

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellant Case No. 2015-000942

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APPEAL FROM GREENVILLE COUNTY

SC Court of Appeals

Court of Common Pleas

Charles B. Simmons, Master in Equity Judge

Case No. 2010-CP-23-8330

Joel Clay Bracken, Appellant.

v.

Green Tree Servicing, LLC., Respondent.

APPELLANT'S RULE 208(b)(7) SUPPLEMENTAL AUTHORITIES

Joel Clay Bracken, "Appellant", hereby supplements additional authorities for with his previous submitted Initial Brief pursuant to Rule 208(b)(7) SCACR based upon recent discoveries of pertinent documents, information, South Carolina court cases and others pertinent to the arguments and issues of this appeal. Please review the supplemental authorities, citations, documents, attachments, argument references, related issues and reasonings set forth below as follows:

- I. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENT V.
(*App. In. Brief* Pages 26-31)

ISSUES

- A. Appellant's Note and Mortgage were never evidenced in the lower records for review.

- B. Mortgage Security contract conditions were not abided by the previous plaintiff or present Respondent, before any suit was proper. (*App. In. Brief*, Argument V Page 26)

SUPPLEMENTAL AUTHORITY

1. Copy of original Appellant *Note & Mortgage Security*. Recorded on date January 3, 2003 Office of the Register of Deeds for Greenville County Book 3826, Page 1384. (See attached Supplemental Authority A)

REASONS FOR NOTE AND MORTGAGE SUPPLEMENTAL AUTHORITY

Previous plaintiff BAC and current Respondent's counsel, failed to introduce, exhibit or otherwise evidence Appellant's original or current Note and Mortgage into the court record of this suit. Thus, the lower court was without material knowledge or reference of the binding terms and conditions for basis of any competent review and judgment upon foreclosure. (See previous court's records) Further, Appellant by emergency motion June 18, 2011 and later Answer and affirmative defenses, raised specific objections notices were never served. The lower court ignored the Appellant's defenses by an abuse of discretion. (See Argument V)

- II. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENTS V, IX and X.
(See *App. In. Brief* Pages 26-43)

ISSUES

- A. There is no Justiciable Controversy for relief from the lower court.

SUPPLEMENTAL AUTHORITIES

1. In order to maintain an action, there must exist a justiciable controversy. See *Dantzer v. Callison*, 227 S.C. 317, 88 S.E. (2d) 64, 65 SC Supreme Court 1955; *South Carolina Electric & Gas Co. v. South Carolina Public Service Authority*, 215 S.C. 193, 54 S.E. (2d) 777, 787; *Southern Ry. Co. v. Order of Ry. Conductors of America*, 210 S.C. 121, 41 S.E. (2d) 774.

In *Dantzler*, our supreme court set forth necessary grounds for determining a justiciable controversy:

“Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action.”

2. These principles were further established in *Guimarin & Doan v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 155 S.E. (2d) 618 249 S.C. (1967); also *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970).

“A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” And “the existence of an actual controversy is essential to jurisdiction to render [judgment].”

3. The high court later founded in *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 227-28, 467 S.E.2d 913, 917-18 (1996);

“A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.... It is not enough that a threat of possible injury currently exists; the mere threat of a potential injury is too contingent or remote to support present adjudication.” (citations omitted) (internal quotation marks omitted).

4. “Before any action can be maintained, there must exist a justiciable controversy.” See *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996).
5. “Generally, [a court] only considers cases presenting a justiciable controversy.” And “If there is no actual controversy, [a court] will not decide moot or academic questions.” See *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) (citing *Jones v. Dillon-Marion Human Res. Dev. Comm'n.*, 277 S.C. 533, 535, 291 S.E.2d 195, 196 (1982)); See also *Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981).
6. “An issue that is contingent, hypothetical, or abstract is not ripe for judicial review.” See *Colleton County Taxpayers Ass'n v. Sch. Dist. of Colleton County*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006).
7. “There must be a real or actual controversy between the litigants at the time of the institution of the action.” See *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595, 748 S.E.2d 781, 787 (2013)

REASONS FOR JUSTICIABLE CONTROVERSY SUPPLEMENTAL AUTHORITIES

The lower court should not have proceeded the merits of the lawsuit’s complaint and further ruled judgment, because there is no ripe justiciable controversy that relief may be granted. Original Plaintiff BAC Home Loans Servicing LLC., failed to establish on record by evidence or testimony, Appellant was in default of the mortgage and all required notices pursuant the mortgage were timely served. (See Argument V, *Appel. Brief*)

