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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2017-002594
Court of Appeals Case No. 2014-002590
Circuit Court Case No. 2011-CP-10-2946

Brent E. Bentrim, ... Petitioner,

v.

Wells Fargo Bank, N.A., ... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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January 17, 2018

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INTRODUCTION

Petitioner Brent E. Bentrim ("Bentrim") refuses to be candid. Despite his protestations to the contrary, this appeal is part of his ongoing attempt to nullify a Negotiable Promissory Note ("Note") and Mortgage that he executed in favor of First Union National Bank ("First Union") in 2002. Bentrim—who is the plaintiff here—has not made a mortgage payment since 2009, and he seeks a declaration that his mortgage is invalid.

Respondent Wells Fargo Bank, N.A. ("Wells Fargo") has actual possession of the original Note, which is made payable to First Union. Both the lower court and the Court of Appeals, interpreting South Carolina law and federal law governing bank mergers, found that Wells Fargo, as successor in interest to First Union, is the holder of the Note and the holder in due course of the Note. A series of bank mergers—from First Union; then to Wachovia Bank, N.A.; and finally to Wells Fargo—do not equate to a free house for Bentrim.

There is nothing about this dispute that warrants certiorari review: no novel question of law, no dissent in the unpublished opinion from the Court of Appeals, and no conflict between the Court of Appeals' decision and authority from any higher court. Accordingly, this Court should deny Bentrim's petition for certiorari and remit the action to the circuit court.

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. Did the circuit court and the Court of Appeals correctly conclude Wells Fargo is the holder and holder in due course of a promissory note when it is indisputably (a) the successor through merger to the payee bank, and (b) in possession of the original note?

II. Did the Court of Appeals properly affirm summary judgment as to Bentrim's causes of action under the Fair Debt Collection Practices Act and the South Carolina Consumer Protection Code?

COUNTERSTATEMENT OF THE CASE

Bentrim claims that he brought this action "in part to enforce the terms of his loan." (Pet. for Certiorari at 1). The Court should not be misled: Bentrim is attempting to invalidate his loan (on which he has not paid since 2009) and get his house for free. For good measure, he is also requesting punitive damages, treble damages, and attorneys' fees. Bentrim's entire case, though, is rooted in his refusal to acknowledge the basic point that when banks merge, their assets automatically transfer to the surviving bank, as described below.

I. First Union issued a note to Bentrim to pay off his purchase-money mortgage and to pay down his pre-existing equity line, which was also with First Union.

Bentrim originally purchased his home at 10 Nicholson Street in Charleston in 2000 with a purchase-money mortgage from Bank of America. (R. p. 774; Bentrim Dep. 20:1–25). In 2002, he refinanced his home by borrowing $182,700 from his employer, First Union. (R. p. 775; Bentrim Dep. 21:12–20; R. p. 1306; Satisfaction of Bank of America Mortgage at Book 412, Page 295; R. p. 983; April 28, 2014 Tr. 34:2–20). As part of the refinance, Bentrim executed a Note to First Union in the amount of $182,700, together with interest, on March 12, 2002. (R. pp. 1115–18; Note; R. p. 30; Complaint ¶ 9). The Note was secured by a Mortgage, also executed on

March 12, 2002, and recorded in the Charleston County Registry in Mortgage Book C402 at Page 182. (R. pp. 1148–53; Mortgage; R. p. 30; Complaint ¶ 8).

At the time of the refinance, Bentrim also had an equity line from First Union. (R. p. 64; Amended Complaint ¶ 9). Bentrim used the proceeds from the new First Union loan to satisfy the Bank of America purchase-money mortgage in full and also to substantially pay down the First Union equity line. (R. p. 1307; Settlement Statement; R. p. 983; April 28, 2014 Tr. 34:1–20). To document the pay down of the equity line, Bentrim entered into a Modification Agreement with First Union whereby the available credit for the equity line was reduced from $49,000 to $10,000. (R. p. 709; 2007 Complaint ¶ 8; R. pp. 725–27; 2007 Complaint, Exhibit C).

Bentrim admits that he signed the March 12, 2002 Note and Mortgage in favor of First Union. (Appx. p. 1456; Brief of Appellant at 2; R. p. 181; Plaintiff's Answers to Requests for Admission, ¶ 1; R. p. 973–74; April 28, 2014 Tr. 24:23–25:1). Further, he admits that he has made no payments on this loan since 2009. (R. p. 781; Bentrim Depo. 48:14–22).

