged on October 10, 2007, the Appellant was at RPH. {R. Vol. IV-2, p. 1305, Re: Exhibit 17} The Appellant met Thomas Jacobs for the first time on October 15, 2007 and for the second time on November 26, 2007 when he brought the loan paperwork and told the Appellant

her loan was going to be handled by his friends and business associates and the price of 423 Bayne Street will be lowered during the closing because no repairs were completed. {R. Vol. I-2, p. 259, ¶30}

(Fact: #16) The last time the Appellant saw Thomas Jacobs (**Fact: #12** *supra*) was at the closing on December 21, 2007. Because no repairs were completed at 423 Bayne Street that would justify a sales price of $75,000.00, on December 21, 2007, the Appellant went to the closing at the Player Law Firm in Columbia, South Carolina to cancel any loan, agreement and/or contract for $75,000.00 for a contract with a much lower price. {R. Vol. IV, pp. 1317-18, **Note #15: (A)-(B)**}

(Fact: #17) The Seller, Thomas Jacobs, LIED. The price was not lowered during the closing. Instead, the Appellant was scammed into a loan, and with the exception of the brief period of time, that she was advised to work things out with the Seller, by Wells Fargo's representative, Kathryn R. Perkinson {R. Vol. V-2, p. 1664} (December 24, 2007-March 1, 2008) the Appellant has been actively trying to cancel loan 0174072777. {R. Vol. IV, pp. 1314-16, **Note 8: (A)-(H)**}

D. Background relative to Wells Fargo notification about the "Mortgage Fraud" associated with loan 0174072777 prior to litigation.

The most egregious intentional misstatement of fact or LIE (as defined by *Black's Law Dictionary*) that has been filed in Civil Action Case #2008-CP-38-1024, by attorneys James H. Burns and Elizabeth Scott Moise is Wells Fargo was not advised of the seller's misrepresentations. {R. Vol. IV, pp. 1392-93, ¶43(c) subpart **(8)**} This is proven a lie or an egregious misstatement by the following facts;

(Material Fact: #21) Wells Fargo was notified on December 22, 2007 that the loan was mired in "Fraud", "Deceit" and "Deception". Kathryn R. Perkinson {R. Vol. IV-2, p. 1369, ¶19**(f)** subpart **(1)**, Re: R. Vol. V-2, p. 1664} returned the call on December 24, 2007, and advised the Appellant to work things out with the Seller and if this could not be done, fax a written request for cancellation to Wells Fargo Home Mortgage (hereafter called WFHM) in Des Moines, Iowa along with any evidence the Appellant had of the fraud. {R. Vol. IV-2, p. 1302, ¶8, Re: Ex. 1}

(Material Fact: #22) On December 21, 2007, Wells Fargo was deemed present at the closing via Wells Fargo's closing agent the Player Law Firm; i.e., attorney Debra C. Galloway. Knowledge of the agent is imputed to the principal. {R. Vol. IV-2, p. 1344, ¶12 subpart **(29)(A)-(B)** Re: R. Vol. V-2, p. 1724. Shortly after, Debra Galloway, the closing attorney, notified WFHM by fax that the loan was in dispute. {R. Vol. IV, pp. 1369-70, ¶19**(f)** & subparts **(1)-(5)**, Re: [R. Vol. V-1, pp. 1546, ¶1, Sent. #6]}

(Fact: #18) On Monday, January 7, 2008, after contacting WFHM, WFHM faxed the Appellant a copy of the 7-59 appraisal that is dated October 8, 2007 and signed on October 9, 2007. Because the Appellant's fax machine needed a new drum; the appraisal was dark and virtually unreadable. However, it was readable enough for the Appellant to see it was the wrong appraisal. The Appellant's name was not on it as borrower. **[Jacobs]** was the borrower and **[Sistrunk]** was the property owner. The Appellant was not the property owner on October 8, 2007. [Vol. V, p. 1638]

> {Pursuant to *Rule 208(b)(4), SCACR*; R. Vol. IV, p. 1327, ¶9**(f)** Re: *Dorothy Sistrunk's Rebuttal and Counter Affidavit of Facts & Truth That Refutes & Opposes the Affidavit of Amanda Weatherly Wells Fargo's Vice President for Loan Documentation for Wells Fargo Bank, N.A., in Support of Wells Fargo's Motion for Summary Judgment* [R. Vol. I-2, p. 291, ¶¶74-79, Re: WF00014-WF00026 - [R. Vol. V-2, pp.1636-48]; hereafter referred to as DSA-SJ, that was filed on July 17, 2013.

(Material Fact: #23) On January 12, 2008, the Appellant received Jim H. Austin, III's 7-59 Appraisal and Satisfaction Completion Certificate from the so-called broker, David Terrell with **[Sistrunk]** as the property owner and **[Jacobs]** as the borrower. This 7-59 appraisal was also dated October 8, 2007 and was not ordered for the Appellant. {R. Vol. I-2, p. 291, ¶79, Re: R. Vol. V-2, pp. 1636-48}

(Material Fact: #24) On January 14, 2008, the Appellant notified WFHM by phone that the 7-59 Appraisal and the Satisfaction Completion Certificate the broker sent were "Falsified". {R. Vol. I-2, p. 291, ¶¶80-85} On February 5, 2008, WFHM, faxed the Appellant another 7-59 Appraisal dated October 8, 2007 that is a **Forgery by Name Substitution**. It is the same 7-59 appraisal that was ordered for **[Jacobs]** by the broker. {R. Vol. I-2, p. 293, ¶96, Re: Wells Fargo's WF00001-13 [R. Vol. V-2, pp. 1623-35} On or about February 5, 2008, the Appellant faxed a 9 page letter to WFHM and to all concerned, entitled, ***Are We The Victims of Fraud?*** Since the Appellant was still following Kathryn R. Perkinson's advice and giving David Terrell time to contact Thomas Jacobs, the letter; dated February 5, 2008, was not as harsh as it could have been. {R. Vol. IV-2, p. 1304, ¶8 & subpart **(3)**, Re: Ex. 4 [R. Vol. V-1, pp. 1511-19]}

(Material Fact: #25) On or about February 8, 2008, the Defendant's husband faxed WHFM documented evidence of the falsifications on the 7-59 Appraisals and faxed the same documents to Rogers Townsend & Thomas, PC on July 21, 2008. {R. Vol. VI-2, p. 1304, ¶8 subpart **(7)**, Re: Ex.s 8-14 [R. Vol. V-1, pp. 1525-31] & pp. 1370-71 ¶19**(g)** & subparts **(1)-(8)**, see also R. Vol. V-2, p. 1739}

(Material Fact: #26) On February 25, 2008, the Appellant received a letter from Janet Frotscher, dated February 21, 2008, that acknowledged receiving the Appellant's information and documentation relative to the Seller's, Appraiser's, Broker's and the Player Law Firm's **Mortgage Fraud**. {R. Vol. IV-2, p. 1311, ¶8 & subpart **(29)**, Re: R. Vol. V-2, p. 1742} The Appellant called WFHM immediately. After the telephone conversation with Wells Fargo's personnel in Des Moines, Iowa, Wells Fargo's personnel had full knowledge that Thomas Jacobs brokered the loan by

himself with the help of the so-called broker/David Terrell and the so-called Appraiser/Jim H. Austin, III. Wells Fargo Bank was defrauded out of $75,000 and Wells Fargo's personnel had the documented evidence of a **Conspiracy to Defraud** by definition and could prove it. {R. Vol. I-2, p. 296-97, ¶¶108-113}.