BAC was barred by the very mortgage contract it sought relief, from initiating any lawsuits against Appellant, until all conditions precedent were performed. The issues were raised to as grounds sought by BAC within the Complaint. Appellant denied the claims by emergency motion and his *Answer* affirmative defenses. No notices were served. According to our supreme court authorities above herein, no justiciable controversy existed from the suit’s beginning that a court may grant relief and must be reversed. (See also Arguments IV & X, *App. Brief*)

- III. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENTS II, III, IV, V, and IX. (*App. In. Brief* Pages 13-43)

ISSUES

- A. The matters are moot for adjudication.

SUPPLEMENTAL AUTHORITIES

1. The high South Carolina court's firmly uphold the *Mootness Doctrine*:

“The court does not concern itself with moot or speculative questions. An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.”

See *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct.App. 2009); See *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001); See also *Jackson v. State*, 331 S.C. 486, 490 n. 2, 489 S.E.2d 915, 917 n. 2 (1997); *McClam v. State*, 386 S.C. 49, 55, 686 S.E.2d 203, 206 (Ct. App. 2009).

2. Justiciability encompasses several doctrines, including ripeness, mootness, and standing. See *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010)
3. The court does not concern itself with moot or speculative questions. See *Sloan v. Dep't of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008).

REASON FOR CITING MOOTNESS DOCTRINE SUPPLEMENTAL AUTHORITIES

Argument II and the records exhibit the lower clerk and circuit court had no personal jurisdiction to refer to an Master Court due to the Finkel Law Firm's failure of service, utter noncompliance with the circuit's Order of publication and S.C. Code Ann. § 15-9-740. Because Argument III and the court records exhibit *prima facie* failure to commence the action pursuant S.C. Code Ann. § 15-3-20(B) and Rule 3(a) by February 4, 2011, all subsequent triable issues are moot as a matter of law.

Argument IV and the records exhibit the Master in Equity was without statutory power and authority from the clerk's reference Order, to reinstate and resume an uncommenced civil action after the § 15-3-20(B) statute of limitations, the Master erred and abused his discretion denying the motion to quash service, while clearly complicit Finkel Law Firm was noncompliant with the publication Order. The lower court was in error and abused it's discretion and no other actual controversy and therefore moot.

Argument V and the records exhibit the original filed Complaint expressly raised material contractual issues within Line No. 15, that "*Any* notice of right to cure has been given as required" (as required by the Mortgage contract), despite Appellants Answer denying such along with affirmative defenses (*Ans. Aff. Def. No. 5-6, Pg. No 4; filed 4-30-2014*) and apparent lack of ANY court records evidencing Appellant was ever indeed given notice of default and acceleration, notices of assignment transfers from the true Lender under Paragraph 15 and 18, pursuant S.C. Code Ann. § 37-5-110, § 37-5-111, Paragraph 10 of the Note and Paragraph 22 of the Mortgage. The Mortgage prohibits ALL such legal actions such as the present case by defined conditions within Paragraph 20 of the Mortgage agreement, to equitable relief outside said conditions. The lower court's judgment of foreclosure and auction of the property has no practical legal effect on an any existing controversy if the Mortgage contract has not first been firmly adhered to by the purported Lender. The matter is moot for adjudication.

IV. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENTS II, III, IV, IX and X. (See *App. In. Brief* Pages 14-47)

ISSUES

- A. The lower clerk and court were absent Personal Jurisdiction.

SUPPLEMENTAL AUTHORITIES

1. The court must “inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” See *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 210, 456 S.E.2d at 899 (1995).
2. The exercise of personal jurisdiction under statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. See *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005).
3. The court must also find that the exercise of jurisdiction is “reasonable” or “fair”. See *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992).
4. Personal jurisdiction is exercised as either “general jurisdiction” or “specific jurisdiction.” See *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).
5. Objections to personal jurisdiction can ONLY be waived when the party fails to raise them. See *Bakala v. Bakala*, 576 S.E.2d 156 (S.C. 2003); *Shinn v. Kreul*, 311 S.C. 94, 427 S.E.2d 695 (Ct.App.1993); *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993); *Republic Leasing Co. v. Haywood*, 329 S.C. 562, 495 S.E.2d 804 (Ct.App.1998).

