PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity

The Honorable Mikell R. Scarborough, Master in Equity Judge

Case No. 2013-02694

Rhonda Meisner,

Appellant,

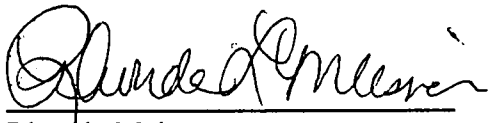
v.

Nationstar Mortgage, LLC Respondent.

PETITION FOR RE-HEARING

Your appellant, Rhonda Meisner, respectfully petitions the Honorable Court of Appeals for a petition of rehearing. The memorandum in support is attached.

May 12, 2016



Rhonda Meisner
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Appellant

Your appellant Rhonda Meisner, respectfully request a petition for rehearing, for the reasons set forth below:

The Order of this Honorable Court is in conflict with previous rulings by this Honorable Court and the Appellant respectfully petitions the Court for a rehearing. The Order also appears to conflict with prior decisions of the Supreme Court of South Carolina and the Supreme Court of the United States of America. The Court ruled that your appellant Rhonda Meisner conceded the bank had standing to sue in the foreclosure action. However, the real party in interest argument and the argument that the plaintiff lacked standing was ruled on by the district court judge prior to the referral to the Master in Equity; however, the Master in Equity also ruled the plaintiff had standing.

As this Court ruled in Lennon, "[A] threshold inquiry for any court is a determination of justiciability, i.e. whether the litigation presents an active case or controversy. 'No justiciable controversy is presented unless the plaintiff has standing to maintain the action.'" Lennon v. South Carolina Coastal Council, 330 S.C. 414, 415, 498 S.E. 2d 906, 906(Ct. App. 1998) (citations omitted). Standing must be determined prior to the Court having a justiciable controversy. Here, the plaintiff does not have standing to maintain the action and the Court's subject matter jurisdiction is therefore not invoked.

The Supreme Court of the United States ruled that the only party that has standing to sue in a mortgage foreclosure action is the holder of both the note and the mortgage. *Carpenter v Longen*, 83 U. S. 16 Wall. 271 (1872). As the Supreme Court in *Carpenter* noted, "[T]his case is a different one from what it would be if the mortgage stood alone, or the note was non-negotiable or had been assigned after maturity". *Id.* at note 2. "[T]he note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries

the mortgage with it, while an assignment of the latter alone is a nullity." *Id.* at note 3. Here, the note and mortgage were given to two separate and distinct legal entities.

Here, MERS, Inc. testified to the Nebraska Supreme Court that it never owns or holds the notes associated with the mortgages it records. *Mort. Electronic Reg. Sys. Inc., v. Nebraska Dept. of Banking*, 270 Neb. 529, 530, 704 N. W. 2d. 784 (2005). The assignor, MERS, Inc. did not own the note. Therefore, all of the assignments in this case were made by the "nullity" as the Supreme Court noted in *Carpenter*. Importantly, for arguments sake, even if MERS did own the note and the mortgage, the assignment to the current plaintiff occurred after the inception of the suit, which as was argued in the initial brief of the appellant, means that Aurora loan services did not have standing at the inception of the lawsuit and therefore there is no justiciable controversy pursuant to this Court's previous ruling in *Lennon*. As also argued, the appellate Courts of Florida, Alabama and other states have ruled plaintiff's in a mortgage foreclosure action cannot retroactively cure their lack of standing at the inception of the suit by a subsequent assignment.

The *Carpenter* ruling was handed down in 1872 and has not been overruled by the Supreme Court. The South Carolina Supreme Court explained the difference between standing, the capacity to enter into the lawsuit, which involves the subject matter jurisdiction of the Court and the real party in interest to the lawsuit, which is waivable. Wright, Miller, and Kane, *Federal Practice and Procedure* § 1542 at pp. 328-329 (1990). Bardoon Properties v. Eidilon Corp., Additionally as this Court observed in *Powell ex rel. Kelly v Bank of America*, "[S]tanding refers to 'a party's right to make a legal claim or seek judicial enforcement of a duty or right'. 'Standing is... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims.'" Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 444,665 S.E. 2d 237, 241 (Ct. App. 2008). (citations omitted).

The South Carolina Supreme Court has ruled, and it is well settled, that subject matter jurisdiction may be raised at any time even on appeal. In order for the Court to have the authority to hear the case and invoke the jurisdiction of the Court the plaintiff must have standing and a justiciable controversy for the court to determine. *Johnson v. State*, 319 S.C. 62, 459 S.E. 2d 840 (1985). *Atlanta Skin and Cancer v. Hallmark Gen'l Partners*, 320 S.C. 113, 463 S.E. 2d 600 (1995) (holding subject matter jurisdiction cannot be waived or conferred by consent). Here, the four corners of the documents evidence, the owner of the note and mortgage are separate and distinct legal entities. Because the United States Supreme Court ruled that only the holder of the note *and* the mortgage can foreclose, the Plaintiff does not have standing to sue for a mortgage foreclosure in this case. The petitioners argue the holder of the note can foreclose; however, this argument is in contradiction to the United States Supreme Court decision in Carpenter. While possession of the note would allow a 'suit on the note' possession of the note when the mortgage was given in favor of another legal entity is not sufficient for a mortgage foreclosure action. The appellant argues the judgment of the Master in Equity should be voided.

For the above reasons, the arguments in the appellant's initial brief, and the appellant's reply brief, the appellant, Rhonda Meisner respectfully requests the Court of Appeals to review the issued decision of April 27, 2016.

Respectfully Submitted,

May 12, 2016

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Appellant

PROOF OF SERVICE OF A PETITION FOR REHEARING

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PETITION FOR RE-HEARING -PROOF OF SERVICE

I certify that I have served the PETITION FOR RE-HEARING on Nationstar Mortgage by depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2016 addressed to his attorney of record, Robert Muckenfuss, McGuire Woods, LLP 201 N. Tryon Street suite 3000 Charlotte, NC 28202. Magalie Creech Finkel Law Firm 4000 Faber Place Drive, Suite 450 North Charleston, SC 29405

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