PETITION FOR A WRITOF CERTIORARI TO THE

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Case Number: 2015-001119

APPEAL FROM AIKEN COUNTY

SECOND JUDICIAL CIRCUIT

COURT OF COMMON PLEAS

REFEREE JAMES MARTIN HARVEY, JR

CASE NO. 2012-CP-02-00699

BANK OF AMERICA, N.A.....RESPONDENT

Successor to BAC Home Loans Servicing, LP f/k/a Countrywide

V.

CAROLYN S. DEANER.....PETITIONER

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

APPENDIX

"COPY OF RECORD ON APPEAL" FILED IN APPEALS COURT IS INCLUDED AFTER NUMBER 5 IN SINGLE BOUND DOCUMENT .

Tab 1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Respondent,

v.

Carolyn S. Deaner, Appellant.

Appellate Case No. 2015-001119

Appeal From Aiken County
James Martin Harvey, Jr., Special Referee

Unpublished Opinion No. 2018-UP-182
Submitted March 1, 2018 – Filed May 2, 2018

AFFIRMED

Carolyn S. Deaner, of North Augusta, pro se.

Robert A. Muckenfuss and Trent M. Grissom, both of McGuireWoods, LLP, of Charlotte, North Carolina, for Respondent.

PER CURIAM: Carolyn Deaner appeals the special referee's order denying her motion to reconsider a judgment of foreclosure and sale. On appeal, Deaner

presents twenty-seven issues. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issues pertaining to Deaner's receipt of the acceleration letter: *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) ("A mortgage foreclosure is an action in equity."); *Buffington v. T.O.E. Enters.*, 383 S.C. 388, 391, 680 S.E.2d 289, 290 (2009) ("On appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence."); *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989) ("While this permits us a broad scope of review, we do not disregard the findings of the [special referee], who saw and heard the witnesses and was in a better position to evaluate their credibility."); *U.S. Bank Trust Nat'l Ass'n v. Bell*, 386 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) ("Moreover, the appellant is not relieved of his burden of convincing the appellate court the [special referee] committed error in his findings." (quoting *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001))).

2. As to issues pertaining to Bank of America's standing to foreclose, status as holder of the note, intrinsic and extrinsic fraud, securitization, and tender of the debt: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [special referee] to be preserved for appellate review."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [special referee].").

AFFIRMED.[1]

SHORT, THOMAS, and HILL, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

Tab 2

The South Carolina Court of Appeals

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Respondent,

v.

Carolyn S. Deaner, Appellant.

Appellate Case No. 2015-001119

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

J.

J.

Columbia, South Carolina

FILED

June 21, 2018

cc: Carolyn Deaner
Robert A. Muckenfuss, Esquire
Trent M. Grissom, Esquire
James Martin Harvey, Jr.; Esquire

Tab 3

PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

CASE NUMBER: 2015-001119

APPEAL FROM AIKEN COUNTY

SECOND JUDICIAL CIRCUIT

COURT OF COMMON PLEAS

REFEREE JAMES MARTIN HARVEY, JR

CASE NO. 2012-CP-02-00699

BANK OF AMERICA, N.A.....RESPONDENT

V.

CAROLYN S. DEANER.....APPELLANT

PETITIONER/APPELLANT, Carolyn S. Deaner

PETITION FOR REHEARING MAY 16, 2018

PETITIONER, Carolyn S. Deaner, COMES NOW IN "GOOD FAITH" AND NOT TO DELAY THIS CASE AND MOVES ON THE COURT FOR A REHEARING PURSUANT TO RULE 221, SCACR BASED ON THE FOLLOWING GROUNDS.

GROUNDS FOR REHEARING

(A) The Court has overlooked, misapplied, or failed to consider a statute, decision or principle directly controlling.

1. **Carpenter V. Longan, U.S. Supreme Court 83 US 271, 16 Wall.271,21 L.Ed. 313 (1872), Stating Plaintiff must clearly OWN the Note and Mortgage. (R. p.520, lines 39-41 and p.521, lines 1-18) (R. p.452, lines 9-11) (R. p.452, lines 15-20) (R.p.455, 9-18).**
2. **YOUNG V. People's Bank, South Carolina Supreme Court (1931) UPHELD Carpenter V. Longan; and Deutsche Bank Nat'l Trust Co. V. Heinrich SC 9th Jud. Cir., 2013, UPHELD Carpenter V. Longan. (R.p.520 , lines17-41) (R.p.521, lines 1-18). The Respondent, Bank of America's witness, testified they are acting as Servicer for Fannie Mae and failed to establish an agency relationship with Fannie Mae/Fannie Mae REMIC Trust 2007-091, who is the real Owner of the Note and Mortgage. (R.p.591-602) and (R.p.455, lines 7-18).**

This case is of exceptional importance and necessary to maintain uniformity in the U.S. and SC Supreme Court's decisions as well as fundamental legal or constitutional rights.

3. **The ruling as to the true owner of Note and Mortgage in the JUDGEMENT OF FORECLOSURE & SALE was in error as the Plaintiff, Bank of America's Witness, Ms. Deloney, stated several times in the Trial Transcript that Fannie Mae was the Owner/Investor of the Note as explained above in (a) 1 & 2. (R. p. 527, lines 26-34 & p.528, lines 1-11).**

The Securitized Note and Mortgage is under UCC Article 8, not Article 3. (R.p.414, Lines 19-23) (R. p. 605, lines 16-33). UCC Article 8 requires a legal Chain of Assignments. There is not an assignment to Fannie Mae or Bank of America, and there are NO DATES on the Assignments to Quicken Loans, Inc., or from Quicken Loans, Inc. to Countrywide Bank, FSB, Countrywide Home Loans, Inc. or proof of an assignment of the Note and Mortgage to Bank of America in the merger from Countrywide. Also, Countrywide could not have legally assigned the Note and Mortgage to Bank of America since it was not assigned to the Fannie Mae REMIC Trust 2007- 091 within the 90 days required by PSA Guidelines or at all. (R.p. 480-483) (R.p. 602-613) (R.p. 618-621). Fraud on the Court. (R.p. 805, lines 1-29, p.806 , 807, lines 1-10) (R. p. 813, lines 3-28).

(B) The Court has overlooked or misconceived some material fact.