REASONS FOR PERSONAL JURISDICTION SUPPLEMENTAL AUTHORITIES

The lower court clerk was absent personal jurisdiction to refer to this uncommenced action to the master in equity court. Plaintiff failed to execute personal service, failed to comply with the circuit’s publication Order and S.C. Code Ann. § 15-9-740. (See Argument II, *App.*

Brief) January 7, 2011 Plaintiff's counsel raised the issue by form motion requesting an Order of Reference to an Master in Equity despite being noncompliant. In error, the lower court clerk signed the Order of Reference for this uncommenced "action for foreclosure of mortgage, upon motion of plaintiff's counsel..." to the Master in Equity court January 18, 2011 without the action being first commenced and personal jurisdiction of the Appellant.

The clerk in determining the Order and the lower master court accepting the case, had a firm duty by precedent of our supreme court in the above case of *Roche*, to inquire whether the plaintiff had sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant had sufficient notice of the proceedings and failed said duty within the statute of limitations of the case. The referral Order was unconscionably unfair to substantial justice upheld in above cases *Cockrell*, *Southern Plastics* and prejudiced Appellant's required due process of timely notice of the suit.

Ultimately, this case was never commenced within the allowable statute of limitations, personal jurisdiction was never achieved by the last day to comply with the standing Order of Publication, S.C. Code Ann. § 15-3-20(B) and SCRCP Local Rule 3(a), thus expired on or around February 4, 2011. (See Argument III, *App. Brief*)

By abuse of discretion on June 13, 2011, 129 Days after the statute of limitations expired, the lower court asserted personal jurisdiction in error, finding that there were no facts to demonstrate why the publication was invalid while acknowledging within it's Order the publication did not run for three (3) weeks as required. (See Argument IV, *App. Brief*) The lower court again erred at hearing April 8, 2015, when Appellant again raised objections ruling Appellant's filings and making any number of voluntary appearances is deemed a *waiver* of any service defect or the statute of limitations. (See Arguments IX & X, *App. Brief*)

V. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENTS III.

(*App. In. Brief* Pages 22-23)

ISSUES

A. Time allowable to commence this action expired pursuant statute and the rules.

SUPPLEMENTAL AUTHORITIES

1. “Statutes of limitations are not simply technicalities.” “On the contrary, they have long been respected as fundamental to a well-ordered judicial system.” Id. “Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Id. “One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his or her rights.” Id. (citations omitted). “Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.” Id. “Statutes of limitations are, indeed, fundamental to our judicial system.” Id. (citation omitted). See *Kelly v. Logan, Jolley & Smith, L.L.P.*, 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009). Quoted from the recent *Stokes-Craven Holding Corp. v. Robinson*, Op. No. 27572 (S.C. Sup. Ct. filed September 9, 2015).

2. “A statute of limitation is an affirmative defense that allows a party to avoid suit. A statute of limitation has no effect on the validity of the claim; it only effects the claim's enforcement.” Quoted by S.C. Supreme Court Justice Beatty from *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010).

3. A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. See *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993).

REASONS FOR STATUTE OF LIMITATIONS SUPPLEMENTAL AUTHORITIES

Appellant’s Initial Brief Arguments III & IV and above authorities support the statute of limitations in South Carolina are nonflexible. In the present case, Respondent and counsel had a statutory duty pursuant S.C. Code Ann. § 15-3-20(B) and Local Rule 3(a) to effect actual service on the Appellant within one hundred twenty days after filing the Complaint and failed. Respondent counsel had statutory duties pursuant to S.C. Code Ann. § 15-9-740 and direct Order of Circuit Judge Miller to publish all notices in the *Greenville News* not less than once a week for three weeks and failed. This uncommenced action was effectively over February 4, 2011.

VI. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENTS II, III, IV, V, and IX. (*App. In. Brief* Pages 13-43)

ISSUES

- A. The lower clerk's referral Order and lower court's successive Judgments are void as a matter of law.

SUPPLEMENTAL AUTHORITIES

1. The Supreme Court has long instructed that judgments in excess of jurisdiction "are not voidable, but simply void." And "without authority, its judgments and orders are regarded as nullities and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." See *Elliott v. Lessee of Peirsol*, 26 US 328 - Supreme Court 1828; Also *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940)
2. "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct.App.2002) (quoting *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct.App. 1996)); See also *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010).
3. Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. See *Tyron Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992).

