

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Charleston County Master in Equity

APPELLATE CASE NO. 2014-002590

BRENT E. BENTRIM , ...Appellant

v.

WELLS FARGO BANK, N.A., ... Respondent

PETITION FOR REHEARING

Robert B. Varnado (S.C. Bar # 0007850)
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

August 24, 2017

Other Counsel of Record:

Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
Attorneys for the Respondent

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SC Court of Appeals

Pursuant to Rules 221 and 240 of the South Carolina Rules of Appellate Procedure, the Appellant Brent E. Bentrin (“Bentrin”) moves the Court of Appeals for rehearing on its unpublished opinion, filed August 9, 2017, affirming the decision of the Charleston County Master in Equity who granted summary judgment in favor of Wells Fargo National Bank, N.A. (“Wells Fargo”) as the successor in interest to Wachovia Bank, N.A. (“Wachovia”) and First Union National Bank (“First Union”).

EN BANC REHEARING SUGGESTED

Bentrin suggests a rehearing *en banc* pursuant to Rule 219(a) of the South Carolina Appellate Court Rules, on the grounds that consideration by the full court is necessary to secure or maintain uniformity in decisions,” or “the proceeding involves a question of exceptional importance.” Rule 219(a), SCACR.

INTRODUCTION

The true questions raised in this appeal is whether Wachovia possessed and owned the Bentrin Note after November 29, 2006. Article 3 of the U.C.C. is comprehensive and displaces common law in regards to the requirement that, in order to enforce a note one claims to “possess”, he must demonstrate delivery. It is also comprehensive to resolving the issue when possession cannot be proven – U.C.C. Section 3-804. Rather than follow Article 3, however, this Court made factually wrong conclusions about Bentrin and changed the terms of his Note.

This Court concludes that, because the payee, First Union, was a holder and inexplicably a holder-in-due course on March 12, 2002, then the evidence of a merger with a payee elevates the acquiring institutions (Wachovia and Wells Fargo) to a holder-in-due course – shielding it from all claims and notices the payee had to include sales, negotiations and transfers of the Note. In other words, this Court finds that a merger is possession.

It is axiomatic that regardless of how Wells Fargo came to produce the Note, it cannot as a matter of law be a holder in due course because it did not possess the Note at the time Bentrin brought his claim, or that Wells Fargo brought its counterclaim.

By not following Article 3, the Court ruled on an open question of fact in a *summary judgment motion* – ignoring the fact that at the outset, this Court is supposed to examine all facts, and inferences from those facts, in the light most favorable to Bentrin. Failure to follow the U.C.C. and applying deference to the protections afforded homeowners, this Court has turned back 50 years of precedent and consumer protection. It finds a lender who drafts the very notes and sets the terms of a loan should be protected from borrowers. It ignores Wells Fargo and Wachovia were forced to implement a massive 'Foreclosure Corrections' program or a party to the second largest civil settlement for unfair and deceptive mortgage origination, servicing and foreclosure practices in violation of Federal and South Carolina law.

Wells Fargo Is Not the Holder in Due Course

Wells Fargo has admitted in the National Mortgage settlement that it is not a holder in due course of instruments like the Bentrin note. R. pp. 1056-1088, 1089 -1162. But even assuming that this admission is not binding on Wells Fargo, when Bentrin filed his complaint it did not have possession.

Possession is critical to a finding whether an entity is the holder. S.C. Code Ann. §§ 36-3-201; 37-1-201(37); *see Bank of New York v. Romero*, 330 P.3d 1 (N.M. 2014) (“A payee is always a holder as long as it has possession.”); *Wells Fargo Bank v. Ostiguy*, 8 N.Y.S.3d 669 (N.Y. App. Div. 2015).

Wells Fargo did not have possession because Wells Fargo gave Bentrin a Lost Note Affidavit. R. pp. 1163-1171. This is because Wells Fargo has said that it has no vault records from

2002-2010 for the Bentrin note.¹ R. pp. 118-1232. Thus, Wells Fargo did not have possession when Bentrin sued it, Likewise, it did not have possession when it brought its counterclaim – which is essential to the counterclaim. *Wells Fargo Bank v. Ostiguy*, 8 N.Y.S.3d 669 (N.Y. App. Div. 2015). Wells Fargo cannot get around this fact. S.C. Code Ann. § 36-3-302. The Court cannot get around this fact by using 12 U.S.C. § 215a(e).