1. This Note and Mortgage was a Securitized Note and Mortgage in the Fannie Mae-2007-091 Trust deeming it a NON-NEGOTIABLE Note and is under PSA Requirements. A Non-Negotiable Note requires a Chain of Assignment, and there is no assignment to the Fannie Mae REMIC 2007-091 Trust on the Note rendering the Note VOID under UCC Article 8. (R. p.415, lines 1-5) Matter of Law (R. p. 586, lines 16-33) (R. p. 455, lines 7-18) Ruled in error. (R.p.527, lines 24-34 & p.528, lines, 1-11). The Note was not legally endorsed or dated & is fraud. (R. p. 482-483). (R. p. 598-602). SC Law, the Lien follows the Secured Party of Record.

(C) The Court has overlooked or misconceived a material question in the case.

1. The Plaintiff FAILED to establish an interest in the Note and Mortgage at the time of the filing of the Complaint, therefore LACKS STANDING in the case. Standing is to be determined at the commencement of suit. Plaintiff states Note and Mortgage are held, not owned. (R.p.10, lines 24-25) Affirmative Defense Nine (R. p. 414, lines 5-18) as Matter of Law. Ruled in error on page 526, No. 7. of the Record on Appeal. (R. p. 526, lines 13-14). (R. p. 520, lines17-38).

2. MERS assignment is invalid and cannot be ratified (IRS does not permit it, the Trustee cannot, nor the certificate holders) after the 90 day cut off time which renders Note and Mortgage VOID since Bank of America is not named on the Note. Quicken Loan, the Lender, is named on the Note. MERS cannot assign a Note or Mortgage it does not own.
(R. p. 450, lines 1-25 & p. 451, lines 1-9) (R. p.518, lines 10-16)
(R. p. 521, lines 25-27) (R. p. 602-613) (R. p. 602, lines 1-22). Ruled in error. (R.p.527, lines 13-25). (R. p.456, lines 2-19).

3. The right to cure or **ACCELERATION LETTER** did not comply with No. 22 in the Mortgage. The Plaintiff/Respondent, failed to give 30 days to cure. The Acceleration Letter WAS NOT sent by the Lender, Quicken Loans, Inc., and the Acceleration was dated August 16, 2010 sent in 2010 before the Assignment to the Plaintiff, on April 29, 2011. Plaintiff is the Servicer, NOT the Lender. (R. p. 510) (R. p. 488).
(R .p. 442-449) (R. p. 463).(R. p.495, line 1)(R. p. 503, #15 Notices)
(R. p. 506, lines 1-16) #22, Acceleration Remedies, "LENDER shall give notice to Borrower prior to Acceleration".
(R. p. 446, lines 7-26 & p. 447, 448 lines 1-20). Letter was sent to a P.O Box, and not property address in Mortgage. (R. p. 457, lines 22-26).

D) There is serious doubt as to the validity, correctness, or adequacy of precedent relied upon and the case itself is of great precedent potential or of grave public concern, especially in an equity case permitting a broad scope of review and to avoid doing substantial injustice concerning a foreclosure.

1. **The rulings on all the above measures were in error as the ruling in the JUDGEMENT OF FORECLOSURE AND SALE was based on a negotiable instrument. HOWEVER, the Note and Mortgage in this case was a NON-NEGOTIABLE Note and Mortgage under Article 8, and the PSA Requirements and Guidelines were violated by failing to Assign the Note and Mortgage to the Fannie Mae REMIC Trust 2007-091, within the 90 day PSA Guidelines rendering the Note and Mortgage VOID by Law. The Plaintiff, Bank of America, is the Servicer and may prosecute a foreclosure under SC Law, but cannot foreclose as Bank of America IS NOT the Owner of the Note and Mortgage and cannot by Law foreclose as ruled by the U.S. Supreme Court, Carpenter V. Longan concurred by the South Carolina Supreme Court, Young V. People's Bank (1933) which held that a Plaintiff must own the Note and Mortgage at the time of filing to foreclose. (R. p. 414, Lines, 19-23, (#10). (R. p. 520, lines 17-41 & 521, lines 1-18).**

2. The Plaintiff/Respondent lacked Standing to foreclose in the Judgment of Foreclose and Sale as Plaintiff stated they only held the note in the Original Complaint and were not the Owner of the Note and Mortgage at time of the Complaint. (Lujan V. Defenders of Wildlife,504 US, 555, 570-1 n.5 (1992). (R.p.520, lines 33-38).

   Noted in the Trial Transcript and the Affirmative Defenses which are Matters of Law. (R.p.465, lines 23-25) Also, MERS assignment. (R.p.22-25) & Lujan V. Defenders of Wildlife, 504 US, 555,570-1 n.5 (1992). (R.p.520,lines 33-38).

3. The Court may RENEW any contention deemed controlling and not expressly passed upon, however, the above issues were ruled on. (R. p. 583-621-MCI Chain of Title Analysis & Mortgage Investigation).

4. The Court failed to consider in the Motion to Reconsider Judgment the Attorney for the Defendant stated "Defendant respectfully includes and repeats by reference all of the issues previously raised before this Court at Trial", therefore, all issues and facts brought up in the Trial Transcript and ruled upon are controlling for a Rehearing as well as the Special Referee stating on Page 465, lines 23-25 that Affirmative Defenses are Matter of Law. (R.p.410- 416).

5. Respondent, failed to show damages that they, the Plaintiff, have suffered from this case for lack of payments on principle and interest at the trial as they ARE NOT the Owners of the Note and Mortgage and failed to show they have the right to receive payments on their behalf in any way. (R.p. 521, lines 20-23) (R.p.453, lines 20-25 & 454, lines 1-4). The Plaintiff/Respondent has sold and assigned the Note and Mortgage to Seterus, Inc., and they have been contacting me during the Appeal and cannot fulfill the requirement of presentment under UCC Article 3, 3-501 (b) 2 (1) or Article 8 as Seterus, Inc. is not endorsed on the Note. (R.p.583-621) MCI Chain of Title Analysis & Mortgage Fraud Investigation

Wherefore, the Petitioner Appellant prays for and moves on this Honorable Court for a Rehearing in this EQUITY case and any other relief this Honorable Court deems just in favor of the Petitioner/Appellant.

CAROLYN S. DEANER

704 KERSHAW DRIVE

NORTH AUGUSTA (BELVEDERE), SC 29841

PRO SE/APPELLANT/PETITIONER

(706) 399-5496

May 16, 2018

CASES SUPPORTING PETITION FOR REHEARING

U. S. SUPREME COURT CASES AND STATE SUPREME COURT CASES:

1. CARPENTER V. LONGAN, U. S. SUPREME COURT, 83, US 271, 16 Wall. 271, L. Ed. 313 (1872)

   The Plaintiff must own the Note and Mortgage at the time of filing to foreclose.

