

INITIAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY Court of Common Pleas

Cynthia Graham Howe, Master in Equity [foreclosure case]

Case No. 2014-CP-26-02623

APPELLATE CASE # 2016-002267

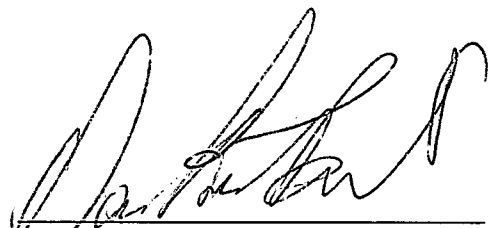
Wells Fargo Bank, N.A.

Respondent,

v.

Dan L. Belfield, et al.

Appellant



Dan Belfield

Pro Se

814 Finger Lake Drive
Myrtle Beach, SC 29588

Pro Se

Arguments

BECAUSE RESPONDENT ALLEGED IN THE COMPLAINT TO BE THE SUCCESSOR BY MERGER TO THE NOTEHOLDER AND PRESENTED NO EVIDENCE ON POINT, SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED

STATEMENT OF THE CASE¹

First it should be noted that prior counsel's motion to withdraw was granted (R-7). Appellant is now proceeding pro se. This is a mortgage foreclosure case that was filed by Wells Fargo Bank, N.A., the Respondent. The note and mortgage are in the name of Wells Fargo Home Mortgage, Inc. Respondent alleged in the complaint at ¶ 9 it was the successor by merger (R-5). Respondent filed no evidence at summary judgment on the successor by merger allegation and was nevertheless granted summary judgment (R-3). Appellant now seeks appellate review because standing was never affirmatively established.

Respondent asserts in ¶ 9 of the Complaint that it is the successor by merger to Wells Fargo Home Mortgage, Inc. At summary judgment it presented no evidence on this point.

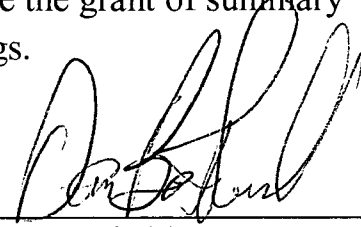
At summary judgment Respondent filed the affidavit of Omari Stewart. Stewart avers in ¶ 3 that "[W]ells Fargo Bank, N.A., directly or through an agent has possession of the Promissory Note or the Promissory Note has been duly endorsed."

"[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note." *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); *see also Ballou v. Young*, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note.").

In this case the Mortgage and Note are not in the name of the Respondent. To prove standing Respondent had to offer evidence of the alleged merger it referenced in ¶ 9 of the complaint that would have presumably transferred the note as well. Since there is no evidence in the record on this threshold issue the Court should have denied summary judgment.

¹ R - DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL #1-7

Appellant respectfully request the Court vacate the grant of summary judgment and remand the case for further proceedings.



Dan Belfield
Pro Se
814 Finger Lake Drive
Myrtle Beach, SC 29588
Pro Se
843-446-1107

CERTIFICATE OF SERVICE

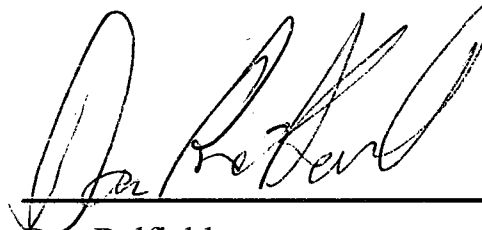
The undersigned hereby certifies that on 28th day of November, 2016, the foregoing **INITIAL BRIEF OF APPELLANT** was furnished to opposing counsel via U.S mail to:

Charlie Gwynne

Rogers Townsend & Thomas, PC
1221 Main Street 14th Floor
Columbia, SC 29201

Attorney for Respondent

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A handwritten signature in black ink, appearing to read "Dan Belfield", is written over a solid horizontal line.

Dan Belfield
Pro Se
814 Finger Lake Drive
Myrtle Beach, SC 29588
843-446-1107

814 Finger Lake Drive
Myrtle Beach, SC 29588

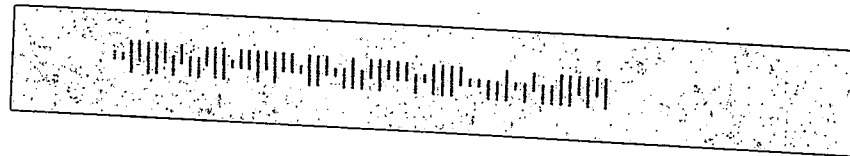


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