Wells Fargo Is Not the Holder Either

For the same reasons Wells Fargo cannot be the holder in due course, it cannot be the holder either because it did not have possession. S.C. Code Ann. § 36-1-201(20). Possession is evidence of delivery; if you lost a note, you cannot prove delivery. S.C. Code Ann. § 36-1-201(14). Thus, in order to enforce the Note, Wells Fargo was required to prove ownership of the note. *See* former S.C. Code. Ann. § 36-3-804. The Court cannot get around this fact by using 12 U.S.C. § 215a(e) either.

This Is Why the Sale is Important

Former S.C. Code. Ann. § 36-3-804 provides that, “[t]he owner of an instrument which is lost ... may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership.” So, having lost the Note – and being in unable to account for its whereabouts – Wells Fargo was required to show that Wachovia *owned* the Note after November 29, 2006 and it *owned* the Note prior to bringing its counterclaim. It did neither. It was error for the Court to allow this.

¹ Wells Fargo’s attorneys say that Wells Fargo has constructive possession of the Note through Brock & Scott, who filed the 2009 foreclosure action. Not only is this not proof, but Brock & Scott never once filed the Bentrin note with any Court – relying instead on a different copy of the note from the “original. Furthermore, during the pendency of this appeal, Brock & Scott sent Bentrin a letter claiming it was initiating a foreclosure sale, once again without possession, but with the same old copy.

The sale shows who had enforcement rights to a Note when possession was lost. The Court found there was a sale but claimed it was unimportant. (Opinion at * 4). Having lost the note – and being unable to account for its whereabouts – Wells Fargo cannot claim it had enforcement rights at the time of Bentrims’s suit, or at the time of their counterclaim. *See* former S.C. Code Ann. § 36-3-804. The Nation Bank Act [12 U.S.C. § 215a(e)] is only applicable if Wachovia possessed and owned the Note after November 29, 2006.

Having found a sale and Wells Fargo’s own admission that no vault records are available to prove it had possession thereafter, the Note’s owner was vested with enforcement rights. Lacking possession, the sale is of critical importance. Under former S.C. Code Ann. § 36-3-804², enforcement rights were vested with its owner, not Wachovia, once lost.

Wells Fargo fought production of documents via affidavits to claim a “no sale.” Bentrims countered with expert witnesses this Court ignored. Because the provisions of Article 3 are subject to the provisions of Article 9 (former S.C. Code Ann § 36-1-103(2)), and Article 9 “applies to a sale of promissory notes,” section 9-318(a) rejects any notion of a “non-sale.” S.C. Code Ann. §§ 36-9-109 (a)(3), 36-9-318(a).

“U.C.C. § 9-318(a), which provides that [a] debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold. (internal quotations omitted).” *Paloian v. Grupo Sella SA de CV*, 433 BR 19 (U.S. Bankr. N.D. Ill. 2010).

² “The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms.” While, as this Court notes, certain portions of the Code are updated for clarity, some, to include Section 3-804 have been changed in their entirety

Any attempt to characterize the sale as a “participation agreement” is flatly rejected under the old Article and clarified with current 9-318. “Subsection (a) makes explicit what was implicit, but perfectly obvious, under former article 9: The fact that a sale of an account or chattel paper gives rise to a “security interest” does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former article 9.” (Official Comment 2, 9-318.). Therefore, *Ostiguy* is inapplicable under these facts as it does not deal with 215a(e) rights in regards to a lost Note. *Wells Fargo Bank v. Ostiguy*, 8 N.Y.S.3d 669 (N.Y. App. Div. 2015).

First Union Was Not Entitled to Holder in Due Course Status

The Court bases the entire superstructure of the Opinion on the finding that, at issue, First Union was the holder in due course because it was the named payee on the Bentrin note. However, this finding is based on another error of law.

First Union was the original payee; therefore, it possessed the Note with Bentrin’s defenses to payment. *See* former S.C. Code Ann. § 36-3-304. A holder in due course, however, must take the instrument: (a) for value; and (b) in good faith; and (c) without notice ... of any defense against or claim to it on the part of any person (emphasis added).” *See* former S.C. Code Ann. § 36-3-302(1)(c); *Thomton, Sperry & Jensen, Ltd. v. Anderson*, 352 N.W.2d 467 (Minn. Ct. App. 1984); *Fazio v. Leath*, 112 A.2d 135 (NY App. Div. 1985). Thus, it is not just U.C.C. defenses, but any defense. *See* former 3-302(1)(c). This accords with longstanding South Carolina case law. *Northwestern Bank v. Neal*, 271 S.C. 544, 548, 248 S.E.2d 585, 586 (1978) (holding “[t]he very essence of a holder in due course is that he takes free of any defenses of the seller.”).