2. YOUNG V. PEOPLE'S BANK, South Carolina SUPREME COURT (1931),

   Adopted the holding of Carpenter V. Longan Supreme Court ruling.

3. LUJAN V. DEFENDER'S OF WILDLIFE, U. S. SUPREME 504 US 555, 570-1 n.5 (1992). "Plaintiff's right to recovery depended on its right at the inception of the lawsuit, and the non-existence of a cause of action when the suit was started is a FATAL DEFECT, which cannot be cured by the accrual of a cause of action pending suit".

4. WELLS FARGO V. EROBOBO , NEW YORK SUPREME, (4/2013).

   Capacity and/or Standing to sue: and REMICS require originals. There is a difference between the capacity to sue which gives the right to come into court, and possessions of a course of action which gives the right to relief. In Article II, section 2.01 Conveyance of Mortgage Loans, the PSA requires that the Depositor deliver and deposit with the TRUSTEE the ORIGINAL Note, ORIGINAL Mortgage and ORIGINAL assignment.

5. BANK OF AMERICA, N.A. V O'DONNELL, NEW YORK SUPREME COURT, 62225-13 (2015).

   Mortgage on date action commenced vested in Freddie Mac not Bank of America. (Mortgage & Note in this case was vested in Fannie Mae REMIC TRUST 2007-091).

APPEALS COURT CASES:

1. DEUTSCHE BANK NATIONAL TRUST CO. V. HEINRICH, 2011-CP-10-1060 (JULY 31, 2013), SOUTH CAROLINA 9th JUD.CIR. 2013). Plaintiff failed to show that it was a PETE at the time of the filing of this lawsuit with regards to enforcing the note.
2. JOSEPH V. BAC HOME LOANS SERVING LP, 4th DISTRICT COURT OF APPEALS, FLORIDA, JANUARY 7, 2015. Ruled directly on this issue that the Plaintiff needed to show standing as a PETE at the time the lawsuit was filed.
3. MERS V. NEBRASKA DEPT. OF BANKING AND FINANCE (2005)

   MERS V. GIRDAVAINIS, SOUTH CAROLINA, SUMTER, (2006) Agreed

   Bank of New York V. Silverberg, SUPREME COURTet al case, 86 ad3d 274,281, 283 (2d Dept. 2011). Mers was never the lawful holder or assignee of the Note and the Assignment of the Mortgage is a nullity, and MERS was without the authority to assign power to foreclose to the plaintiff.
4. Cases in final brief of Appellant/Petitioner & MCI Chain of Title Investigation.

PETITIONER/APPELLANT'S

PETITION FOR REHEARING

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ON APPEAL FROM THE AIKEN COUNTY, SECOND JUDICIAL CIRCUIT, COURT OF COMMON PLEAS.....PETITION FOR REHEARING, May 16, 2018.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Petition for Rehearing" has been served upon the parties in this action by mailing a copy thereof, postage prepaid to the following:

Robert A. Muckenfuss, Esq. and Trent M. Grissom, Esq.

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This the 16th day of May 2018

Carolyn S. Deaner, Pro Se

Tab 4

BANK OF AMERICA V. DEANER
CASE NUMBER: 2015-001119
APPELLANT FINAL BRIEF

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Case Number: 2015-001119

APPEAL FROM AIKEN COUNTY

SECOND JUDICIAL CIRCUIT

COURT OF COMMON PLEAS

REFEREE JAMES MARTIN HARVEY, JR

CASE NO. 2012-CP-02-00699

BANK OF AMERICA, N.A.....RESPONDENT

Successor to BAC Home Loans Servicing, LP f/k/a Countrywide

V.

CAROLYN S. DEANER.....APPELLANT

FINAL BRIEF OF APPELLANT

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ON APPEAL FROM THE AIKEN COUNTY, SECOND JUDICIAL CIRCUIT, COURT OF COMMON PLEAS

APPLELLANT'S FINAL BRIEF TO REVERSE JUDGEMENT ORDER AND CANCEL SALE

CAROLYN S. DEANER

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II TABLE OF AUTHORITIES

CASES

41. SUSSMAN V. SUSSMAN (NY 1978).....P26

42. VINCENT V. PUTNAME (NY 248,76,82-84 (1928).....P26

43. GLASKI V. BANK OF AMERICA, N.A. (CAL 5th APP.).....P19,38

44. BANK OF AMERICA, N.A. V. O'DONNELL (NY SUPREME CT 2015).....P 22

(Mortgage on date action commenced vested in Freddie Mac not BOA)

NOTE: CASE OF REFERENCE TO APPEAL:

CORREA V. US BANK, N.A. (FLA 2nd DIS. CT. APP 2013)

"reasoned that in SUFFICIENCY OF EVIDENCE can be raised ON APPEAL whether or not the party raised the issue at trial, and Plaintiff failed to prove terms of the Note." (RESPONDENT/BOA failed to prove OWNERSHIP OF NOTE AT TRIAL.)

BAC HOME LOAN SERVICING V. MAPP (Ohio, CT APP 12TH DIS. 7/2013)

"we therefore reverse the trial court's finding that "BAC alleged lack of standing does not constitute a meritorious defense" and remand the case to the trial court for a hearing to determine BAC's standing to sue, and correspondingly whether the trial court had jurisdiction over the foreclosure proceedings. On remand, the trial court must determine whether MERS had the authority to assign the mortgage and/or the note as the nominee for Countrywide in light of the claim that Countrywide was no longer in existence when the mortgage was assigned to BAC...."a common pleas court cannot substitute a real party in interest for another party if no party with standing has invoked its jurisdiction in the first instance. (NO proof at trial MERS had authority from Quicken Loans)

BAC FUNDING CONSORTIUM, INC. V. JEAN-JACQUES, (FLA DIS.CT APP (2010)

Plaintiff failed to offer, "evidence of a valid assignment, proof of purchase of the debt, or evidence of an effective transfer."