(Material Fact: #27) On February 29, 2008, the Appellant faxed a letter to Janet Frotscher entitled, ***This Could Be Construed As Insurance Fraud*** and the Appellant's husband faxed the information he had discovered to WFHM and requested WFHM cancel the loan because continued payments would make the Appellant a party to **Insurance Fraud**. {Exhibit 51} The Appellant was not going to support Wells Fargo's **Complicity** in the illegal activity of the Seller, the Broker and the Appraiser. {R. Vol. I-2, p. 297, ¶¶114-116}

(Fact: #19) March 1, 2008 came and went and no word from Thomas Jacobs. By this time the Appellant abandoned Kathryn R. Perkinson's advice and stopped payments on the mortgage altogether until the matter could be resolved satisfactorily. On March 6, 2008, the Appellant faxed a letter to WFHM entitled, ***I Will Not Perpetuate A Fraud By Continued Payments; Notice of Intent To Stop Payments & Risk Foreclosure***. {R. Vol. IV-2, p. 1322, ¶8 & subpart **(34)** Re: Ex. 52}

During April of 2008, the Appellant basically exchanged letters with Janet Frotscher about the **Mortgage Fraud** associated with loan 0174072777. {R. Vol. I-2, p. 298, ¶118} In May of 2008 **(Material Fact: #28)**, the Appellant contacted Wells Fargo's Loss Mitigation Department in Fort Mill, South Carolina, and was instructed by the supervisor to resend the evidence of fraud back to an Executive Resolution Team in Des Moines, Iowa to have the loan cancelled. Unfortunately, the Appellant was routed back to Janet Frotscher. {R. Vol. IV-2, pp. 1349-52, ¶12; subparts **(41)** & **(44)(A)-(D)** & **(1)-(7)**; Re: R. Vol. V-2, pp. 1747-48 & p. 1752}

E. Background relative to Janet Frotscher's false accusations, false documentation, concealment of material facts & misrepresentation of material facts that has maintained this foreclosure action for over 6 years from 2008 to the present.

To further illustrate and provide additional evidence and factual details that neither Wells Fargo nor Judge Goodstein was interested in a search for truth, Janet Frotscher's February 21st and June 2nd , 2008 letters have been in the Court of Common Pleas for over 6 years and have never been discussed or reviewed by Judge Goodstein or referred to by James H. Burns, Brian A. Calub, Elizabeth S. Hodgson, Amanda Weatherly or Judge Diane Shafer Goodstein. Elizabeth Scott Moise's misrepresentation of material facts mirrors Janet Frotscher's false accusations. {See R. Vol. V-2, p. 1742 & pp. 1747-48}

(Material Fact: #29) Rather than cancel the loan, in her June 2, 2008 letter, Janet Frotscher chose to rely on the falsified documents of the Seller, Broker, Appraiser and the Player Law Firm and in the process told her Ultimate LIES; and this is after receiving the documented evidence of **Mortgage Fraud** on February 8, 2007 and after the telephone conversation on February 25, 2008 (*supra*) and after months of correspondence, Janet Frotscher decided to cover up the truth about the Appraiser's, Broker's and Seller's misrepresentation of material facts, falsified documentation and falsely accused the Appellant. Janet Frotscher's false accusations have maintained this action for 6 years {R. Vol. IV-2, pp. 1355-59, ¶¶13-14}

(Material Fact: #30) In the same June 2, 2008 letter, Janet Frotscher falsely accused the Appellant of meeting with the Appraiser on September 14, 2007, being the borrower on October 8, 2007 and sending documents to Wells Fargo. {R. Vol. IV-2, pp. 1349-51, ¶12 & subpart **(41)(A)-(I)** Re: R. Vol. V-2, pp. 1747-48} In the process, Janet Frotscher also concealed material facts from SCDCA and from the Office of the Comptroller of the Currency (OCC) relative to loan 0174072777. {R. Vol. IV-2, pp. 1351-52, ¶12 subpart **(44)(A)-(B)**; Re: R. Vol. V-2, p. 1752 & See p. 1638 & p. 1649}

F. Procedural History from 2008 to the Notice of Appeal on 7/30/2014.

1. Date of commencement of the action & nature of the action.

This action began on June 27, 2008, when Rogers Townsend & Thomas, PC, filed a Complaint against the Appellant to foreclose on 423 Bayne Street {R. Vol. IV-2, p. 1304, ¶8 subpart **(4)**; Re: Exhibit 5}. The Complaint did not include or mention any of the history associated with Wells Fargo's loan, note and mortgage or any of the correspondence and telephone conversations between Wells Fargo and the Appellant that occurred from December 22, 2007 until the Complaint was filed in June. {R. Vol. I-1, pp. 69-74}

2. Defraud or swindle is the nature of the Appellant's defense.

On July 18, 2008, the Appellant filed a timely *Answer* to the complaint stating the real facts in the case from personal knowledge and not from information and/or belief. {R. Vol. I-1, pp. 69-74} The Appellant clearly stated the following in her Defensive Pleading to Wells Fargo's Complaint. {R. Vol. I-1, p. 69}

> "[T]hat this action for the foreclosure of a mortgage upon certain real estate in Orangeburg County, South Carolina is an attempt by the Plaintiff

> to perpetuate a Predatory Lending Scheme in which a falsified appraisal was used to inflate the value of the real estate identified in this complaint. I have refused to participate in this scheme. Therefore, the Plaintiff has filed a foreclosure proceeding in an attempt to coerce or force me to participate in this scheme by accepting terms that will only extend the scheme and in due course **defraud** or **swindle** me out of $75,000.00 plus interest one month at a time, one payment at a time. Either I accept the terms or lose my home by foreclosure." **[Boldness** is for emphasis]

(Fact: 20) On July 21, 2008, the Appellant faxed the evidence of Jim H. Austin, III's Appraisal Fraud to C. Rye, at Rogers Townsend & Thomas, PC. {R. Vol. IV-2, pp. 1293-94, ¶2**(c)** subparts **(1)-(11)** & p. 1304, ¶8 subparts **(3)-(7)**, Re: Ex.s 8-14 & the Addendum}

(Fact: #21) On July 31, 2008, the Appellant filed her *First Amendment to Answer to Complaint with Counterclaims* that has the eyewitness account of the true condition of 423 Bayne Street as it was on October 8th and 9th, 2007. The eyewitness description of the property on pages 27-39 [R. Vol. I-1, pp. 110-117] proved Jim H. Austin, III's, 7-59 Satisfaction Completion Certificate is falsified and also proved his 7-59 Appraisal that was ordered by the broker/David Terrell for the Seller – Thomas Jacobs misrepresented, concealed and omitted material facts. {R. Vol. IV-2, p. 1302, ¶6, & p. 1304, ¶8 subpart **(7)**, Re: Ex.s 8-14 supra}