Here, First Union dealt with Bentrin and had knowledge of his valid defenses. For example, it had knowledge Bentrin could rescind the loan within three days and, thus, “actual notice” that the obligation was “voidable.” *See* former S.C. Code §§ 36-3-304(1)(b); 37-2-502(1); Accordingly, with this knowledge, First Union could not be the holder in due course at issue. *See* former S.C. Code Ann. § 36-3-302(1)(c); *First Int. Bank v. Blankstein*, 59 NY 2d 436 (NY Ct. App. 1983) (holding that “[k]nowledge that an agreement is rescindable at will similarly provides the holder with notice that a defense to the performance of the agreement has arisen and such notice precludes the holder from asserting that he is a holder in due course”).

Moreover, because First Union did not in fact fund the loan until March 22, 2002, it did not “take the instrument” for value on March 12, 2002 – under former S.C. Code Ann. § 36-3-303(a)(1) – “because the agreed consideration was not performed.” *See* S.C. Code Ann. §§ 36-3-302(1)(a); 36-3-303(a)(1). The fact that the note is under seal cannot operate to change the above law. *See* former S.C. Code Ann. § 36-3-113. This is another example of another defense that First Union had knowledge of at issue – making it impossible to be a holder in due course at issue.

If the Court of Appeals could find no authority where the holder by issue of a negotiable promissory note on refinancing a consumer loan was also its holder in due course, it is not surprising. The Missouri Court of Appeals, in *Pittman Place Development v. Howard Investments*, held that “where the obligor is the only obligor on the note, the holder-in-due-course doctrine is irrelevant in determining rights between the obligor and obligee with respect to the instrument because the obligor retains its defenses against the obligee”. 330 S.W.3d 519, 534 (Mo. Ct. App. 2010). Comment 4 to S.C. Code Ann. § 36-3-302 is therefore appropriate “[t]he payee of an instrument can be a holder in due course, but use of the holder-in-due-course doctrine by the payee of an instrument is not the normal situation”). This case is one where First Union could not be the

holder in due course because it was the primary lender, the holder in due course doctrine would not apply.

Because 12 U.S.C. § 215a(e) states that “the receiving institution shall hold ... all rights of property ... in the same manner and to the same extent ... were held ... by anyone of the merging banks ... at the time of the merger” (Opinion at *3), it is a nullity. Once again, the Court erred in using 12 U.S.C. § 215a(e) to displace U.C.C. Article 3.

Wachovia and Wells Fargo Do Not Have Holder in Due Course Status

Even assuming First Union was entitled to holder in due course status, Wachovia still could not possess “holder in due course” status on the Bentrin Note at the date of the merger with Wells Fargo (March 19, 2010). This is because Wachovia was not insulated from any claims or defenses which arose against it *after* it “took” the Bentrin Note, under § 36-3-305. Examples of such defenses include: (1) Wachovia had already accelerated the loan; (2) Wachovia was aware of Bentrin’s defenses; (3) had admitted it wrongfully accelerated the Note; and (4) was in possession of in excess of \$10,000 in funds tendered by Bentrin. *See* former S.C. Code Ann. § 36-3-305 and note 1.

Wachovia’s own servicing records show evidence of these problems. R. pp. 1098-1101, 1108-1114. Moreover, since the Court found that Wachovia had sold the Bentrin loan to TMS Service Corp. on November 29, 2006 (Opinion at ** 2, 4), Wachovia was aware of a claim from TMS Service Corp. because Wachovia had warranted such a claim in the Participation Agreement, on November 29, 2006. Finally, by signing the Participation Agreement, on November 29, 2006, Wachovia had notice under § 36-1-201 that it had given up all rights to the Note. If Wachovia could not be a holder in due course, then neither could Wells Fargo.

Incorrect Factual Findings

The Court of Appeals makes two factual statements which are incorrect or misleading:

- “The 2009 foreclosure was also dismissed because an attorney for Wachovia never showed at the hearing.” (Opinion at *2).

This is false. A *witness* did not show up for Wachovia, despite instruction from the Court to appear, to testify to Wachovia’s damages. A lawyer was present.

- “Bentrim has not made a payment on the loan since 2009.”