II. The Note transferred through a series of bank mergers, culminating in Wells Fargo having actual possession of the original Note.

First Union merged with Wachovia Bank, N.A., which in turn merged with Wells Fargo. (R. p. 1286; Lost Note Affidavit of Tracy Thomas, ¶ 5; R. p. 772; Bentrim Depo. 9:25–10:4). Bentrim acknowledged the occurrence of these bank consolidations and admitted that Wells Fargo is the successor in interest to First Union. (R. p. 772; Bentrim Depo. 9:25–10:4; R. p. 1043; June 9, 2014 Tr. p. 7:17–19). He also admitted that Wells Fargo or its predecessors in interest were at all relevant times the servicer of the Note. (Appx. p. 1466; Brief of Appellant at 12 ("Bentrim contends [that] . . . at all times [Wells Fargo] was merely a loan servicer. . . .")).

III. Bentrim stopped paying on his Note and filed this case to have his loan declared invalid.

Wells Fargo and its predecessors brought foreclosure actions against Bentrim in 2005, 2007 and 2009. (R. pp. 679–705; 2005 Complaint (Case No. 2005-CP-10-4814); R. pp. 706–38; 2007 Complaint (Case No. 2007-CP-10-3933; R. pp. 739–57; 2009 Complaint (Case No. 2009-CP-10-4700)). The bank ultimately dismissed each of those cases without prejudice.

However, Bentrim, originally appearing *pro se*, brought the current action against Wells Fargo in 2011 to have his Note declared unenforceable. (R. pp. 28–36; Complaint). He amended the complaint in 2013, specifically seeking a declaration that Wells Fargo has "no. . . rights whatsoever, associated with the Property." (R. pp. 59–83; Amended Complaint, ¶ 137). In response, because Bentrim had stopped paying on his debt, Wells Fargo counterclaimed seeking a foreclosure of the Mortgage. (R. pp. 84–111; Counterclaims and Answer to Amended Complaint).

The parties referred the case to Master-In-Equity Mikell R. Scarborough by a Consent Order of Reference filed November 13, 2012. (R. pp. 23–24; Consent Order of Reference). Wells Fargo brought the original Note to court on multiple occasions, and Judge Scarborough inspected the Note. (R. p. 1063; Oct. 16, 2014 Tr. 5:14–24; R. p. 1043; June 9, 2014 Tr. 5:4–7). The Note is made payable to First Union National Bank, and there are no endorsements on the Note or allonges to it. (R. p. 1043; June 9, 2014 Tr. 6:4–11; R. pp. 1115–18, Note).

At a hearing on April 28, 2014, Judge Scarborough inspected the original Note and concluded that, "as of the date of this hearing, . . . Wells Fargo holds the original Note, and the Note is payable to its predecessor in interest, First Union National Bank." (R. p. 4, lines 3–4; Order). At a subsequent hearing on June 9, 2014, and in the corresponding Order filed October 28, 2014, Judge Scarborough denied Bentrim's motion to reconsider the ruling that Wells Fargo

is the holder of the Note and elaborated on that prior ruling: "Wells Fargo is the holder of the Note as a matter of law and a holder in due course of the Note as a matter of law. Further, 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." (R. p. 7, lines 12–15; Order).

In the October 28, 2014 Order, Judge Scarborough also addressed Wells Fargo's previously filed Motion for Summary Judgment (R. pp. 237–46; Motion for Summary Judgment), and granted summary judgment in Wells Fargo's favor as to ten of Bentrim's seventeen causes of action.[1] (R. p. 9, lines 3–20, Order).

In a unanimous, unpublished decision, the Court of Appeals affirmed Judge Scarborough's finding that Wells Fargo is the holder of the Note and holder in due course of the Note. (Appx. pp. 1573–74). It also affirmed Judge Scarborough's grant of summary judgment to Wells Fargo as to ten of Bentrim's seventeen causes of action. (Appx. pp. 1575–76). Bentrim sought rehearing and *en banc* consideration of his arguments. (Appx. p. 1578). On November 17, 2017, the Court of Appeals denied both requests. (Appx. pp. 1596–99). This certiorari request followed.