(Fact: #22) The Appellant's averments that Jim H. Austin, III's 7-59 Appraisal; upon which Wells Fargo relied to establish value for its mortgage and fixed rate note, is falsified and a fabrication are genuine statements of fact that are documented, verifiable and not mere allegations. The never denied, refuted, controverted or contested eyewitness description of 423 Bayne Street has been in the Court's record for over 6 years; as well as, the documented evidence that supports it. {R. Vol. IV-2, 1304, ¶8 subpart **(7)** supra}

3. Action of the Plaintiff, Wells Fargo & the Court.

On August 1, 2008, Rogers Townsend & Thomas, PC filed an Order of Reference and the case was sent to the Honorable O. Davie Burgdorf for adjudication. On August

12, 2008, pursuant to *Rules 38(a)-(d) and 53(b), SCRCP*, The Appellant responded to the Order of Reference by filing a timely *Demand for a Trial by Jury*. {R. Vol. IV-2, p. 1381, ¶27**(a)**} Pursuant to *Rule 11(a), SCRCP*, there is no obligation to consult with a Pro Se litigant, at some point in time after the Appellant's *Demand for a Jury Trial* was filed on 8/12/2008 [R. Vol. I-1, pp. 5-24], a decision was made to Substitute Counsel.

Excluding Judge O. Davie Burgdorf's signed Order Substituting Counsel on August 27, 2008, since August 28, 2008, as defined by *Black's Law Dictionary*, Judge Goodstein has basically conducted a **Kangaroo Court** on behalf of Wells Fargo and/or Nelson Mullins Riley & Scarborough, LLP. This is evidenced by the following pattern of **Irrefutable** (impossible to deny or disprove) **Facts** that will be identified as **[I-Facts]**.

> **(I-Fact: #1 - Wells Fargo Filed a Motion)** On August 15, 2008, Wells Fargo filed a Motion to Extend Time to Answer Defendant's Counterclaims. [Vol. I-2, p. 174]
>
> **(I-Fact: #2 - Order Signed)** On August 28, 2008, Judge Goodstein signed an Order Extending Time to Answer the Appellant's Counterclaims to October 15, 2008. (This is expected and is included to demonstrate a pattern of conduct.)
>
> **(I-Fact: #3 - Hearing Held After the Order is Signed)** On September 3, 2008, Judge Goodstein conducted a hearing to inform the Appellant of her decision. There was no need for the Appellant to object to anything, the Order Tolling Time was already signed and faxed to Nelson Mullins Riley & Scarborough, LLP on August 29, 2008 at approximately 10:14 a.m. [R. Vol. I-1, p. 27]

4. **In 2008, either Judge Goodstein ignored or did not realize, the Appellant's statements of fact in verified and notarized pleadings demanded evidence and proof not misstatement and misrepresentation of facts and/or material facts by attorneys.**

(I-Fact: #4) On October 15, 2008, it began with Elizabeth Scott Moise. There is no evidence in the record to support Elizabeth Scott Moise..or Janet Frotscher's statement that the Appellant sent Wells Fargo documents. Wells Fargo..and/or..Wells Fargo's hired attorneys misrepresented material facts, misstated facts..andfiled false statements from Oct. of 2008 to 2014. {R, Vol. IV-2, pp. 1370-72, ¶19; subparts **(a)-(h)**; & subparts **(5)(A)-(D)**}

(I-Fact: #5 – Wells Fargo Filed a Motion) On Nov. 4, 2008, attorney James H. Burns filed a Motion for a Protective Order that is dated October 31, 2008. **(I-Fact: #6)** There is no evidence in the record to support attorney Burn's statement that the Appellant had a dispute with the Seller after the closing. The seller - Thomas Jacobs, left the closing shortly after it began. {R. Vol. I-1, p. 288, ¶38} Attorney Burns' filed argument is replete with misrepresented material facts, misstated facts and false statements. The Motion came into existence because the Appellant sent over 1100 request for Admissions that would expose loan #0174072777 as a **Mortgage Fraud**. {R. Vol. IV-2, pp. 1368-69, ¶19**(e)(1)-(7)**}

(I-Fact: #7 – Judge Goodstein Conducted a Hearing) On November 13, 2008, Judge Goodstein conducted a hearing to limit the Appellant's Request for Admissions to twenty. Despite the fact *Rule 36(c), SCRCP* allows for more than 20 admissions for good cause shown, Judge Goodstein did not ask the Appellant why she needed more than 20 admissions, or explained any procedures that would allow for more than 20 admissions. What she did say was, "In my court, there are only going to be 20."{Vol. IV, p. 1387, ¶35}

(I-Fact: #8 – Order Signed) On November 25, 2008, Judge Goodstein signed the Protective Order, despite the fact, attorney Burns misrepresented and mischaracterized facts, {R. Vol. IV-2, p. 1368, ¶19**(e)**} and despite the fact, the Appellant had demanded a Jury Trial on August 12, 2008, that would have allowed the Appellant to ask Wells Fargo's representatives many of those same questions in the Appellant's Request or Admissions. Judge Goodstein's partiality was shown by scheduling a hearing for Wells Fargo's Motion and signing an Order in less than 30 days, without ever scheduling a hearing or explaining any court procedures to the Appellant relative to her jury trial that was on the court's calendar since August of 2008. {R. Vol. IV-2, pp. 1381-85, ¶¶27-30} The Appellant had no idea what was going on.

5. **The Massive Filing Fraud of Wells Fargo, Elizabeth Scott Moise and James H. Burns During the Stay/TRO from May 2009 – May of 2011 and August 1, 2011.** [Vol. II, pp. 411-733]

Judge Goodstein's partiality and prejudicial treatment of the Appellant continued in 2009 with **(I-Fact: #9)** Judge Goodstein ignored Administrative Order #2009-05-22-01. {R. Vol. IV-2, pp. 1375-77, ¶23 subparts **(1)-(5)**} The use of the word "shall" means it is mandatory and must be followed. *State v. Foster, 284 S.E.2d 780 (S.C. 1981)*

> **(I-Fact: #10)** Administrative Order #2009-05-22-01 Section 2, clearly stated in pertinent parts; "[T]he judge shall consider the affidavit and any counter affidavit that may be filed to determine if there is any contested issue that must be resolved regarding the eligibility of the loan for modification under the HMP or satisfaction of the requirements of the HMP if it applies. If so as to either, the judge shall resolve this issue like any other contested issue in a mortgage foreclosure action." [R. Vol. I, p. 30] {R. Vol. IV-2, pp. 1376-77, ¶23 & subparts **(1)-(5)**}

(Fact: #23) Wells Fargo's dishonest conduct of misrepresenting material facts, concealing facts...and...misstating the facts continued as well with the filing of attorney Elizabeth S. Hodgson's False/Scam Affidavit. {R. Vol. I-2, p. 245} Elizabeth S. Hodgson did not demonstrate any familiarity with the Appellant's case at all; and coupled with Judge Goodstein's failure to comply with the Supreme Court's Order, allowed an illegal loan transaction and a mortgage riddled with fraud into the HMP. {R. Vol. IV-2, pp. 1375-77, ¶23 & subparts **(1)-(5)**} This evidenced by the following additional **I-Facts**.