As outlined above, Bentrim was making payments when Wachovia (regardless of as a servicer or holder) in 2008, began to demand amounts not due. It admitted wrongfully accelerating the Note in 2008 and refused further payments. “Equity will not require the doing of a futile task, nor foreclose the rights of a party from obtaining specific performance for failure to do something which in view of all the facts would have been useless.” *Elliott v. Dew*, 264 S.C. 40, 46, 212 S.E. 2d 421, 424 (1975). As Wachovia would not provide a correct amount to reinstate, he tendered what he believed accurate in late 2009 as well as January 11, 2010 payment. Wachovia refused to accept these payments.

“[W]ere the amount due is within the exclusive knowledge of the creditor and the creditor on demand neglects or refuses to indicate the correct amount that is due, the debtor may tender so much as he thinks is justly due, and if less than the true amount, the tender nevertheless will be good.” *Id.* Finally, “If no objections are made by the defendant to the sufficiency of the tender by the purchaser at the time it is made, or if the defendant then repudiates the contract, he cannot set up defects in the tender as a defense to the suit.” *Id.*

Non-Holder in Possession

The Master further ruled that “even if Wells Fargo was not the holder, it would still qualify as a ‘person entitled to enforce’ as defined in S.C. Code Ann. § 36-3-301;” i.e., a “non holder in

possession.” Bentrim has illustrated in his briefs that a “non-holder in possession” must prove it received the rights of a holder via transfer. S.C. Code Ann. §§ 36-3-301(ii); 36-3-203(b) & Official Comment; 36-3-103(13). Wells Fargo offers one conclusory footnote that – by virtue of application of 12 U.S.C. § 215a(e) – Wells Fargo would also be a non-holder in possession. In the Opinion, the Court ignores non-holder in possession altogether. For the same reasons, however, Wachovia and Wells Fargo lost possession of the Bentrim note and, thus, they cannot show that they were the non-holder in possession.

12 U.S.C. § 215a(e) Does Not Preempt UCC Article 3

Bentrim agreed with Wells Fargo that there is no issue of federal preemption, which should have ended any further inquiry into the matter. The Court, however, found that 12 U.S.C. § 215a(e) preempted U.C.C. Article 3. This is an error. “Courts should not lightly infer preemption.” *City of Casey v. Norfolk Southern*, 391 S.C. 395, 409, 688 S.E.2d 136, 144 (2011). In fact, it is one of the two touchstones of preemption jurisprudence “that courts should begin with a presumption against preemption.” *Priester v. Cromer*, 401 S.C. 38, 43, 736 S.E.2d 249, 252 (2012). In applying the US Constitution’s Supremacy Clause, courts “start with the assumption that the historic police powers of the States [are] not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress. *Weston v. Kim’s Dollar Store*, 385 S.C. 520, 526, 684 S.E.2d 769, 772 (Ct. App. 2009) *affirmed as modified* 399 S.C. 303, 731 S.E.2d 864 (2012). “In the interest of avoiding unintended encroachment on the authority of the states, however, a court interpreting a federal statute pertaining to a subject traditionally governed by state law will be reluctant to find preemption; thus, preemption will not lie unless it is the clear and manifest purpose of Congress. *Quigley v. Rider*, 357 S.C. 477, 483, 593 S.E.2d 476, 479 (Ct. App. 2003).

Turning to the National Bank Act itself, we see that Congress specifically states that only state consumer protection codes are preempted, and only to the extent they do not meet the test articulated in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996); 12 U.S.C. § 25b. Consequently, there is no evidence of preemptive purpose in the National Bank Act. See *Quigley*, 357 S.C. at 483, 593 S.E.2d at 479 (holding that evidence of preemptive purpose is sought in the text and structure of the statute at issue). Limited preemption by the National Bank Act is consistent with long-standing authority. See Kurt Eggert, *Foreclosing on the Federal Power Grab: Dodd-Frank, Preemption, and the State Role in Mortgage Servicing Regulation*, 15 Chap. L. Rev. 171 (2011). Moreover, there is nothing explicit or implicit in the National Bank Act which would indicate Congress's intent to occupy the field of negotiable instruments, nor that there is anything in UCC Article 3 would conflict with the purposes of the Act – and compliance with both statutes is not impossible. Cf. *State v. 192 Coin-Operated Video Game Machs.*, 338 S.C. 176, 525 S.E.2d 872 (2000) (declining to find federal statute nullified state anti-gambling statutes since compliance with both was possible); see also OCC Interpretive Letter # 1005 in which the OCC agrees that federal banking laws do not preempt the Uniform Commercial Code.