STATUES

OTHER AUTHORITIES

1. Mortgage Compliance Investigators Chain of Title Analysis and Mortgage Fraud Investigation (MCI Report) & Affidavit, notarized
2. Securitization Report & Affidavit sealed and Jurat
3. Trial Transcript & Mot To Vacate Judgment/Cancel Sale Transcript

III STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in failing to find a LACK OF STANDING and SUBJECT MATTER JURISDICTION based on CARPENTER V. LONGAN (U.S. Supreme Court Ruling 83 US 271 ,16 Wall. 271, 21 L. Ed 313 (1872) and YOUNG V. PEOPLE'S BANK, 163 South Carolina Supreme Court, 161 SE 2nd 324, 329 (1931)(must OWN the note) once the Bank of America witness testified at trial FANNIE MAE WAS THE INVESTOR. (R.p.430, lines 7-11) (R. p. 453, lines 23-25, p. 454, line 1) (R. pp. 482-483) (R. pp. 517-521) (R. p. 720, lines 74-100) (R. pp. 308-333) (R. pp. 583-645).
2. Did the Trial Court err in not requiring proof of ownership at inception in the Court of Equity when the required ENDORSEMENTS AND DATES were missing on the submitted Note, and the endorsement and date to Fannie Mae and FANNIE MAE 2007-91 REMIC TRUST (hereafter, FNMA 2007-91) were missing altogether? (R. p. 449, lines 22-25 & p. 450, lines1-14) (R. pp 482-483) (R.p.520, lines 17-38) (R.pp.583-645) (R.pp.412-416).

3. Did the Trial Court err in not dismissing this foreclosure with prejudice case once it was discovered at trial the Respondent/BOA was not the OWNER of the Note as testified by the Bank of America witness? (R. p. 430, lines,4-11).

4. **Did the Trial court err in failing to find this action is barred as legal "TENDER OF PAYMENT" was made on the alleged debt following the "Judgment Order and Sale", and the alleged debt is discharged if refused? (R.pp.725-793). (R. pp. 882 & 883, lines1-50) (R. p. 904, lines 15-30 & p. 905, lines 1-3).**

5. **Did the Trial Court err in not finding EXTRINSIC/INTRINSIC FRAUD on the Court by Respondent's Counsel when the Respondent/ BOA knowingly misrepresented themselves by mailing the Acceleration Letter dated in 2010 when Respondent /BOA was not the Lender of record, and their Counsel continued the Acceleration Letter misrepresentation and Lender misrepresentation at the trial and submitted a fraudulent INVALID Note and MERS Assignment? (the Due Process Clause of the Fourteenth Amendment entitles borrowers to defend foreclosures by challenging the Lender's use of fraudulent documents). (R. pp. 803-813).**

6. **Did the Trial Court err in not REQUIRING strict, clear and convincing proof when the Respondent/BOA did not provide proof of mailing the ACCELERATION LETTER, either from who, from where or when it was mailed, did not mail it to the property address as required in the Mortgage Agreement, and did not give the Appellant the required 30 days to cure? (R. pp. 442-449) (R. pp. 470-471) (R. p. 473, lines 13-26) (R.pp.518-520).**

7. **Did the Trial Court err in not REQUIRING the Respondent/BOA to produce or provide any evidentiary proof of an AGENCY RELATIONSHIP with Quicken Loans, Inc. (the original Lender), Countrywide, MERS, Fannie Mae or the Fannie Mae 2007-91 REMIC TRUST giving authority to send the Acceleration Letter when Respondent has never been the Lender at any time, proven a debt, or proven any AUTHORITY and ENTITLEMENT for a Power of Sale or to FORECLOSE on the APPELLANT'S REAL PROPERTY from the OWNER of the Note and Mortgage? (R. pp.455-456)(R.p.518, lines 2-16)(R.p.520,lines 24-41)**

8. **Did the Trial Court err in not finding the Respondent/BOA bears the BURDEN OF PROOF as the Plaintiff at trial and command strict proof as such concerning Appellant's Affirmative Defenses and Counter Claim as well as Appellant's Trial Closing Summary and causes of actions in this document dated February 20, 2015?(R.pp.22-25)(R.pp.106-152)(R.p.412)(R.pp.517-521).**

9. **Did the Trial Court err in not requiring compliance with Article 8 and ordering the full documents to prove compliance with the PSA GUIDELINES knowing from Appellant's Affirmative Defenses & Counter Claim, the Securitization Report with Affidavit/Jurat sent to him in previous Motions, that the Note is securitized and a non-negotiable note under Article 9?(R. p. 415, lines1-14), (R.pp.359-388) (R. pp. 583-645) (R.pp.262-263)(R.pp.865-871)(R.pp.902-903).**

10. **Did the Trial Court err in not requiring the Respondent/BOA to follow the PSA GUIDELINES on the securitized Note which requires all the endorsements, assignments, negotiations and deliveries with proper dates and authentic signatures to be recorded in accordance with County Laws, Securities Laws and New York Trust Laws? (R. p. 414, lines 19-23 & p. 415, lines, 1-22)(R.pp.359-388)(R.p.450,lines 1-13)(R.pp.805-807)(R.pp.865-871).**

11. **Did the Trial Court err in not requiring clear and convincing evidentiary proof the Respondent/BOA OWNS the Note and Mortgage and OWNED the Note at the filing of the Original Complaint and inception of this case in order to have subject matter jurisdiction? (R.p.10, line24)(R. p. 403, line20) (R.p.404,line 30)(R.pp.22-25)(R. pp. 412-415)(R. pp.520-521)(R.pp.805-807).**

12. **Did the Trail Court err in not finding the NOTE INVALID when there was no Endorsement or validity of signatures on the Note to Fannie Mae or the FANNIE MAE 2007-91 REMIC TRUST and lacked required dates on the endorsements violating the New York Trust Laws where the trust is located? (R. pp. 482-483) (R. p. 450, lines 1-14) (R.p.455, lines 1-25) (R. pp. 520-21).**

13. **Did the Trial Court err in not questioning the alleged debt when the COMPUTERIZED PAYMENT SHEETS of the alleged loan submitted at trial were not trustworthy, since the Bank of America witness did not create them, no proof was offered as to how they originated from the original Lender, and the hearsay sheets lacked the payoff from Fannie Mae and Appellant's original promissory note entries of the cash payment item? (R. pp. 489-493) (R.p.655, lines 9-18) (Glarum case)(R.p.901, line22&p.902).**

14. **Did the Trial Court err in not dismissing the case with prejudice when at the Motion to Vacate Judgement Order and Cancel Sale hearing, Appellant Deaner gave clear and convincing evidence in the "MORTGAGE COMPLIANCE INVESTIGATOR'S REPORT" (hereafter, MCI REPORT) of supporting matters of law, facts of merit, material facts, causes of action and fraud in the report concerning the CHAIN OF TITLE ANALYSIS AND THE MORTGAGE FRAUD INVESTIGATION confirming Appellants Affirmative Defenses and Counter Claim?(R.pp.410-416)(R.pp.583-645)(R. pp. 647-656) (R.p.570, lines 80-100 of page 36 of transcript) (R. pp. 718-720).**