> **(I-Fact: #11)** Beginning with the first Case Status Update filed in June of 2009 and lasting until August of 2011 with attorney James H. Burns' *Certification of Compliance with Administrative Order 2011-05-02-01* that is dated August 1, 2011, [R. Vol. II-1 & 2, pp. 411-733] Wells Fargo, James H. Burns and Elizabeth Scott Moise initiated, implemented, maintained and repeated a consistent pattern of dishonest conduct by misstating facts, false accusations and false statements about the Appellant during the TRO/Stay. {R. Vol. IV-2, pp. 1364-75, ¶¶19-22 & subparts **(1)-(16)**}
>
> **(I-Fact: #12)** During the Stay/TRO, Wells Fargo, Elizabeth Scott Moise and James H. Burns filed nothing but bogus Case Status Updates that were replete with false information that lasted for over 2 yrs, the Appellant calls it the ***Massive Filing Fraud***. [R. Vol. II-1, pp. 411-570] {R. Vol. IV-2, pp. 1364-75, ¶¶ 19-22 & subparts **(1)-(16)**}

6. **From September of 2011 to September of 2012, the Abusive Practices of Wells Fargo's Attorneys Continued with Brian A. Calub.** [R. Vol. III, pp. 734-961]

The abusive practices and dishonest conduct of Wells Fargo's attorneys continued during 2011 and 2012 with attorney Brian A. Calub. **(I-Fact: #13)** There is no evidence in the court's record to support attorney Calub's statement, the seller gave the Appellant an appraisal. [Vol. I-2, p. 190] Like Burns and Moise, attorney Calub's filed argument was replete with false statements. Despite being told in verified and notarized pleadings, the Appellant's counterclaims and affirmative defenses are based on Wells Fargo's filed documents; [R. Vol. V-2, pp. Bi-Bxxxii], attorney Calub hounded the Appellant and the Appellant's witness to produce documents Nelson Mullins Riley & Scarborough already had - R. Vol.V-2, pp. 1632-1756. {R. Vol. IV-2, p. 1360-61 ¶15**(b)** & subpart **(10)**}

> **(I-Fact: #14)** The Appellant and the witness are Pro Se. Both, the Appellant and witness, agreed to taking depositions pursuant to *Rule 31(a), SCRCP* (**no attorney is required**) or by any other means pursuant to the rules. Even though under *Rule 30(b)(2), SCRCP* the depositions could not be used against the witness or the Appellant because neither the witness nor the Appellant would have counsel available during any deposition by oral examination, attorney Calub insisted on depositions by oral examination. {R. Vol. IV-2, pp. 1380-81, ¶26**(e)-(f)**}

(I-Fact: #15 –The Appellant Filed a Motion) On August 15, 2011, the Appellant filed a *Rule 41(b) Motion to Dismiss with Prejudice, a Legal Memorandum* to support the motion and an Affidavit. {R. Vol. I-2, pp. 251-261} The Appellant's motion is based on Wells Fargo's violation of Administrative Order #2009-05-22-01 and Wells Fargo's "Falsified", "Forged" and "Altered" documents in the Court's record. The Appellant's statements of fact in the Appellant's Legal Memorandum have never been controverted, contested, refuted...or...denied...by anyone with personal knowledge in over 3 years.

> *Pentecost v. Harward, 699 P.2d 696 (Utah 1985)* (holding that a verified pleading that meets the requirements of Rule 56(e) can be considered the equivalent of an affidavit); *Golden Canal Co. v. Bright, 6 P. 142 (Colo. 1884)* (holding that under mandamus statute, a verified petition was

equivalent to an affidavit); *Iowa v. One Certain Automobile, 23 N.W.2d 847 (Iowa 1946)* (noting the general rule that a verified pleading may be held to be an affidavit); *Missouri ex rel. Burton v. City of Parsons, 95 P. 391 (Kan. 1908)* (noting that a verified petition can be used as an affidavit and the allegations contained therein should be treated accordingly); *Montana ex rel. Redle v. District Court In and For Missoula County, 59 P.2d 58 (Mont. 1936)* (noting that under statutes requiring an affidavit, a verified petition is equivalent to, and can be used as, an affidavit); *Rekart v. Safeway Stores, 468 P.2d 892, 895 (N.M. Ct. App. 1970)* ("The verification of the complaint is a statement that the contents of the complaint are true; thus, in effect, an affidavit."); *Renville State Bank v. Kinsberg, 166 N.W. 643, 644 (S.D. 1918)* ("A written declaration, properly sworn to, may constitute an affidavit, even though in the form of an ordinary pleading."); *Washington ex rel. Victor Boom Co. v. Peterson, 70 P. 71 (Wash. 1902)* (holding that a verified pleading can constitute an affidavit)."

(I-Fact: #16) Judge Goodstein has not conducted a hearing for the Appellant's motion in over 3 years. In *Pinnacle Corp. v. Village of Lake in the Hills, 258 Ill.App.3rd 205, 209, 196 Ill.Dec.567, 630 N.E.2d 502 (1994)* Illinois' Appellate Court stated the following; "[w]hen a pleading is verified, every subsequent pleading must also be verified unless verification is excused by the court. There is no allegation that verification was excused by the court. When a subsequent pleading is not verified, it is as if the unverified pleading was never filed; it must be disregarded. (*Charter Bank v. Eckert* (1992), *223 Ill.App.3d 918, 924, 166 Ill. Dec. 282, 585 N.E.2d 1304; Florsheim v. Travelers Indemnity Co. (1979), 75 Ill.App.3d 298, 308, 30 Ill.Dec. 876, 393 N.E.2d 1223.)* Consequently, we must ignore the allegations in Crystal Lake's unverified answer. Moreover, a failure to file an answer results in well-pleaded facts being deemed admitted. (*Florsheim,* 75 Ill.App.3d at 309, 30 Ill.Dec. 876, 393 N.E.2d 1223.)"

(I-Fact: #17 – Wells Fargo Filed a Motion) On, or shortly after, October 14, 2011, attorney Calub filed a Motion to *Compel Discovery by Deposition of Defendant Dorothy Sistrunk and Third-Party Witness George Sistrunk.* [Vol. I-2, pp. 180-197] This

was done despite the fact that statements in an unverified deposition cannot change a judicial admission in a verified pleading. [Vol. I, pp. 337-410] *Winnetka Bank v. Mandas, 202 Ill. App. 3d 373, 397 (1st Dist. 1990).* ("It is well established that a fact admitted in a verified pleading is a formal, conclusive judicial admission which is binding on the pleader and which dispenses wholly with proof of that fact.") [R. Vol. III, pp. 734-961]

Even though no hearing has been scheduled for the Appellant's motion in 3 years, **(I-Fact: #18 – Judge Goodstein Conducted a Hearing)** on December 6, 2011, attorney Calub's argument not only had an outright LIE (**the seller gave the Defendant an appraisal**), at the December 6, 2011 hearing, attorney Calub verified the Appellant's statement of fact in her *Rule 41(b) Motion to Dismiss with Prejudice*, by admitting in Judge Goodstein's courtroom Wells Fargo did not "Substantially Comply" with Administrative Order 2009-05-22-01 (**not only were Burns and Moise's Case Status Updates bogus and replete with false statements and false accusations, some Case Status Updates were not even filed as mandated by Chief Justice Toal's Order**). [R. Vol. II-1, pp. 411- 570, Vol. II-2, pp. 571-733],{R. Vol. IV-2, pp. 1367-68, ¶19**(d)** & subparts **(1)-(3)**}