Bentrim continues to argue that Wells Fargo cannot be the holder or holder in due course of the Note, though he now abandons his appeal as to the grant of summary judgment on eight out of ten causes of action. Regardless of this attempt to narrow the appeal, his petition for certiorari should be summarily denied.

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[1] The lower court initially granted summary judgment on an eleventh claim for violation of the South Carolina Unfair Trade Practices Act but later reversed that ruling. That claim is not a part of this appeal.

ARGUMENTS AND AUTHORITIES

I. Nothing about this case warrants certiorari review.

Both the Appellate Court Rules and this Court's precedent make clear that certiorari review is the exception, not the rule, and that it is only available in cases that present unique or meaningful issues. *See, e.g., State v. Lyles*, 381 S.C. 442, 443–44, 673 S.E.2d 811, 812 (2009) (emphasizing that certiorari review is available "only where special reasons justify the exercise of that power"); Rule 242(b), SCACR ("A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons."). This case falls far short of this high threshold.

Bentrim, citing Appellate Court Rule 242(b)(3), states that certiorari is appropriate because "the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court." (Pet. for Certiorari at 3). Nowhere in his Petition, though, does Bentrim identify ***any*** allegedly conflicting opinion from this Court. In fact, Bentrim does not cite a single South Carolina decision until ***the eighth page*** of his Petition. Even then, the South Carolina cases that he does cite only stand for general propositions of law—such as the standard of review of summary judgment, or general principles of statutory construction—that are unrelated to the particular facts of this case, and certainly do not provide any basis for the extraordinary use of certiorari.

In short, the Court of Appeals decision does not conflict with any prior decision of the Supreme Court, nor does it meet any other requirements of Appellate Court Rule 242(b). Instead, the Court of Appeals' decision is based on straightforward applications of the Uniform Commercial Code and the National Bank Act. There are no novel or unusual concepts. Indeed, bank mergers are a regular occurrence, and there is no mystery as to how the promissory notes of

a merging bank become the property of the surviving bank. Because there are no exceptional issues in dispute, the Court should deny certiorari review.

II. Wells Fargo is entitled to enforce the Note.

A. The Court of Appeals properly applied the National Bank Act's provisions regarding the merger of payee banks to find that Wells Fargo is a holder in due course.

The Court should also reject Bentrim's Petition because the Court of Appeals correctly affirmed Judge Scarborough's orders holding that Wells Fargo was the holder and the holder in due course of the Note. The Court of Appeals' Order is wholly supported by two undisputed facts: (1) Wells Fargo is in physical possession of the original Note; and (2) the Note is payable to First Union, a predecessor in interest to Wells Fargo.

Bentrim admits that he executed the Note to First Union in 2002. First Union was both the holder and holder in due course of the Note. The definition of "holder" includes "the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession." S.C. Code Ann. § 36–1–201(b)(21)(A) (Supp. 2016). Further, one is a "holder in due course" if the instrument, when issued, "does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity," and

> the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 36–3–306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 36–3–305(a).

Id. § 36–3–302(a).

Bentrim does not deny—because he cannot—that First Union was a holder and holder in due course of the Note. Nor does he deny—again, he cannot—that Wells Fargo is the successor in interest to First Union. The National Bank Act explains that, when national banks merge, the successor bank *becomes* the predecessor bank by operation of law, and all property interests, including promissory notes, are transferred to and vested in the surviving bank:

> The corporate existence of each of the consolidating banks or banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and such consolidated national banking association ***shall be deemed to be the same corporation*** as each bank or banking association participating in the consolidation. All rights, franchises, and interests of the individual consolidating banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the consolidated national banking association by virtue of such consolidation ***without any deed or other transfer***. The consolidated national banking association, upon the consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, and receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the consolidating banks or banking associations at the time of consolidation, subject to the conditions hereinafter provided.

12 U.S.C. § 215(e) (emphasis added).

The Court of Appeals correctly found that Wachovia, as the surviving bank in the Wachovia–First Union merger, succeeded by operation of law to First Union's status as holder and holder in due course of the Note. Further, as the surviving bank in the subsequent Wells Fargo–Wachovia merger, Wells Fargo succeeded by operation of law to Wachovia's status as

holder and holder in due course of Bentrim's Note.[2] This analysis, in addition to being legally correct, is also logical and equitable.