15. **Did the Trial Court err in not doing everything possible to promote justice, fairness, and truth in the "Court of Equity" after the MCI Report was presented to the Court, and Appellant requested the Court to order documents to prove ownership of Note at the Motion to Vacate hearing? (R.p.719, lines 18-34,"Your request is noted")(R. pp. 864-871)(R.pp.901-905)**

16. **Did the Trial Court err in not acknowledging the "MORTGAGE COMPLIANCE INVESTIGATOR'S REPORT"/ CHAIN OF TITLE ANALYSIS AND MORTGAGE FRAUD INVESTIGATION WITH AFFIDAVIT, was worthy of serious consideration once the Appellant testified she verified with JULIE STUTTS, DEPUTY REGISTRAR, AT THE AIKEN COUNTY MESNE CONVEYANCE RECORDS that no recordings existed to Countrywide Bank, FSB, Countrywide Home Loans, Inc. or to Fannie Mae or to the Fannie Mae REMIC TRUST 2007-91, and then to BAC Home Loans Servicing on file in the records? (R. p. 886).**

17. **Did the Trial Court err is not requiring clear and convincing evidence from Respondent/BOA at Trial concerning OWNERSHIP OF THE NOTE and MORTGAGE at the time of filing the Original Complaint, legal and title rights, agency rights, proof of a debt, and a true party of interest with power of sale entitlement to foreclose on the Appellant's real property? (R.pp.22-25)(R. pp. 243-303) (R. p. 520, lines 17-41) (R. p. 521, lines, 1-18).**

18. **Did the Trial Court err in not dismissing this case with prejudice since the Respondent/BOA, predecessors and successors VIOLATED the SOUTH CAROLINA CONVERSION LAWS when they changed the Note to a securitized stock certificate since the Note cannot be changed, altered or made different and is in violation of the Mortgage Agreement without written authorization by Appellant Deaner to securitize her alleged loan? (R.p.720).**

19. **Did the Trial Court err in not REQUIRING the Respondent/BOA to prove at trial proper considerations were paid and to whom concerning the Chain of Title? (R. pp. 412-415) (R. p. 430, lines 7-11) (R. pp. 449-451) (R. p. 520,lines 17-41) (R. p. 613) (R. pp. 585-613).**

20. **Did the Trial Court err in not dismissing this case with prejudice and grant the Appellant recoupment once Court was informed at Motion to Vacate that the Appellant is maker and first transferor of the Original Promissory Note, is registered in the Appellant's name as creditor on her UCC 1 Financial Statement, and the promissory is a cash item meaning no loan was ever made, but only an exchange or swap of currency, and a registered Note trumps an INVALID Note held by the Respondent/BOA at the trial? (R. pp. 647-704).**

21. **Did the Trial Court err in not REQUIRING THE Respondent/BOA in a Court of Equity to prove the chain of title when the required endorsement was missing to FANNIE MAE and the FANNIE MAE 2007-91 REMIC TRUST on the non-negotiable Note once the Bank of America witness stated at trial Fannie Mae was the investor and OWNER of the Note ?(R.p.430, lines 7-11).**

22. **Did the Trail Court err and not dismiss this case when at trial, the Bank of America witness could not authenticate damages to Bank of America concerning the alleged loan principle and interest, and any other expenses except those being from contributory negligence brought about by this wrongful foreclosure action by the Respondent/BOA? (R. pp. 452-453) (R. p. 454, lines 1-3)(R.p. 517 & 518,lines 1-16)(R.p.410,line13-14 & p.411,line1-3).**

23. **Did the Trial Court err in not dismissing this case with prejudice when MERS does not hold NOTES or have any ENTITLEMENT RIGHTS TO NOTES, therefore, cannot assign Notes which is the alleged debt in this case or has any authority to assign Notes or has beneficiary rights to ENTITLEMENT? (R. p. 518, lines 10-16) (R. p. 620) (R. pp. 628-630)(R.p.410,line13-14 & p. 411, lines, 1-7 & lines 12-20) (R. p. 413, lines 1-5).**

24. **Did the Trial Court err in not dismissing this case with prejudice when MERS assigned BOTH NOTE and MORTGAGE, thus SPLITTING THE NOTE FROM THE MORTGAGE causing it to become NULL AND VOID as well as the NOTE being SPLIT when it was securitized making the Note NULL and VOID and UNSECURED which was bankrupted and discharged in 2011 in Appellant's personal bankruptcy? (R.pp.308-333 & 388) (R.p.255, lines 1-6). (R.p.413,line6-12)(R.p.807,line,15-31 & p.808,line10)(R.p.879,lines 95-100).**

25. **Did the Trial Court err in not dismissing this case with prejudice and waiving the bond by not considering all the MATTERS OF LAW, MATERIAL FACTS, FACTS OF MERIT, CAUSES OF ACTION, AND FRAUD in the Appellant's AFFIRMATIVE DEFENSES AND COUNTERCLAIM including "UNCLEAN HANDS" AND "LACHES" and the ENTIRITY OF THE MCI REPORT? (R.pp.120-132)(R. pp.243-305) (R. pp. 308-333 & 388) (R. pp. 340-346) (R. p. 390) (R. pp. 410-416) (R. pp. 442-456) (R. pp. 459-461 & p.462, lines,1-2) (R. pp. 463-464 & 465, line 2)(R. pp. 517-522) (R. pp. 538-541) (R. pp. 569-907) (R. pp. 834-845) (R. pp. 335-338) (R. pp. 851-862).**

26. **Did Trial Court err by failing to determine whether "the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument"? (R. pp. 16-20) (R. pp. 22-25) (R. pp. 517-521) (R. pp. 571-645) (R. p. 885, lines 16-79) (R. pp. 901-906).**

27. **Did the Trial Court exercise an "abuse of discretion" in any of the STATEMENTS OF ISSUES ON APPEAL in numbers 1-26?**

The questions before this court in the preceding STATEMENT OF ISSUES include the following Matter of Law TOPICS as follows and clarified in the STATEMENT OF THE CASE. (Materially Harmful errors of the trial court)

A. **LACK OF STANDING and SUBJECT MATTER JURISDICTION (R.pp.521-522)**

B. **TENDER OF PAYMENT/ALLEGED DEBT DISCHARGED (R.pp.821-825)**

C. **EXTRINSIC & INTRINSIC FRAUD/RECOUPMENT REQUIRED (R.p.876-885)**

D. **NO EVIDENCE OF ANY AGENCY RELATIONSHIP BY RESPONDENT/BOA**

E. **DISMISSAL OF AFFIRMATION DEFENSES & COUNTERCLAIM WITHOUT REQUIRING BURDEN OF PROOF FROM THE RESPONDENT/BOA (R.p.414)**