(I-Fact: #19 – Order Signed) Even though no information was given to the Appellant, relative to a jury trial or a bench trial without a jury, on March 7, 2012, Judge Goodstein signed attorney Calub's *Order Granting Plaintiff's Motion to Compel Discovery, Issuing Stay, and Granting Motion for Continuance.* [Vol. I, p. 35] Despite the fact attorney Calub admitted Wells Fargo did not "Substantially Comply" with Administrative Order #2009-05-22-01 and misstated facts/LIED, the Order was signed. Judge Goodstein LIED as well. Judge Goodstein did not consider or referred to any of the Appellant's objections at the hearing, the witness was not allowed to give any testimony and attorney Calub did

not show any good cause by any known standard; legal or otherwise...or...by any known definition. A judge is the ultimate authority in a courtroom. Therefore, there is absolutely no need or reason for a judge to LIE so that a Court Order can be signed. [R. Vol. I-1, p. 35] Judge Goodstein's conduct and unnecessary LIE were so outrageous and beyond the pale, the Appellant filed a petition for her recusal in the Court of Common Pleas and with South Carolina's Commission on Judicial Conduct. {Exhibit 333}

> {See Exhibit 333; *Petition for Removal or the Voluntary Recusal of Circuit Court Judge Diane Shafer-Goodstein*, pgs 1-10, that was filed on March 23, 2012}
>
> **(1)** *Merriam Webster's Dictionary of Law (2001)* defines **"Good Cause"** as; "[A] substantial reason put forth in good faith that is not unreasonable, arbitrary, or irrational and that is sufficient to create an excuse for an act under the law."
>
> **(2)** *Blacks Law Dictionary (Rev. 4th ed. 1968), on pg 1071*, defines **LIE**, n., as.."[A]n untruth deliberately told; the uttering or acting of that which is false for the purpose of deceiving; [an] intentional misstatement." [Brackets added]

Beginning in 2008, Judge Goodstein maintained a consistent pattern of prejudicial treatment of the Appellant and preferential treatment for Wells Fargo/Nelson Mullins Riley & Scarborough, LLP with an established procedure in Civil Action Case #2008-CP-38-1024 of: **Wells Fargo Filing a Motion-She Conducting a Hearing-and-Signing Whatever Order Wells Fargo Had Written** or doing whatever Wells Fargo needed the judge to do. At these hearings no evidence is presented, no witness testimony is taken, the Appellant and her witness are ignored and the Appellant basically would come to court to hear a recital from Wells Fargo's attorneys as to what the Appellant is suppose to believe.

This procedure that is evidenced in **I-Fact's, #1, #2, #3, #5, #7, #8, #17, #18 & #19,** (supra), is evidenced in the following irrefutable facts. **(I-Fact: #20 – Wells Fargo**

Filed a Motion) On...shortly after...or...before May 15, 2012, attorney Brian A. Calub filed a Motion for Sanctions. {R. Vol. IV-2, pp. 1367-68, ¶19**(d)** & subparts **(1)-(3)**}

(I-Fact: #21 - Judge Goodstein Conducted a Hearing) On September 6, 2012, at the hearing for attorney Calub's Motion, no evidence was asked for..or...presented and the Appellant's witness was not only not allowed to speak, he was ushered out of the Courtroom by the Security Guard for trying to assist the Appellant. Judge Goodstein gave the Appellant 5 minutes to find her *Motion* and present it. The Appellant told Judge Goodstein, giving her 5 minutes to find and present a motion is unreasonable. In *Haines v. Kerner, 404 U.S. 519-421,* even though Haines was an inmate, the United States Supreme Court determined; "[R]egardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims."

In this particular instance; instead of signing an order and despite the fact that the Appellant would not have an attorney present during attorney Calub's deposition by oral examination, **Judge Goodstein threaten the Appellant with Contempt of Court, if the Appellant did not agree to attorney Calub's deposition by oral examination**. The **I-Fact** remains...attorney Calub got what he wanted. {R. Vol. IV-2, pp. 1387-88, ¶¶36-37}

(I-Fact: #22 – Wells Fargo Filed a Motion) More than enough evidence exists in the court's records to prove the Appellant notified Wells Fargo relative to the misrepresentations of the seller; as well as, the broker and appraiser. On June 27, 2013, Wells Fargo filed a Motion for Summary Judgment with the usual misstatement of facts, mischaracterization of facts, false statements and accusations. [R. Vol. I-2, pp. 198-223]

(I-Fact: #23 – Judge Goodstein Conducted a Hearing) On September 3, 2013, at attorney Burns' hearing for Summary Judgment, the Appellant's witness was not allowed to present evidence.

The Appellant's constitutional right to a fair and impartial hearing and/or trial is in violate. If the Appellant's witness was not allowed to present evidence and give testimony, the Appellant should have been notified or told, prior to the proceeding. {R. Vol. IV-2, pp. 1425-27, ¶97 & subparts **(1)-(9)**}

(I-Fact: #24 – Order Signed) There is no evidence in the record to support Burns' or Moise's statements that the Appellant and her lawyer attended the closing on December 21, 2007, and/or the cost of yard work is the reason the Appellant needed to find another home and/or there were negotiations to purchase 423 Bayne Street. On March 27, 2014, Judge Goodstein signed the, now infamous Partial Summary Judgment Order that is replete with misrepresented material facts, misstated facts, mischaracterized facts and the usual outright lie/s. [R. Vol. I-1, pp. 39-45] {R. Vol. IV-2, pp. 1391-93, ¶43**(a)-(c)** & subparts **(1)-(13)**}

7. Summation of the evidence of Judge Goodstein's partiality and prejudicial treatment of the Appellant and preferential treatment of the Respondent/Wells Fargo/Nelson Mullins Riley & Scarborough, LLP's attorneys.

"A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party." *Koon v. Fares, 379 S.C. 150, 156, 666 S.E.2d 230, 234 (2008).* "It is not sufficient for a party seeking disqualification to simply allege bias; rather, the party must show some evidence of bias or prejudice. If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Id.*

The Appellant's evidence of judicial partiality, prejudicial treatment and the Respondent's/ Wells Fargo's/Nelson Mullins Riley & Scarborough, LLP's attorney's preferential treatment consistent of the following **Irrefutable Facts** and documentation:

(a) The Appellant's *Demand for a Jury Trial* was filed on August 12, 2008 pursuant to *Rules 53(b), 38(a)-(d) & 39(a), SCRCP.* The Appellant's *Rule 41(b) Motion to Dismiss with Prejudice* was filed on August 15, 2011. From August 12, 2008 to August 15, 2011, the Respondent/Wells Fargo had one no evidence hearing and one favorable ruling that was based on Attorney James H. Burns filed argument that is replete with misrepresented facts, mischaracterized facts and false statements, while no hearing was scheduled for the Appellant's motion. {R. Vol. IV-2, pp. 1302-1397, ¶¶8-48**(a)-(e)**} unlike Wells Fargo, the Appellant's motion is based on verifiable documentation, the physical evidence (the property, 423 Bayne Street), eyewitness testimony and Wells Fargo's own documents; R. Vol. V-2, pp. Bi-Bxxxii. {R. Vol. IV-2, pp. 1325-59, ¶¶9-14 & subparts **(1)-(25)**}

(b) From August 15, 2011 to March 27, 2014, the Respondent/Wells Fargo has had 3 more no evidence hearings and 3 more favorable rulings that are based on attorney's Brian A. Calub's and James H. Burns' filed arguments and this includes the September 3, 2013 no evidence hearing for summary judgment that are all based on misrepresented facts, mischaracterized facts and false statements; as well as, an OUTRIGHT LIE (**"The loan closed on December 21, 2007, and the Defendant and her lawyer attended the closing."** (R. Vol. I-1, p. 41, ¶12); while no hearing was scheduled for the Appellant.