4. South Carolina's highest court sustained "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." See *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).
5. "It is axiomatic that an order entered by a court without [jurisdiction] is utterly void." See *Simmons v. Simmons*, 370 S.C. 109, 116, 634 S.E.2d 1, 4 (Ct.App.2006); Also *Katzburg v. Katzburg*, 410 S.C. 184, 764 S.E.2d 3 (Ct. App. 2014).

REASONS FOR VOID JUDGMENT SUPPLEMENTAL AUTHORITIES

Respondent's counsel Susan S. White on January 7, 2011, form motioned for an Order of Reference to the lower court. The records clearly show the action was not pending and uncommenced, counsel had failed to enact personal service on the Appellant and technically failed to obey the circuit court's standing November 19, 2010 publication Order and it's obligation pursuant S.C. Code Ann. § 15-9-740. The motion should have been properly reviewed for prior compliance and denied. It was not. On January 18, 2011, upon said motion, the lower clerk ruled an Order referring the case action to the master court in error without personal jurisdiction of the Appellant and without Respondent's counsel complying with the antecedent publication Order. (See *App. Brief Argument II*)

There must first be an commenced *action* pursuant to S.C. Code Ann. § 15-3-20(B), S.C. Rules of Civ. Proc. Rule 3(a) or S.C. Code Ann. § 15-9-740 to give rise to an referral of an pending case. An officer of the court, as is the clerk, may not refer power and authority that is not ascertained first by the prerequisites of controlling state statutes. Nor can the lower court be granted power to proceed any uncommenced action that is not first established personal jurisdiction of the defendant. (See *App. Brief Argument III*) The lower clerk's reference Order is void as a matter of law.

This uncommenced action expired on February 4, 2011, without personal service, without personal jurisdiction and without proper publication as strictly ordered. The lower court knowingly and recklessly proceeded in an abuse of discretion and error of law. All subsequent proceedings, Orders and rulings are void as a matter of law and must be reversed for the integrity of this Court and future rulings.

- VII. IN REFERENCE TO APPELLANT’S INITIAL BRIEF ARGUMENTS II and VII. (*App. In. Brief* Pages 13-35)

ISSUES

- A. Appellant’s constitutional liberty of procedural Due Process was infringed by the lower clerk and court.

SUPPLEMENTAL AUTHORITIES

1. The Supreme Court of the United States opined requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. See *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).
2. “The fundamental requisite of due process of law is the opportunity to be heard.” See *S.C. Dep’t of Soc. Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).
3. “Due process is flexible and calls for such procedural protections as the particular situation demands.” See *S. C. Dep’t of Soc. Servs. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). Also *Bundy v. Shirley*, Op. No. 27520 (S.C. Sup. Ct. filed May 6, 2015).
4. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”; *id.* (“The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.”). See *Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008).

REASONS FOR PROCEDURAL DUE PROCESS SUPPLEMENTAL AUTHORITIES

Because the SCOTUS and this Court require notice must be provided to comply with the *Due Process Clause* of the Fifth or Fourteenth Amendment of the United States Constitution, the lower clerk failed to allow for proper notice of the lawsuit from Respondent unto the Appellant, before hastily granting Respondent's illegitimate referral motion. Without proper notice, Appellant was deprived procedural due process to fundamentally appear first before any referral would be proper. (See *App. Brief Argument II*)

The lower court infringed the Appellant's procedural due process when it was formally informed of the Respondent's counsel failure to timely mediate pursuant SC Administrative Order 2011-05-02-01 on Oct. 27, 2011 and ignored it's duty to allow Appellant to appear and hear the complaints. The lower court ignored the Appellant's motion for help and granted counsel's motion to strike the case from the docket pursuant the same administrative Order. Such denial to even hear Appellant's claims of neglect are an abuse of the SCOTUS and this Court's precedents that a party must be given the right to be heard and the lower court was charged by duty of the South Carolina Supreme Court under Title C of said Administrative Order to act upon any notice of nonparticipation in good faith. The lower court failed it's duty and neglected Appellant's procedural due process and this Court must reverse on these grounds.