Bentrim's position, however, is completely illogical. For one, he argues at length that the analysis above is tantamount to the National Bank Act preempting Article 3 of the Commercial Code. (Pet. for Certiorari at 9–10.) But the Court of Appeals made no such finding, and the notion of preemption does not appear anywhere in its decision. This Court should disregard his request for certiorari review of a ruling that was never made accordingly.

Moreover, Bentrim claims that as a result of a series of bank mergers, Wells Fargo cannot now enforce the Note that it indisputably possesses because of an illusory concern for his own protection. In his Reply Brief to the Court of Appeals, Bentrim bizarrely stated: "Bentrim does not seek a windfall; he merely wants to protect himself from being railroaded out of his house by a dubious claim" from an unidentified third-party. (Appx. p. 1561; Reply to the Court of Appeals at 14). Assuming the Court credits this puzzling hypothetical concern, what third-party could possibly "railroad" Bentrim out of his house? Wells Fargo is in possession of the original Note, and Wells Fargo is the only entity trying to enforce the Note. Bentrim concedes that he borrowed money from Wells Fargo's predecessor in interest and that Wells Fargo has serviced this loan. Put simply, there is no other entity with a claim to the Note—Wells Fargo is ***the*** entity entitled to enforce the Note—and the Court should not credit Bentrim's attempt to avoid the outcome dictated by the National Bank Act by suggesting that some other unknown entity may be lurking to foreclose on the loan.

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[2] The Court of Appeals noted that Wachovia had sold a beneficial interest in the Note to a wholly-owned subsidiary, but it correctly held that sale did not preclude Wells Fargo—the successor in interest with actual possession of the Note—from enforcing it. (Appx. p. 1574). Bentrim argues that this is an "absurd result." (Pet. for Certiorari at 11). However, it is hard to imagine a more absurd result than a court declaring that the only entity with actual possession of and any interest in the Note cannot enforce it—and, in turn, give Bentrim a free house.

B. Even if Wells Fargo is not the holder in due course, it is still entitled to enforce the Note, as it indisputably holds the Note.

Bentrim has devoted the bulk of this case litigating whether Wells Fargo is a "holder in due course" of his Note. But that debate does not actually effect the outcome here, because even if Bentrim were to prevail on that argument—he should not—Wells Fargo would still be a "person entitled to enforce" the Note, as defined by South Carolina Code § 36-3-301, and the foreclosure counterclaim would still proceed.

Wells Fargo is a holder of the Note as a matter of law. As noted above, the definition of "holder" includes "the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession." S.C. Code Ann. § 36–1–201(b)(21)(A) (Supp. 2016). It is undisputed that Wells Fargo is in possession of the original Note, that the Note is made to First Union, and that Wells Fargo is the successor in interest to First Union. As such, Wells Fargo is the Note's holder. *See* 12 U.S.C. § 215(e).

Because it is the holder, Wells Fargo is a "person entitled to enforce" the Note pursuant to South Carolina Code § 36-3-301. That statute reads in pertinent part:

> "Person entitled to enforce" an instrument means ***(i) the holder of the instrument***, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d).

S.C. Code Ann. § 36-3-301 (emphasis added).

Bentrim's litigation has succeeded in delaying enforcement for eight years, but ultimately Wells Fargo will be permitted to enforce the Note.

C. The Court should ignore Bentrim's continued reliance on unrelated Wells Fargo settlements to avoid enforcement of the Note.

In an effort to overcome the unappealing, straightforward facts of his own case, Bentrim attempts to heighten interest in this case by suggesting that Wells Fargo has violated orders from two other proceedings. This is grossly misleading, and the Court should not credit his arguments.

The first of these is a 2011 Consent Order between Wells Fargo and the Office of the Comptroller of the Currency. (*E.g.*, Pet. for Certiorari at 1–2). The OCC Order states clearly that it does not give individual borrowers like Bentrim "any legal or equitable right, remedy or claim." (R. p. 1204; OCC Order at 27, ¶ 10). Courts across the country have ruled that the OCC order cannot be used as a defense to a foreclosure action. *See, e.g., Green v. Bank of Am. Corp.*, 530 F. App'x 426, 430 (6th Cir. 2013); *Hersh v. CitiMortgage, Inc.*, 2:13-CV-1344, 2013 WL 6858443 (W.D. Pa. Dec. 30, 2013); *Anderson v. Deutsche Bank Nat. Trust Co.*, 13-CV-12854, 2014 WL 988994 (E.D. Mich. Mar. 13, 2014).