(c) Judge Goodstein's first misrepresentation or outright LIE is on Pg 1, in ¶ 2, sentence #1, in her *Order Granting Plaintiff's Motion to Compel Discovery, Issuing Stay, and Granting Motion for Continuance* that is dated March 7, 2012. [R. Vol. I-1, p. 35] Judge Goodstein's misrepresentations were so brazen until the Appellant filed a Petition for her recusal on March 23, 2012 pursuant to 28 U.S.C. § 455. {R. Vol. IV-2, p. 1390, ¶40 & pp. 1395-97, ¶47 & subparts **(1)-(7)**}

(d) In addition to lying on Court Orders, Judge Goodstein has signed Court Orders that misrepresent the facts. Judge Goodstein's latest series of signed misrepresentations and/or distortions or total disregard for the evidence, the truth and the facts; can be found in Judge Goodstein's Partial Summary Judgment Order dated March 27, 2014 [R. Vol. I-1, pp. 39-45] {R. Vol. IV-2, pp. 1391-93, ¶43 & subparts **(1)-(13)**}

(e) Additional evidence of Judge Goodstein's partiality and prejudicial treatment of the Appellant is evidenced by her violation of South Carolina's Rules of Civil Procedure; specifically, *Rules 30(b)(2),* (Judge Goodstein violated the rule by using Brian A. Calub's deposition in her summary judgment deliberation that was never reviewed or signed by the Appellant in order to clarify any statement/s) *32(a)(4) , 32(a)(5), 43(a),* and *56(c), (d) and (e), SCRCP.* [R. Vol. I-1, pp.44, ¶26] {R. Vol. IV-2, pp. 1393-97, ¶¶43-48**(a)-(e)**}

(f) By not allowing the Appellant to present evidence, Judge Goodstein also violated South Carolina's evidentiary procedures. "[I]f the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury." *Armstrong v. Collins, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005)* {R. Vol. IV-2, p. 1397, ¶48**(a)-(e)**}

(I-Fact: #25) Judge Goodstein's prejudicial treatment of the Appellant and partiality evidenced by these irrefutable facts; **(A)** Every motion that was filed by Wells Fargo had a hearing to decide the motion. **(B)** The Appellant's Motion to Dismiss was never heard. And..**(C)** The Appellant's Motions to Vacate the Partial Summary Judgment Order, Alter or Amend it, and for A New Trial were all denied without a hearing.

"[T]he relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester, 327 S.C. at 267, 491 S.E.2d at 242.* "[I]f the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim." *C & S Real Estate Servs., Inc. v. Massengale, 290 S.C. 299, 302, 350 S.E. 2d 191, 193 (1986)*

Rule 38(a), SCRCP clearly states the following in pertinent parts. "[I]ssues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury unless a jury trial be waived. *Rule 53(b), SCRCP* also provides for a trial by jury by stating in pertinent parts; "[A]ny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court." The matter was returned to the circuit court. Shall is a mandatory requirement. *State v. Foster, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981)* ("Taken literally, the word 'shall' is mandatory."). The Appellant's issues of fact and material facts should have been presented to a jury as intended in 2008.

South Carolina Constitution Art. I, § 14 states the following in pertinent parts, "[A]ny person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury." And...in addition, a "[c]ompulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both."

8. Statement of Appealabiity.

This appeal is taken pursuant to *Rules 72 SCRCP, Rule 201(a), 203(b)(1) & Rule 241(a) SCACR.* The denial of the Appellant's motions to Vacate, Alter or Amend the Partial Summary Order and a New Trial or appealable court orders.

(a) *Rule 72, SCRCP* says this... "[A]ppeal may be taken, as provided by law, from any final judgment or appealable order."

(b) *Rule 201(a), SCACR* clearly provides; in pertinent parts... "[A]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision."

(c) *Rule 203(b)(1), SCACR* states the following in pertinent parts... "[A] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment."

(d) *Rule 241(a), SCACR* clearly states in pertinent parts... "[A]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court....."

9. Standard of Review for Summary Judgment.

Since the Appellant never had a real jury trial, "[A]s a conclusion of law, the Appellate Court reviews the trial court's grant of summary judgment de novo." *Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000)* "[T]o obtain summary judgment, the moving party must demonstrate there is "no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." *Rule 56, SCRCP; Wilson v. Moseley, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997); Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998)* ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court.") "[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Law v. S.C. Dep't of Corrs., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006)* "[I]f triable issues exist, those issues must go the jury." *Mulherin-Howell v. Cobb, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005)*

"[I]f triable issues exist, those issues must go to the jury." *Rothrock v. Copeland, 305 S.C. 402, 409 S.E.2d 366 (1991);* "[S]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).* "[A]ll inferences, conclusions and ambiguities, arising from the evidence must be construed most strongly against the moving party." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999).* "[E]ven when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000)*

10. Standard of Review for Abuse of Discretion.

Even though, "[T]he admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion" *Pike v. S.C. Dept. of Transp., 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000);* "[A]n abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Carlyle v. Tuomey Hosp., 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991).* "[T]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence." *Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997);* "[A] circuit court's failure to exercise discretion is itself an abuse of discretion." *State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981); Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997)* ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); *Balloon Plantation, 303 S.C. at 155, 399 S.E.2d at 441* ("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.")

11. Standard of Review for a New Trial.

"[A]n abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *State v. Hughes, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct. App. 2001).* "[I]f the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury." *Armstrong v. Collins, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App.*

12. Standard of Review for Fraud upon the Court.

Wells Fargo's and Burns and Moise's, misrepresentations, misconduct or dishonest conduct; is properly alleged as either intrinsic or extrinsic fraud. Because of Fraud upon the Court there has never been a real contest before the court on the subject matter of the action." *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n,* 294 S.C. 9, *11, 362 S.E.2d 176, 177 (1987).*

"[W]henever an officer of the court commits fraud during a procedure in the court, he is engaged in fraud upon the court." *Bulloch v. United States 763 F 2d 1115, 1121 (10th Cir. 1985).* It is well settled law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354, 192, NE 229 (1934)* ("[t]he maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions"). *Id.*

"[F]alse testimony threatens the fair and effective administration of justice and the integrity of the courts. Trials are ideally a search for the truth." "[T]his truth-determining process depends upon the partisan, but accurate, presentation of truthful evidence by the parties." *Clark v. United States, 289 U.S. 1 (1933)* "[T]hus, the United States Supreme Court has aptly observed that all perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore, it cannot be denied that it tends to defeat the sole ultimate objective of a trial." *In re Michael, 326 U.S. 224, 227 (1945)*

"[W]hether the deprivation of a party's rights by actions of the court are attributable to a willful intent to defraud or a reckless disregard of rules or statutory provisions, the court has the same duty to rectify the wrong." *Mallonee v. Grow, 502 P.2d 432 (Alaska 1972)*

ARGUMENTS

I. ABUSE OF DISCRETION

A. <u>The lower court abused its discretion by improperly granting judgment because issues of fact, material facts and law still exist that mandate a jury trial or at least a review of the evidence in a trial without a jury</u>.