VIII. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENTS II, III, IV and V.
(*App. In. Brief* Pages 13-33)

ISSUES

A. This Court must interpret and enforce the laws as the legislature originally depicted.

SUPPLEMENTAL AUTHORITIES

1. "Statutory interpretation is a question of law subject to de novo review." See *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010).
2. "Where the terms of a statute are clear, the court must apply those terms according to their literal meaning." "The words of the statute must be given their plain and ordinary

meaning without resorting to subtle or forced construction to limit or expand its scope.” See *Allen v. State*, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000). Also *Hayes v. State*, SC: Op. No. 5335 Court of Appeals (2015).

3. “Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below. It is well-established that [t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature. Thus, we must follow the plain and unambiguous language in a statute and have no right to impose another meaning.” See *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (alteration by court) (citations and internal quotation marks omitted).
4. “Words in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's application.” See *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011).
5. “The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” See *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).
6. “When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Id.* In interpreting a statute, “words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Id.* at 499, 640 S.E.2d at 459. Further, “the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.” See *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

REASONS FOR STATUTORY INTERPRETATION AUTHORITIES

Appellant makes specific reference within Arguments II, III, IV and V, the lower court and this appeals Court, must only interpret and enforce the South Carolina's statutory codes by their literal and ordinary meanings. Any judicial reconstructions that limit or expand on the statute's legislative intent and operation, are in conflict with it's fundamental purpose of legislature. These recent supplemental authorities have been found in support that the statutes of our state are to be determined by their literal meanings.

IX. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENT VI, VIII, IX and X. (*App. In. Brief* Pages 33-47)

ISSUES

- A. Respondent is an notoriously abusive mortgage debt collector that federal government agencies investigated, litigated and harshly sanctioned \$63 million dollars in 2015.
- B. Respondent had specific conditions to comply with the Appellant mortgage under the Consent Order and has failed it's duty.

SUPPLEMENTAL AUTHORITIES

- 1. Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) Complaint against the Respondent; Federal Trade Commission et al v. Green Tree Servicing LLC (0:15-cv-02064), Minnesota District Court, Filed: 04/21/2015. (See Attach. Supp. Authorities B)
- 2. Respondent Green Tree Consent Order; Federal Trade Commission et al v. Green Tree Servicing LLC (0:15-cv-02064), Minnesota District Court, Filed: 04/26/2015. (See Attach. Supp. Authorities C)

REASONS FOR RESPONDENT'S CONSENT ORDER SUPPLEMENTAL AUTHORITIES

Appellant argues in the Initial Brief, Respondent and it's counsel, have repeatedly abused the conditions paramount for fair mediation prescribed by the South Carolina Supreme Court. (See *App. In. Brief* Arguments VI, VIII and IX)

These recent sanctions and settlements with the CFPB and FTC, support the Appellant's Arguments of other mortgage debtors experiencing egregious actions from the Respondent regarding foreclosure. The consumer complaints from 2010 to 2014 were so massive, the federal consumer agencies investigated Respondent finding systemwide abuse of protection laws FDCPA, FCRA, RESPA, the FTC Act and CFPA. As was the case here, Respondent was discovered to have floundered or declined to mediate with homeowners appropriately, needlessly delayed and ignored homeowner communications regarding loan modifications, including misrepresentations to homeowners.

Respondent agreed to a bevy of strict conditions and penalties within said Consent Order. Some of which requires the establishment of a "home preservation plan", effective for five years, designed to "identify and review" identified consumers for "loss mitigation options, provide for the solicitation and fast-track evaluation of loss mitigation applications and stop pending foreclosure sales for such consumers to the extent necessary to permit the consumers to be solicited and considered for loss mitigation"; Implement a "Home Preservation Requirement" to provide loss mitigation options to consumers whose loans were transferred to Green Tree during the time period covered by the complaint; Provide quarterly disclosures to consumers with past due debts serviced by the Defendant which include customer service information, as well as directions as to how to contact the FTC and CFPB concerning the manner in which the account is being collected. None of these conditions have yet been fulfilled unto Appellant by Respondent.

- X. IN REFERENCE TO APPELLANT'S INITIAL BRIEF ARGUMENT X.
(*App. In. Brief* Pages 44-47)

ISSUE

- A. Respondent's claim of an unsecured interest in the Mortgage Security, absent the Note, does not give rise to an foreclosure sale and ejection of Appellant.