F. **PSA GUIDELINES VIOLATED/SECURITIZATION & MERS SPLITS NOTE**

G. **MORTGAGE COMPLIANCE INVESTIGATORS CHAIN OF TITLE AND MORTGAGE FRAUD REPORT (MCI REPORT) NOT CONSIDERED (R.p.583)**

H. **SOUTH CAROLINA CONVERSION LAW VIOLATIONS (R.p.789)**

I. **NO DEBT PROVEN/UNSECURED ALLEGED DEBT/BANKRUPTED IN 2011**

J. **SECURITIZATION OF THE LOAN AND NEW YORK TRUST LAW VIOLATIONS**

K. **LACK OF REQUIRED DATES AND ENDORSEMENTS ON NOTE TO TRUSTEE**

L. **NO PROVEN DAMAGES SUFFERED BY RESPONDENT/BOA (R.pp.452-453)**

M. **NO PROVEN CONSIDERATIONS PAID BY RESPONDENT/BOA (R.p.455)**

N. **MERS ASSIGNMENT INVALID AND VOID...NEVER HELD NOTE TO ASSIGN**

O. **WAIVER OF BOND DENIED EVEN THOUGH TENDER OF PAYMENT MADE**

P. **UNCLEAN HANDS AND LACHES (R.p.415)(R.p. 851-861)(R.p.483)(R.p518)**

III STATEMENT OF THE CASE

On March 19, 2012, the RESPONDENT/Plaintiff, BANK OF AMERICA (hereafter BOA), being only the Servicer, brought this foreclosure action against the APPELLANT, CAROLYN S. DEANER, stating in the ORIGINAL COMPLAINT, they held the note with no evidentiary proof attached or Notice of Entry of the Note, however, the Note was not shown to APPELLANT DEANER until January 11, 2013, and the APPELLANT has continued to DENY throughout this case that the NOTE held is the ORIGINAL NOTE. On April 2012, the Appellant filed a MOTION TO DISMISS which was granted by Referee Harvey later in the case and gave the Plaintiff Respondent/BOA time to file an Amended Complaint. In the RESPONDENT/BOA'S AMENDED COMPLAINT, they stated they held a "VERSION OF THE ORIGINAL NOTE", and in the JUDGMENT ORDER, they claim they are the OWNERS of the NOTE when at trial the BANK OF AMERICA WITNESS stated FANNIE MAE was the INVESTOR of the loan.(R.p. 5,lines 7-11) and OWNER of the Note.(R. p. 28, lines1-25). (CarpenterV Longan,US SUPR 271, 16 Wall. 271 L.Ed. 313 (1872)), Stating Plaintiff must clearly OWN the NOTE and MORTGAGE; Young v. People's Bank, South Carolina Supreme Ct (1931), UPHELD Carpenter v. Longan; and DeutscheBank Nat'l TrustCo. V. Heinrich SC 9TH Jud. Cir, 2013, upheld Carpenter v. Longan; (BAC/Countrywide v. Stentz, (Florida, 6th Circuit 12/2010) "A thief who steals a check payable to Bearer becomes holder of the check, but does not become OWNER.") (R.p.448, lines 24-25) (R.pp.449-456).

In the Appellant's Motion to Dismiss filed April 12, 2012 which was GRANTED with Respondent/Plaintiff allowed to file an Amended Complaint although they had filed an Amended Complaint during the 60 day stay in error causing the Pleading as prejudice referred to in Rule 15 (a), SCRCP. With regards to the Appellant Deaner's Motion to Dismiss, the Respondent/ BOA in their Original Complaint did not state that it was entitled to enforce the Note or established any evidence of an agency relationship with anyone to foreclose.(R.pp.16-25).

The MERS assignment was INVALID and VOID as MERS never held the Note or had any legal authority to assign title, therefore, Respondent/BOA lacked standing to bring this action and failed to state a claim upon which relief can be granted. (Sumter County South Carolina, Court of Common Pleas, MERS, Inc. v Girdavainis, Case No.2005-CP-43-0278, 2006). (R.p.456) (R.p.518, lines 10-16).

MERS does not OWN the Promissory Notes secured by the mortgages; and that MERS does not acquire any loan or extension of credit secured by a Lien on Real Property. No evidence was supplied at the trial proving MERS or Respondent/BOA was the mortgagee as neither are named in the Note. (Deutsche Bank Nat'l Trust Co. v. Heinrich, SC 9th Jud. Circuit, 7/31/2013).

Also, when MERS assigns the note and mortgage the note is split from the mortgage since MERS DOES NOT have the Note, hold the Note or OWN the Note, thus causing the Note to become NULL AND VOID and UNSECURED and APPELLANT'S personal bankruptcy was discharged in 2011. (R.p.342, lines 8-19).

The court may dismiss a claim where the Respondent failed to state facts sufficient to constitute a cause of action (Hamrick v. GMAC Mort. Corp., 370 S.C. 118; 634 S.E.2d 5 (Ct. App. 2006). Respondent alleged, among other things, that MERS assigned Appellant's Mortgage to the Respondent/BOA by an assignment of Mortgage (hereafter "AOM") dated April 29, 2011 and that BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP have merged with Plaintiff making Plaintiff successor by merger of these companies. (R. pp. 23-25). The original COMPLAINT contains no other allegations regarding the assignment, negotiations, transfers or deliveries of the Note or of any succession in interest between the Respondent/BOA and Quicken Loans, Inc. As a result, Respondent/Plaintiff has FAILED to allege how it is that Respondent/BOA is entitled to enforce Appellant's Note by foreclosing on her home as a Servicer with no clear and compelling evidence they OWN THE NOTE AND MORTGAGE or have PERFECTED the alleged LIEN for power of sale. Cromarty V. Wells Fargo ,FLCt App 2013, "we agree with argument on standing".

THE VALIDITY OF ATTEMPTS TO TRANSFER THE DEANER NOTE AND MORTGAGE TO A SECURITIZED TRUST IS A FUNDAMENTAL ISSUE IN THIS APPEAL.