Golden Gate Mortgage, Inc./David Terrell never interviewed the Appellant on 11/26/2007 as stated on his Uniform Residential Loan Application, Jim H. Austin, III, never appraised 423 Bayne Street in Orangeburg, South Carolina on October 8th or 9th in 2007 and loan 0174072777 was brokered by an unlicensed seller – Thomas Jacobs. Wells Fargo never had a legal contract or mortgage. The lower court judge improperly granted judgment by failing to consider misrepresenting material facts, concealing material facts and making false statements to a federally charted or insured financial institution by 2nd and/or 3rd parties in order to obtain money is defined by **SECTION 34-3-110** SC Code of Laws and 18 USC § 1344 as a "[s]cheme or artifice to defraud" and such a scheme cannot be legalized, ignored, disguised as a foreclosure and should have been and must be nullified pursuant to 36-3-305(a)(1)(ii-iii). {See also R. IV-2, p. 1407}

B. <u>The lower court abused its discretion by denying the Appellant's Motion for a New Trial because testimony that was never heard, evidence and exhibits that were never seen or reviewed were excluded during 6 years of litigation that should have been presented to a jury</u>.

The evidence contained in Wells Fargo's filed documents, WF00001-137, proves the value of Wells Fargo's $75,000 mortgage and fixed rate note is based on falsified documentation, misrepresented material facts and concealment of material facts as early as December 4, 2007. The lower court improperly denied the Appellant's Motion for a New Trial by failing to consider misrepresenting material facts, concealing material facts and submitting falsified documentation to a bank or lender for a mortgage loan is defined

as **Mortgage Fraud** by the FBI, 12 CFR § 1731.2(c) and by statutory law in 13 States; {R. IV-2, pp. 1295-96, ¶4**(a)-(e)** & subparts **(1)-(5)**} This evidence should have been presented to a jury or reviewed by a judge deliberating without a jury. In addition to the seller's, broker's and appraiser's statutory violations that are identified in subsection [**B**] on pgs 16-20, the Seller, Broker and Appraiser also violated **SECTION 16-13-10**(A)(1)-(4) SC Code of Laws and 18 USC § 1001(a)(1)-(3). {See also R. Vol. IV-2, p. 1406, ¶67 subparts **(1)-(3)**}

> **(a)** In addition, Wells Fargo was duly notified by phone, written correspondence, given documented evidence and was notified by verified pleadings of the **Mortgage Fraud** associated with loan 0174072777; and after all the facts were known, Wells Fargo deliberately chose to falsely accuse the Appellant before and during litigation in order to avoid cancellation and obtain a foreclosure.
>
> **(b)** Since Wells Fargo cannot defraud itself, a successful foreclosure would in essence legitimize Wells Fargo's Underwriters, Broker's, Appraiser's and the Seller's, **Mortgage Fraud**. {R. Vol. IV-2, pp. 1346-51, ¶12 subparts **(37)-(41)(A)-(I)**}

Wells Fargo can and did defraud others. The Appellant has been victimized by a scheme to defraud that was engineered by 2nd and/or 3rd parties. For 6 years, the Appellant has been falsely accused, victimized and unjustly and unfairly persecuted by Wells Fargo. {R. Vol. IV-2, pp. 1413-14, ¶¶76-78 & pp. 1432-34 ¶ 98**(a)** & subparts **(1)-(9)**}

C. The lower court judge erred by ignoring Wells Fargo's Mortgage is falsely certified in violation of South Carolina law and does not comply with the requirements of SECTION 30-5-30(A)(2)-(C).

Stephanie Hammond was never in the Appellant's presence on December 21, 2007. {R. Vol. IV-2, pp. 1326-27, ¶9**(d)** & subparts **(1)-(10)**} [R. Vol. I-2, pp. 312-18] Therefore, Stephanie Hammond could not have witnessed the Appellant execute Wells Fargo's mortgage. Accordingly, Wells Fargo's mortgage is not filed pursuant to **SECTION 30-5-30**(A)(2)-(C) SC Code of Laws. Subsection (B)-(C) is as follows:

"(B) A deed or other instrument must be signed by the grantor, mortgagor, vendor, or lessor and the signing must be acknowledged by the grantor, mortgagor,

vendor, or lessor in the presence of two witnesses, taken before some officer within this State competent to administer an oath." "(C) Where the instrument is acknowledged by the grantor or maker, the form of acknowledgement must be in substance as follows:

"South Carolina,
_____ County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the grantor or maker), personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).

_____
Signature of Officer"" {See also R. Vol. IV-2, p. 1437, ¶101 & subparts **(1)-(5)**}

> *Simon v. Chase Manhattan Bank (In re Zaptocky), 250 F.3d 1020, 1027-28 (6th Cir. 2001)* (holding that, "the trustee may avoid mortgage that was improperly recorded under Ohio law.") *Baker v. CIT Group/Consumer Fin., Inc. (In re Hastings), 353 B.R. 513, 516-17 (Bankr. E.D.Ky. 2006)* (the information required by Kentucky Revised Statute § 423.130 includes identifying the debtors) *Christensen v. Arant, 358 N.W.2d 200 (Neb. 1984)* (holding that "the contract is unenforceable, since the wife had not actually been in the notary's presence.")

In addition to Wells Fargo's mortgage violating **SECTIONS 26-3-40**(1), **26-3-60** (1)-(3)(a), **30-5-30**(A)(2)-(C) & **30-5-40**(1)(a)-(b) – SC Code of Laws; like the Seller, the Appraiser and the so-called Broker, attorney Debra C. Galloway's and Stephanie Hammond's falsely certifying Wells Fargo's mortgage at the Player Law firm on Dec. 21, 2007 [R. Vol V-2, p. 1680, 1682, 1719] is a concealment of and misrepresentation of material facts that also violates **SECTION 16-13-10**(A)(1)-(4) SC Code of Laws, 18 USC § 1001(a)(1)-(3), and 18 USC § 1344 that clearly states in pertinent parts;

> "[W]hoever knowingly executes, or attempts to execute, a scheme or artifice - (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both."

