

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Gordon G. Cooper, Master in Equity

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Appellate Case No. 2014-002610

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**RECEIVED**

MAR 22 2016

**SC Court of Appeals**

U.S Bank National Association as Trustee on behalf of Manufactured Hosing Contract  
Senior/Subordinate Pass-Through Certificates 1996-6 by Green Tree Servicing LLC, as servicer  
with delegated authority under the transaction documents . . . . . Respondent,

v.

Kim Byrd and South Carolina Department of Revenue. . . . . Defendants

Of Who Kim Byrd is Appellant

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RETURN TO APPELLANT'S MOTION TO ALLOW PETITION FOR REHEARING

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B. LINDSAY CRAWFORD, III  
THEODORE VON KELLER  
SARA C. HUTCHINS  
CRAWFORD & VON KELLER, LLC  
POST OFFICE BOX 4216  
COLUMBIA, SOUTH CAROLINA 29240  
(803) 790-2626  
ATTORNEY FOR RESPONDENT

On March 14, 2016, Appellant served Respondent with a Petition for Rehearing and to allow oral argument.

### **ARGUMENT AS TO THE MOTION TO ALLOW ORAL ARGUMENT**

Pursuant to Rule 215, SCACR, “all appeals in civil cases which do not involve a constitutional question and in which the amount involved is \$1,000 or less, and all appeals in civil cases where there has been no final judgment, shall be submitted to the appellate court without oral argument. Further, the appellate court may decide any other case without oral argument if it determines that oral argument would not aid the court in resolving the issues.”

The present appeal involves the trial court’s determination regarding Respondent’s standing to pursue foreclosure. The appeal does involve any novel question of law, constitutional issues, nor is appellant seeking to overturn prior precedent. South Carolina case law has ample authority regarding standing as it pertains to mortgage foreclosure actions. The issues on appeal are simple and straightforward. Oral argument is unnecessary, will not aid the Court in reaching its decision. Oral argument will only delay the decision of the Court and needlessly increase attorney fees.

### **ARGUMENT AS TO THE PETITION FOR REHEARING**

The Appellant’s Petition for Rehearing is based solely on the allegation that the Court inappropriately found evidence of ownership of the subject note. In support of this allegation, Appellant alleges that the only evidence regarding ownership presented by Respondent was the affidavit of Kathryn K. Davis. However, the Appellant fails to recognize that evidence in support of standing included, not only the affidavit of Kathryn K. Davis, but also the live testimony of Shannon Tucker, an employee of Green Tree Servicing LLC and the presentation of the original note for the Court’s inspection. The testimony at the trial by Shannon Tucker, an employee of Green Tree Servicing LLC provided that as trustee, the Respondent had the power to foreclose on the promissory notes the trust held (R.p. 1, 45-49, 72-93) and furthermore, as “holder” of the

instrument, it was entitled to enforce the instrument, pursuant to statutory law and case law of South Carolina. *See S.C. Code Ann. §36-1-201(b)(21)(a) (Supp. 2015); S.C. Code Ann. §36-3-31 (Supp. 2015); Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E. 2d 478 (Ct. App. 2013).

### **CONCLUSION**

This Court correctly found evidence supporting the master's finding that Respondent had standing to pursue foreclosure, that being the affidavit of Kathryn K. Davis and the presentation of the original note at trial, and the testimony of Shannon Tucker at the trial of this matter. (R.p. 1, 45-49, 72-93).

For the reasons stated, Respondent respectfully requests that the Court deny the Appellant's Petition for Rehearing and Motion for Oral Arguments.

**CRAWFORD & VON KELLER, LLC**

BY: \_\_\_\_\_

**B. Lindsay Crawford, III**  
**Theodore von Keller**  
**Sara C. Hutchins**  
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**Attorney for Respondent**

March 22, 2016

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Of Who Kim Byrd is Appellant

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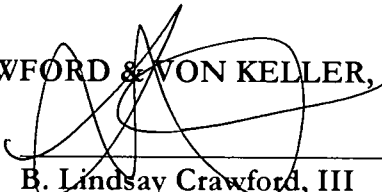
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I certify that I have served the Respondent's Return to Appellant's Petition for Rehearing  
by depositing a copy of it in the United States Mail, postage prepaid, on March 22, 2016  
addressed to its Appellant at the following address:

J. Edwin McDonnell  
South Carolina Legal Services  
148 East Main Street  
Spartanburg, SC 29306

CRAWFORD & VON KELLER, LLC

BY:



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March 22, 2016

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MARCH 22, 2016

**VIA HAND DELIVERY ONLY**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

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**MAR 22 2016**

**SC Court of Appeals**

**RE: U.S. Bank N.A., et al. vs. Kim Byrd, et al.  
Case No.: 2014-002610  
Our File No.: 1323.5963**

Dear Ms. Kitchings:

Please find enclosed an original and seven (7) copies of Respondent's Return to Appellant's Petition for Rehearing, and Proof of Service in the above referenced matter. Please file the original with the court and return one (1) filed copy to me in the envelope provided for your convenience. By copy of this letter I am serving Mr. McDonnell, counsel for Ms. Byrd, with the same.

Thank you for your attention to this matter, and should you have any questions, comments, or concerns do not hesitate to contact me.

Sincerely,

CRAWFORD & VON KELLER, LLC.

Sara C. Hutchins

Enclosures  
/sch

Cc: J. Edwin McDonnell (w/enclosure)