IN ADDITION, how can the RESPONDENT/BOA state they are holding or ARE OWNERS of the ORIGINAL NOTE without an endorsement to Fannie Mae or the Fannie Mae REMIC Trust 2007-91, (hereafter FNMA 2007-91), without an endorsement to the FNMA 2007-91 Trust? The INVALID and VOID NOTE HAS NO DATES on the endorsements in violation of the PSA GUIDELINES of a securitized Note. The Respondent/BOA has not established timing and dates the Note was endorsed, transferred, negotiated and delivered to the Trust prior to filing the foreclosure action. Borrower may challenge the securitized Trust's chain of ownership by alleging the attempts to transfer the deed of trust to the securitized trust (which was formed under New York law) occurred after the trusts' closing date,(even though not a party or 3rd party), and TRANSFERS THAT VIOLATE THE TERMS OF THE TRUST INSTRUMENT ARE VOID UNDER NEW YORK TRUST LAWS. (Glaski V. Bank of America, National Association, et al, California,5th Appellant District, 2013). APPELLANT DEANER'S NOTE HAS NO DATES ON THE ENDORSEMENTS AND NO ENDORSEMENT TO THE FNMA TRUST.

"Generally, the party seeking to foreclose has the BURDEN of establishing the existence of the debt and the mortgagor's default on that debt." United States Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 375; 684 S.E.2d 199, 205 (Ct. App. 2009). This would include proving by preponderance of the evidence that the Respondent/BOA is the OWNER of the Note and Mortgage and that Appellant Deaner had defaulted on the Note. See 385 S.C. at 375; 684 S.E. 2d at 199 (Citing Franklin Credit Mgmt. Corp v. Nicholas, 73 Conn. App. 830, 812, A.2d 51, 57-58 (Conn App. Ct. (2002). Respondent, BOA is required to plead and prove that it has received rights in both the NOTE and the MORTGAGE because "the assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt." S.C. Nat'l Bank v. Halter, 293, S.C. 121, 128, 359, se. 2D 74, 77 (Ct.App. 1987). (R.p.430, lines 7-11) (R. pp.520-521).

The Appellant's "Mortgage Compliance Investigator's Report on the Chain of Title Analysis and Mortgage Fraud Investigation" (hereafter, the MCI REPORT) CLEARLY AND CONVINCINGLY PROVES OTHERWISE. The Multiple Classes of the Fannie Mae REMIC 2007-91/FNMA 2007-91 are the true OWNERS, and the Respondent/BOA has not established any agency relationship or presented any evidence of authority to foreclose or of obtaining a power for sale for the Appellant Deaner's real property from the FNMA 2007-91 or anyone else.

1. New Mexico SUPREME COURT v. Bony, "we reverse the Court of Appeals and District Court and remand the district court with instructions to VACATE its FORECLOSURE JUDGMENT and to DISMISS the Bank of New York's foreclosure action for lack of standing."(Supreme Ct,"How did this get past the trial court?")

2. Focht v. Wells Fargo, 2nd Dist Ct. App FL 9/2013), "I concur in this decision because existing precedent requires me to do so. Presumably, our mandate requires the DISMISSAL of this foreclosure action, which in turn will UNDO THE FORECLOSURE SALE. Our CERTIFIED QUESTION of GREAT PUBLIC IMPORTANCE IS DISPOSITIVE of the APPEAL and worthy of consideration by the SUPREME COURT. " Application of a long line of Supreme Court cases applying the general principle that, "the Plaintiff's lack of standing at the inception of the case is not a defect that may be cured by the acquisition of standing after the case is filed." (R.pp.22-25)(R. pp. 426-515)(R. pp.520-522) (R.p.720, lines 80-99).

Respondent/BOA in this case failed to establish the time the Trust was created prior to filing the foreclosure and Appellant Deaner's mortgage was an asset of the Trust, Fannie Mae REMIC 2007-91 prior to the filing, thus a genuine issue of material fact remains REGARDING STANDING. In addition, the Respondent/BOA and counsel continue to MISREPRESENT themselves as OWNERS of the note and mortgage, and in fact, stated it in the JUDGMENT ORDER perpetrating extrinsic and intrinsic fraud upon the Court. (R.p.403, line 20-21) (R.p430, lines7-11) In addition, the Appellant Deaner's counsel, Mr. Sloan, informed the Trial Court in the Affirmative Defenses and Counter Claim to the Original Complaint and the Amended Complaint that the Note is Securitized. (R. pp. 583-645) (R. p. 415).

In present day time, Courts are aware a Securitized Note is under Securities Laws, IRS Laws and the PSA GUIDELINES. (US Nat'l. Assn V. Said, N Y SUPREME COURT, Queens City (1/2013) "Case dismissed over broken chain of Assignments...improper chain of assignments prior to the assignment involving Plaintiff). " Wells Fargo v. Erobobo (NYS 4/2013) Capacity and/or Standing to sue: and REMICS require originals. There is a difference between capacity to sue which gives the right to come into court, and possession of a cause of action which gives the right to relief. PSA requires depositor deliver and deposit with Trustee the ORIGINAL NOTE, ORIGINAL MORTGAGE AND ORIGINAL ASSIGNMENT involving Plaintiff.(R.p 10,lines24-25)(R.pp.449-456)(R.pp.571-645)

Due to Carpenter v. Longan, 83 U.S. 271, 276 (1872), "The debt is the principal thing, and it is obvious that if an action was brought on the bond in the name of the mortgagee, as it must be.." Deutsche Bank v Heinrich, 2011-SC-10-1060 (July 31, 2013, then this foreclosure case must be dismissed. In "Young v. People's Bank, 163 SC 57, 161 SE 2nd 324, 329 (1931), our SC SUPREME COURT adopted the principle of Longan." The Respondent/BOA has not established they are OWNERS OF THE NOTE, A DEBT EXISTS or have MORTGAGEE STATUS, as neither MERS or Bank of America are named on Appellant Deaner's NOTE. Under the Deaner Mortgage, it is the Lender-Beneficiary who decides whether to pursue a foreclosure in the event of an uncured (PROVEN) default by the borrower. The trustee implements the Lender-Beneficiary foreclosure in this case of which the Respondent/BOA IS only the Servicer in this case. Appellant Deaner DENIES A DEFAULT as the Respondent has not proven a default in this case and CLAIMS FRAUD against Respondent/BOA, successors and predecessors for their failure to timely and properly transfer the Deaner loan to the FANNIE MAE, FNMA 2007-91 REMIC TRUST and their failure to reveal the truth to the Appellant in this case and CONTINUE IN THE WRONGFUL FORECLOSURE ACTION against the APPELLANT which is "UNCLEAN HANDS" and "PUNITIVE IN NATURE." (Citibank N.A V. McCray, JSC Supreme Ct Br NY) "Citibank has not demonstrated right to the debt in the absence of a chain of custody and proof that the mortgage and notes were lawfully assigned&held by Citibank prior to commencement action."