1. The United States Supreme Court established “An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.” “All the authorities agree that the debt is the principal thing and the mortgage an accessory.” See *Carpenter v. Longan*, 83 U.S. 271, 274 (1872)

2. “The idea that the Mortgage follows the Note is one which has been repeatedly confirmed by our courts: “South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of mortgage. However, *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872), quoted by Plaintiffs counsel in this oral argument and brief, clearly supports the notion that the Plaintiff must clearly own the Note and the Mortgage to foreclose on the property. Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed. In its complaint, Plaintiff merely contends in §3 of its Complaint that it is a holder and has the right to enforce. Further, the mortgage of this case shows Mortgage Electronic Registration Systems, Inc. (MERS) to be the mortgagee. This was confirmed by Plaintiffs counsel in oral argument. MERS is never mentioned on the Note.”

“It is clear to have standing in this foreclosure case, Plaintiff must not only be the holder of the original Note, but also the Mortgage as well.” The Court determined because “Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed”, and also noted that the Mortgage shows MERS to be the mortgagee but that MERS is never mentioned in the Note.” “It is clear that to have standing in this foreclosure case, Plaintiff must not only be the holder and owner of the original Note, but also the Mortgage as well. Plaintiff's Complaint in this case fails to meet this criteria. Plaintiff lacks standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b)(6) SCRCF is appropriate.”

See above quoted Opinion from attached (Supplemental Authority D) lower court decision of *Deutche Bank v. Heinrich*, Ninth Circuit Charleston Court of Common Pleas, Case No. 2011-CP-10-1060, July 31, 2013. NOTE: Deutche Bank declined to appeal or challenge these findings and decision.

REASONS FOR NOTE OWNERSHIP SUPPLEMENTAL AUTHORITIES

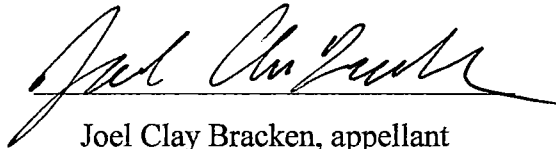
The United States Supreme Court, is the ultimate definer of issues of law within all states and districts. The precedents in *Carpenter* have never being overruled or overturned in any case since. A Plaintiff must clearly own the Note and the Mortgage to foreclose a property. PERIOD. The Ninth Circuit Charleston Court of Common Pleas recently deliberated *Carpenter* regarding inadequacies of plaintiff Deutche Bank's note ownership and "holder" claims, arriving at the very same conclusion.

In this present case, original Plaintiff BAC Home Loans Servicing, claimed to be an owner of the Note and Mortgage by way of an assignment in 2010. However, Respondent Green Tree claims to be an assignee of only a Mortgage contract on date May 16, 2003. Respondent specifically never makes any claims within pleadings, evidence, affidavit or testimony on the lower court record to being an holder or owner of Appellant's Note. The lower court erred and abused it's discretion in it's opinion that Respondent, with only an marginal interest in the Mortgage contract and devoid any ownership of the physical Note, may foreclose upon the Appellant's property in South Carolina. At most, if proven up, Respondent could seek an unsecured monetary debt judgment and the lower judgment must be reversed.

CONCLUSION

These supplemental authorities, citations, documents, attachments, argument references, related issues and reasonings are submitted with the Initial Brief for review of this Court on their merits.

Today's Date: November 25, 2015.

A handwritten signature in black ink, appearing to read "Joel Clay Bracken", written over a horizontal line.

Joel Clay Bracken, appellant

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellant Case No. 2015-000942

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Master in Equity Judge

Case No. 2010-CP-23-8330

Joel Clay Bracken, Appellant.

v.

Green Tree Servicing, LLC., Respondent.

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SC Court of Appeals

I HEREBY CERTIFY, a true and correct copy of the aforementioned pleading has been delivered to Respondent's counsel by US postal mail with verifiable delivery confirmation to:

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Office: 803-765-2935

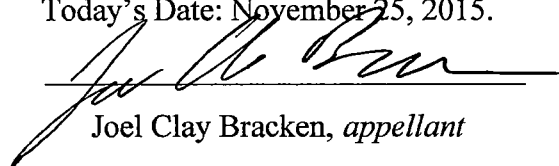
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Respectfully submitted,

Today's Date: November 25, 2015.



Joel Clay Bracken, *appellant*

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Greenville, SC 29607

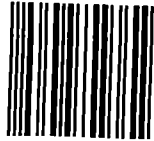
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