Fair Debt Collection Practices Act

The Court finds Wells Fargo claims its status as an 'original creditor' precludes it from liability under 15 U.S.C. § 1692. However, Bentrin asserts that Wells Fargo designed, complied and furnished deceptive forms to collect and foreclose to include loan servicing history, pleadings and counterfeit notes. *Id.* at § 812(a). If proven, regardless of whether they are not a debt collector, a Defendant is liable under the Act to the same extent. *Id.* at §§ 812(b), 813.

Further, Courts have repeatedly found that mortgage foreclosure is separate from loan servicing and therefore under the purview of 15 U.S.C. § 1692: "While the Seventh Circuit has not

considered this exact issue, however, so far all courts of appeals have held that 'mortgage foreclosure is debt collection under the Act. Lawyers who meet the general definition of a 'debt collector' must comply with the FDCPA when engaged in mortgage foreclosure. And a lawyer can satisfy that definition if his principal business purpose is mortgage foreclosure or if he 'regularly' performs this function.'" *Glazer v. Chase Home Fin. LLC*, 704 F.3d 453, 464 (6th Cir. 2013); *see also Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 376 (4th Cir. 2006) (rejecting argument that a debt ceased to be a debt under the FDCPA once foreclosure proceedings were commenced and holding that defendant attorney's "actions surrounding the foreclosure proceeding were attempts to collect that debt"); *Kaltenbach v. Richards*, 464 F.3d 524, 529 (5th Cir. 2006) (subjecting attorney defendant to general requirements of FDCPA in action involving foreclosure, explaining that "a party who satisfies § 1692a(6)'s general definition of a 'debt collector' is a debt collector for the purposes of the entire FDCPA even when enforcing security interests"); *Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1217 (11th Cir. 2012) (holding that non-judicial foreclosure actions fell within the general definition of debt collection under the FDCPA: "The fact that the letter and documents relate to the enforcement of a security interest does not prevent them from also relating to the collection of a debt within the meaning of § 1692e."); *Cf. Piper v. Portnoff Law Assocs., Ltd.*, 396 F.3d 227, 234 (3d Cir. 2005) (finding attorney defendants' actions of filing suit to enforce a lien on plaintiff's property fell within the general definition of debt collection)."

Specifically, Bentrim alleges that the Respondent and counsel all acted as debt collectors and conspired under 15 U.S.C. § 1692j to make it appear Wachovia and Wells Fargo was the true creditor by claiming to be the Note holder and owner since 2006.

Consumer Protection S.C. Code § 37-5-108

The Court found that Bentrin consolidated a portion of his existing home equity line (a consumer loan as defined under S.C. Code Ann. § 37-3-104) into the refinance, therefore it is a consumer credit transaction subject to S.C. Code Ann. § 37-5-108. Section 37-5-108 applies to a consumer credit transaction (see S.C. Code Ann. § 37-5-108(1)). "Consumer credit transaction" means a consumer credit sale (Section 37-2-104) **or consumer loan (Section 37-3-104) or a refinancing or consolidation thereof**, a consumer lease (Section 37-2-106), or a consumer rental-purchase agreement (Section 37-2-701). S.C. Code Ann. § 37-1-301(11)(emphasis added).

Further, as outlined Wells Fargo in both its 2007 and specifically in its 2009 complaint plead the Note was not a first mortgage and therefore not eligible for loss mitigation. Further, the Court cannot change the terms of the Note expressly waiving for collateral 10 Nicholson Street while used as a primary dwelling.

Fraud & Slander of Title

Because the Court found a sale, Bentrin has met the requirements of fraud. "South Carolina recognizes that a mortgagee has an interest in the mortgaged property." State v. Leach, 282 S.C. 178, 318, S.E. 2d 267 (1984). "The mortgagee is the owner of the money lent or due and shall be entitled to recover satisfaction for such money out of the land by foreclosure and sale according to law." S.C. Code Ann. § 29-3-10.

Bentrin has asserted Wachovia in 2007 and 2009 had no right to foreclose. Wells Fargo defense was claiming to be the Note's holder and owner under the common law theory "the mortgage follows the Note," now displaced with S.C. Code Ann. §§ 36-9-203(g) and 36-9-318. The *Ostiguy* case, cited by the Court, does not stand for the proposition that a "sale" has no impact on a party's right to foreclose. In fact, it clearly provides "[a] plaintiff has standing in a mortgage foreclosure action where it is both the holder or assignee of the subject mortgage and the holder or

assignee of the underlying note at the time the action is commenced." It follows "[a] mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009).