D. <u>The lower court judge erred by failing to consider Wells Fargo's mortgage, loan and fixed rate note constitute an illegal contract that is unenforceable in South Carolina due to illegal brokering, falsified value, misrepresentation of material facts, concealment of material facts, omission of material facts and meets the statutory description of operating a fraud in SECTION 40-58-70(3).</u>

SECTION 40-58-70(3) clearly states in pertinent parts; "[i]t is unlawful for a person in the course of a mortgage loan transaction to: engage in a transaction, practice, or course of business which is unconscionable, as provided in Section 37-5-108, or which operates a fraud upon a person in connection with the making of or purchase or sale of a mortgage loan.." Wells Fargo's mortgage was unconscionable at the time it was made.

> **SECTION 37-5-108** SC Code of Laws clearly states in pertinent parts.. "(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds: (a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or (b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained....," {See also SOTE, pgs 112-114, ¶¶ 56-62 & subparts **(1)-(3)**}

Wells Fargo is deemed present at the closing via its closing agent the Player Law Firm. Therefore, attorney Galloway's unscionable conduct of concealing the Seller's failure to comply with *24 C.F.R. Part 35 – Subpart A*; as well as, Attorney Galloway's concealing the material fact that Wells Fargo's mortgage is falsely certified is attributable to Wells Fargo as principal. {R. Vol. IV-2, p. 1344, ¶12, subpart **(29)(A)-(B)**}

> *<u>Triple A Mgmt. Co., Inc. v. Frisone, et al.</u>, 81 Cal. Rptr. 2d 669, 679 (Cal. Ct. App. 1999)* ("As a general rule, knowledge acquired by an agent within the course and scope of his agency duties is imputed to the principal. Imputation is based on the theory that the agent will disclose to his principal that which he is obligated to disclose."){R. Vol. IV-2, p. 1407}

The evidence in the record clearly shows Wells Fargo ratified and used the false certification of Galloway and Hammond. In *United States Fidelity & Guaranty Co. v. State, 211 Miss. 864 (Miss. 1951)*, the court stated that "[a] notary public is liable on his official bond, for wrongful official acts resulting in loss or injury. It is not necessary that the wrongful act of the notary shall be the sole cause of the loss. If it is a concurring cause and plays a part in bringing about the injury, the liability for the loss is fixed. A notary public engages in misconduct by affixing the notarial stamp and signature to an acknowledgment that the subscriber personally appeared on a specific date. A notary who knowingly purports to authenticate a document which, in fact, has not been properly authenticated, to the detrimental reliance of innocent third parties, is liable for fraud."

{Pursuant to Rule *208(b)(4), SCACR*... {See *Defendant Dorothy Sistrunk Objects to the Plaintiff's Motion for Order of Reference. There is no valid mortgage on 423 Bayne Street due to False Certification*, [R. Vol. IV-1, pp. 1031-45, ¶¶1-4, pp. 1031-33 & 7-37, pp. 1034-44]

II. FRAUD UPON THE COURT

A. The lower court erred by denying the Appellant's Motion to Vacate the Partial Summary Judgment Order due to the Fraud upon the Court that was perpetrated by Wells Fargo, Elizabeth Scott Moise and James H. Burns for 2 years during the Stay/TRO, i.e., Administrative Order #2009-05-22-01 that falsely accused the Appellant; misrepresented material facts and were replete with false statements about the Appellant.

Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir.1978) (fabrication of evidence where attorney is implicated is fraud upon the court); *H.K. Porter Co. v. Goodyear Tire & Rubber*, 536 F.2d 1115, 1119 (6th Cir.1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); *Synanon Found., Inc., v. Bernstein*, 503 A.2d 1254 (D.C.1986) (attorney subornation of perjury and false statements to trial court constitute fraud upon the court).

B. The lower court erred by denying the Appellant's Motion to Alter or Amend the Partial Summary Judgment Order because the signed Order of March 27, 2014 that was drafted by Nelson Mullins Riley & Scarborough, LLP not only misrepresents facts and material facts, the signed Order is replete with statements that are patently false.

No attorney attended the closing with the Appellant on December 21, 2007. This statement is patently false." {R. Vol. IV-2, pp. 1391-1401, ¶¶43-45 & subparts **(a)-(n)**}

> "[F]raud upon the court by an attorney, whether or not intrinsic or extrinsic, can be used to set aside a prior judgment" *Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003)*

"[T]he deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." *Mooney v. Holohan, 294 U.S. 103, 112 (1935).* In *Napue v. Illinois, 360 U.S. 264 (1959)*, "[A] conviction obtained through use of false testimony, known to be such by representatives of the State, is a denial of due process." "[T]here is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could in any reasonable likelihood have affected the judgment of the jury." *Napue, 360 U.S. at 271.*

As principal, Wells Fargo is bound by the Player Law Firm's material representations of fact to the same extent as if Wells Fargo had made them personally. This also applies to the misrepresentations of material facts, false accusations and misstatements of attorneys Elizabeth Scott Moise, Brian A. Calub and James H. Burns. Wells Fargo is similarly bound by the false accusations, concealment of material facts and representations of Janet Frotscher, the forgery and "Document Fraud" of Wells Fargo's underwriters and the "False/Sham Affidavit of Elizabeth S. Hodgson.

C. **The lower court judge and attorneys James H. Burns and Elizabeth Scott Moise committed Fraud upon the Court by changing the Appellant's Defensive Pleading from Defrauding or Swindling with falsified documents to fraud.**

Judges cannot change a Defensive Pleading without consent. Attorneys cannot change a defense pleading to expedite a judgment or obtain a favorable Court Order or Ruling. Changing a defense pleading is not something Wells Fargo did..or..can do..and.. the offense is an egregious affront to justice. This offense was done by Officers of the Court. The Appellant's Defensive Pleading was never fraud. The Appellant's primary Defensive Pleading in case #2008-CP-38-1024 still is... Wells Fargo is "Perpetuating a Fraud" that is based on Wells Fargo's acceptance, approval, funding, use and defending the use of falsified, forged, altered, and unauthorized documents from 2nd and/or 3rd parties; i.e., the Seller, Broker, Appraiser, the Player Law Firm and Wells Fargo's own employees to Defraud or Swindle the Appellant out of property and/or money one month at a time and one payment at a time. {R. Vol. IV-2, pp. 1361-64, ¶¶16-18**(a)-(d)**}

> In *6 Angels, Inc. v. Stuart-Wright Mortgage, Inc. (2001) 85 Cal.App.4th 1279 at 1286* where the Court stated: "[I]t is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties."

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

October 9, 2015

/s Dorothy Sistrunk

Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716

NOTARY CERTIFICATION

RECEIVED
OCT 14 2015
SC Court of Appeals

IN WITNESS WHEREOF, The undersigned, being duly ***SWORN***, and under the ***PENALTY OF PERJURY*** declares the facts in her "Final Brief" are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon information and/or belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: Case No. 2014-001683, has signed, sealed, attested and executed this 9th day of Oct in the year 2015 in City and County of Orangeburg, in the State of South Carolina.

> *Rule 11(c), SCRCP* clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

Appellant's Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Lillian D. Buck

Signed, sealed and delivered in the presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On Oct 9th 2015 before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and by her signature on the "Final Brief" and this Notary Certification presents this document to the Appellate Court.

WITNESS my hand and official seal.

Notary's Signature Lillian D. Buck

Commission Expires ~~My Commission Expires~~
July 24, 2022

(Seal)