The other is a consent order that Wells Fargo and other banks entered with the government to resolve a dispute regarding mortgage procedures. (Pet. for Certiorari at 15–16). However, that consent order expressly states that it cannot "constitut[e] evidence against" Wells Fargo. (R. p. 1212; Consent Judgment at 2).

Accordingly, the Court should disregard Bentrim's hyperbolic, misleading reliance on these irrelevant orders when assessing this Petition. This case is only about Bentrim's attempt to twist law and logic to avoid having to repay a home loan he secured with one of Wells Fargo's predecessors in interest, and on which he has not paid since 2009. The Court of Appeals' ruling on this issue is unimpeachable, and there is no reason for the Court to grant certiorari review of it and further delay enforcing the Note.

III. The Court of Appeals correctly affirmed summary judgment in every respect.

Finally, the Court should deny certiorari because the Court of Appeals correctly affirmed Judge Scarborough's order granting summary judgment. As described above, Judge Scarborough granted summary judgment in Wells Fargo's favor as to ten of Bentrim's seventeen causes of action. Bentrim initially appealed the ruling on all ten causes of action, and all ten were affirmed by the Court of Appeals. In his Petition, though, Bentrim only seeks review of two of those claims—violation of the Fair Debt Collection Practices Act, and violation of the South Carolina Consumer Protection Code—and he has abandoned any effort to challenge the Court of Appeals' affirmation of summary judgment in Wells Fargo's favor on the other eight causes of action.

A. Fair Debt Collection Practices Act

The Court of Appeals correctly affirmed summary judgment on Bentrim's claim alleging a violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692. Bentrim readily admits that First Union originated the Note and Mortgage. (Appx. p. 1456; Brief of Appellant at 2; R. p. 181; Plaintiff's Answers to Requests for Admission, ¶ 1; R. p. 973–74; April 28, 2014 Tr. 24:23–25:1). Further, he admits that Wells Fargo is the servicer of the loan. (*See* Appx. p. 1466; Brief of Appellant at 12 ("Bentrim contends [that] . . . at all times [Wells Fargo] was merely a loan servicer. . . .")). These undisputed facts entitle Wells Fargo to summary judgment on this claim for several reasons.

First, the FDCPA was created "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692. The Act defines a "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts . . . ." *Id.* § 1692a(6). The term "debt collector" does ***not*** include: "(F) any person collecting or attempting to collect any debt owed or due or asserted to

be owed or due another to the extent such activity . . . (ii) concerns a debt which was originated by such person." Because First Union originated the debt, and because First Union is Wells Fargo's predecessor in interest, Wells Fargo is attempting to collect its own debt. *See* 12 U.S.C. § 215(e) (when national banks merge, a successor bank in deemed to be the same bank as the predecessor bank). As the debt was originated "by such person," Wells Fargo is not a "debt collector" under the statute, and the FDCPA is accordingly inapplicable here.

Second, as explained in great detail by numerous courts, mortgage servicers are not subject to the FDCPA if the loans which they service were not in default at the time they began servicing them. *See, e.g. Roth v. CitiMortgage Inc.*, 756 F.3d 178, 183 (2d Cir. 2014) (mortgage servicer acquired a mortgagee's debt before it was in default, and thus the servicer was not a debt collector for purposes of the FDCPA); *Prickett v. BAC Home Loans*, 946 F. Supp. 2d 1236, 1248 (N.D. Ala. 2013) ("[A] mortgagee and its assignee, including mortgage servicing companies, are not debt collectors under the FDCPA when the debt is not in default at the time the mortgage-holder acquires the debt."); *Sudduth v. CitiMortgage, Inc.*, 79 F. Supp. 3d 1193, 1198 (D. Colo. 2015) (dismissing FDCPA claim against mortgage servicing company because company began servicing the loan before the loan was in default). Bentrim, for his part, denies he is in default. (R. p. 114; Answer to Counterclaim ¶ 15) Because Wells Fargo and its predecessors serviced the loan at all times, including prior to any default, it cannot be liable under the FDCPA.