Therefore, under South Carolina Law, when TMS Service Corp gave value to Wachovia, who authenticated (i.e., "signed") the Participation Agreement, as the "owner" of the Note, it became the mortgagee under S.C. Code Ann. § 36-9-203(g). Citing the case of *Landmark Nat'l Bank v. Kesler*, 289 Kan. 528, 216 P.3d 158, 167 (2009), the Supreme Court of Nevada explains: "[t]he deed and note must be held together because the holder of the note is only entitled to repayment, and does not have the right under the deed to use the property as a means of satisfying repayment. *Id.* Conversely, the holder of the deed alone does not have a right to repayment and, thus, does not have an interest in foreclosing on the property to satisfy repayment." *Edelstein v. Bank of New York Mellon*, 286 P. 3d 249 (Nev. 2012).

Summary Judgment

This was a case decided on summary judgment. It is a bedrock principle of summary judgment procedure in this State that the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. *Montgomery v. CSX Transport, Inc.*, 376 S.C. 37, 53-54, 656 S.E.2d 20, 29 (2008). Under *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), "the non-moving party is only required to submit a *mere scintilla* of evidence in order to withstand a motion for summary judgment." Moreover, any fact in issue may be proved by circumstantial evidence as well as direct evidence, and circumstantial evidence is just as good as direct evidence if it is equally as convincing to the

trier of the facts. *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 79-80, 735 S.E.2d 650, 658 (2012). Based on this standard, Bentrim has shown more than enough facts, and inferences from the facts, to withstand summary judgement.

CONCLUSION

This Court erred applying 12 U.S.C. § 215a(e) without first applying provisions set forth in the Uniform Commercial Code to determine what rights Wachovia Bank, NA did have in Bentrim's Note after November 29, 2006. Because the Court has found a sale, there remains genuine issues as to Wells Fargo's defenses against Bentrim's first party claims as well as its ability to counterclaim.

All Bentrim asks is that the Court rule on these issues with the same care and concern that the New York Appellate Division did in the two recent cases that this Court cites in the opinion – *Wells Fargo Bank v. Ostiguy*, 8 N.Y.S.3d 669 (N.Y. App. Div. 2015) and *Wells Fargo Bank v. Burke*, 34 N.Y.S.3d 865 (N.Y. App. Div. 2016).

Respectfully submitted,



Robert B. Varnado (S.C. Bar # 0007850)
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

August 24, 2017

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Charleston County Master in Equity

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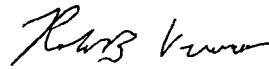
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CERTIFICATE OF COUNSEL

The undersigned certified that this *Petition for Rehearing* complies with Rule 211(b), SCACR.



Robert B. Varnado (S.C. Bar # 0007850)
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

Other Counsel of Record:
Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
Attorneys for Respondent

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PROOF OF SERVICE – PETITION FOR REHEARING

The undersigned attorney for Appellants hereby certify that a true copy of the *Petition for Rehearing* in the above-referenced matter has been served on all counsel of record by sending a copy via hand delivery and email on this the 24th day of August, 2017 to the following:

Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
Attorneys for the Respondent

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Robert B. Varnado (S.C. Bar # 0007850)
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

August 24, 2017

**BROWN &
VARNADO** LLC
ATTORNEYS AT LAW

103 CHURCH STREET (29464)
POST OFFICE BOX 1127
MT. PLEASANT, SC 29465
OFFICE: (843) 737-7300
FACSIMILE: (843) 654-5109

ROBERT B. VARNADO
DIRECT: (843) 737-7301
EMAIL: rvarnado@brown-varnado.com

August 24, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Brent E. Bentrim v. Wells Fargo Bank, N.A.
Appellate Case No.: 2014-002590
Our File No.: 6223-1

Dear Ms. Kitchings:

The Appellant Brent E. Bentrim respectfully submits the original and six (6) copies of his ***Petition for Rehearing*** in the above-captioned matter, plus an additional copy to be hand-stamped and returned with my courier. My firm's check in the amount of \$25.00 for the petition fee is attached herewith. I am serving counsel of record via hand-delivery and email. Should you have any questions please do not hesitate to contact our office.

With best regards, I remain,

Very truly yours,

BROWN AND VARNADO LLC



Robert B. Varnado

RECEIVED

AUG 24 2017

SC Court of Appeals

RBV/kg

Enclosure(s): as stated

cc:

Charles J. Baker III, Esquire (*via hand delivery and email*)

S. Sterling Laney III, Esquire (*via hand delivery and email*)

John C. Hawk IV, Esquire (*via hand delivery and email*)