In a grasping effort to create a cause of action against Wells Fargo under the FDCPA, Bentrim cites a number of cases holding that the FDCPA applies to attorneys and law firms that participate in mortgage foreclosure. But these cases are irrelevant, as Bentrim sued Wells Fargo, ***not*** a lawyer or law firm, under the FDCPA. *See Glazer v. Chase Home Fin. LLC*, 704 F.3d 453,

457 (6th Cir. 2013) (holding contemporaneously that the FDCPA did apply to the law firm that handled the foreclosure but did not apply to the bank that serviced the mortgage).

Finally, in his Petition, Bentrim now attempts to expand his claim to alleging a violation of a portion of the FDCPA, relating to "furnishing certain deceptive forms." *See* 15 U.S.C. § 1692(j). But this newfound allegation—in addition to being false—comes much too late. Bentrim's Amended Complaint does not specifically allege a violation of this portion of the FDCPA, nor does it allege generally that Wells Fargo unlawfully designed, compiled, or furnished any form "knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating." *Id.* In fact, the first time Bentrim mentioned this theory of liability was as an afterthought in his Reply Brief to the Court of Appeals, rendering the issue abandoned. *See, e.g., Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) ("[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief.").

In sum, Wells Fargo is not a debt collector under the FDCPA, and the Court of Appeals was therefore correct to affirm summary judgment in Wells Fargo's favor on this claim.

B. South Carolina Consumer Protection Code

The Court of Appeals also correctly affirmed summary judgment on Bentrim's claim alleging a violation of South Carolina Code § 37-5-108, part of the Consumer Protection Code. This statute only "applies to actions or other proceedings to enforce rights arising from consumer

credit sales, consumer leases, ***consumer loans***, and consumer rental-purchase agreements." S.C. Code Ann. § 37-5-102 (emphasis added). "Consumer loan" is a defined term under the statute. *Id.* § 37-3-104. Importantly, the term "does not include a loan ***secured by a first lien or equivalent security interest in real estate***." *Id.* § 37-3-105 (emphasis added). Therefore, as a matter of law, Section 37-5-108 does not apply to a first mortgage real estate loan or its equivalent.

While Bentrim's Mortgage is technically a second lien, it is difficult to imagine a security interest more "equivalent" to a first lien than the Mortgage in question. At the time of the 2002 closing, Bentrim had a purchase-money mortgage from Bank of America in first lien position and an equity line from First Union as a second lien. Bentrim used the new $182,700 loan from First Union to completely satisfy the Bank of America purchase-money mortgage and to substantially pay down the First Union equity line. The parties' Modification Agreement reduced the available credit from $49,000 to $10,000. The equity line then assumed first lien position, while the new Mortgage took second position. In most cases, a new lender would have insisted on a subordination of the equity line to its mortgage. However, given the minimal amount of the equity line and ***the fact that First Union held both loans***, there was no practical reason for First Union to require a subordination agreement—it would have been an agreement to subordinate one First Union lien to another First Union lien. In practical effect, the First Union Mortgage replaced the Bank of America purchase-money mortgage and, in the parlance of the Consumer Protection Code, is the equivalent of a first lien.

When interpreting a statute, courts must ascribe meaning to all parts of the statute. *State ex rel. McLeod v. Nessler*, 273 S.C. 371, 373, 256 S.E.2d 419, 420 (1979). If the word "equivalent" found in Section 37-3-105 is to have any meaning at all, Bentrim's loan is the

equivalent of a "loan secured by a first lien" and, therefore, is not a "consumer loan." Accordingly, the Consumer Protection Code does not apply to his loan, and the Court of Appeals properly affirmed summary judgment in Wells Fargo's favor on this claim.

CONCLUSION

Because this case does not meet any of the criteria for granting certiorari, and because the Court of Appeals' decision was correct on all points, the Court should deny Bentrim's Petition and remit this matter back to the circuit court to conclude the remaining portions of the foreclosure.

Respectfully submitted,

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January 17, 2018

PROOF OF SERVICE

I, the undersigned Legal Secretary of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Wells Fargo Bank, N.A., do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Return to Petition for Writ of Certiorari

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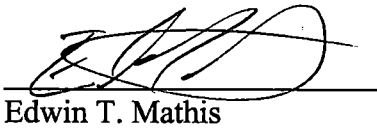

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