ALSO, because the Respondent/BOA was not the original Lender and not the original payee on the NOTE, Plaintiff must show that it became entitled to enforce the Note. Generally, promissory notes are negotiable notes, however Appellant Deaner's note is securitized and is a non-negotiable note under Securities laws where the PSA Guidelines must be strictly followed with all endorsements, dates, negotiations, transfers, blue ink signatures and deliveries on the NOTE. This is not the case on Appellant Deaner's Note as Fannie Mae, nor the Fannie Mae REMIC 2007-91 is endorsed on the Note and since no dates are on the endorsements, the Respondent/BOA cannot establish the Note was delivered within the 90 required time to the Trust or establish they are holding a legal Note. Appellant Deaner has valid reason to believe the Note never reached the Trust since no endorsement to the Trust rendering the Note NULL and VOID. (Bank of America, NA v. O'Donnell, (NY Supreme Ct,62225-13(2015), "Mortgage on date action commenced vested in Freddie Mac not Bank of America") In the Appellant Deaner's case, the note and mortgage are vested in FANNIE MAE, FNMA 2007-91 REMIC TRUST on date action commenced.

Further, the Appellant informed the Court the Note is SECURITIZED at the Motion To Vacate Hearing, and the Note is no longer a NOTE, but a STOCK CERTIFICATE, separating the NOTE from the MORTGAGE causing the NOTE to become "NULL AND VOID by BIFURICATION." See, in the Court of Civil Appeals Oklahoma, Division I; BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans V. Ronald R. and Teri L. White, OK Civil Appeal 35, 10, 256 P.3d 1014,1017 "therefore in Oklahoma it IS NOT possible to bifurcate the security instrument from the note. An assignment of the mortgage to one other than the holder of the note is NO EFFECT. The record in the present case contains CONFLICTING EVIDENCE as to the OWNERSHIP OF THE NOTE. ..we are unable to determine from the record submitted to us that the instrument was later endorsed in blank and transferred to BAC Home Loans Servicing." Also, "a plaintiff must demonstrate right to enforce the note and absent a showing of ownership of the note, the plaintiff lacks standing." See Gill v. First Nat'l Bk and Trust of OK City, 1945 OK 181, 159 P.2d 717.9 (R. pp. 359-388) (R. pp. 571-645) (R. p.415).

Most importantly, "CHANGING THE NOTE FROM A PROMISSORY NOTE TO A STOCK CERTIFICATE VIOLATES THE SC "CONVERSION LAWS" AS A NOTE CANNOT BE CHANGED, ALTERED OR MADE DIFFERENT". When a Respondent/BOA violates a SC LAW, then it becomes an UNLAWFUL ACT and deems "UNCLEAN HANDS." At no time did Appellant Deaner authorize her Note to be Securitized and changed, altered or made different into a REMIC, mortgage backed security in her mortgage agreement. The Respondent/BOA, successors and predecessors have turned her Note of which she is the Maker and first transferor into a high finance money making vehicle with no income paid back to the borrower and is a breach of contract, a sham and RICO actions. (R.pp.112-152)(R. pp. 165-208) (R.p.415) (R. pp. 576-645) (R.pp.712-720)(R.pp.876-907).

EVEN if the Respondent has physical possession of the original Note, which they purport to do (falsely), the original Complaint filed at the beginning of this action is not sufficient to state facts where relief can be granted. This is more than an appearance of a "technical defense", as the Appellant has an overriding interest in making sure that the party that brings the action is actually entitled to enforce the alleged debt and must prove convincingly that a debt exists. In addition, as the Respondent filed the amended motion during the 60 day stay period by Judge Early, the appellant's counsel stated "the Amended Pleading is the PREJUDICE REFERRED TO IN RULE 15 (a) SCRCP against the Defendant." And "the Respondent's allegation that Mortgage Electronic Systems, Inc. (MERS) ASSIGNED the Defendant's Mortgage to Plaintiff/BOA is insufficient as a MATTER OF LAW", because MERS does not have any interest in the Promissory Note, and therefore cannot assign any interest in said Note to Plaintiff. (MERS v. Girdavainis, Sumter SC, 2006) (New York Mortgage Trust V. Dasdemir (NY 11/2012) "MERS as nominee in the instant foreclosure action is without legal authority, and Plaintiff could not be holder of the subject mortgage and note when the action commenced."(R.p.22, lines 1-16) (R.pp.23-25) (R. pp. 30-34) (R.pp.36-41)(R.p.430,lines 17-18)(R.p.470,lines,1-19) (R.pp.517-522)(R.pp.628-639) (R.pp.642-645)(R.p.807, lines 15-31 & p.808, lines 1-10)(R. p. 851-861).

Appellant's Motion to Reconsider Summary Judgment was granted due to genuine issues of material fact concerning the Acceleration Letter, the mailing and receipt, and discovery and the trial followed. (R.p.355-358)(R.p.390-395).

During discovery, the Respondent refused to give the Appellant required documents concerning the chain of title and other vital documents to the Appellant Deaner's case and used technical terms to hide the Truth from the Appellant in this case. Then trial was scheduled for 2/4/2015. (R.p.864-871).

At trial, the transcript proves the Bank of America witness could NOT establish the following: (1) the Respondent/BOA was the OWNER of the note, (2)damages were owed to the Respondent/BOA concerning the principle and interest, (3) a debt existed as the computerized Sheets are hear say, since the Bank of America witness did not originate the sheets or knew who did or how they were originated from the original Lender, Quicken Loans, Inc. or Countrywide prior to the merger, (4) during the trial the Bank of America witness did not establish any entitlement from Countrywide concerning enforcing the Appellant's Note or that a debt existed from the Note, and (5) the Respondent/BOA alleged the merger only, but no proof of entitlement from Countrywide to foreclose or power of sale, nor from Fannie Mae or the FNMA 2007-91 Trust.(R.pp.427-515)

THE SIMPLE ANSWER actually is there cannot be a foreclosure or power of sale if so many issues of fact exist regarding the propriety of the loan documents, parties, terms and transfers involved and whether the law and the terms of the very agreements governing the transfers especially the PSA guidelines were followed or were there breaches and the documents fictionalized, backdated and executed without authority. The Respondent/BOA should have provided a certification upon personal knowledge whether it possessed the original Note as the location of the original note has never been confirmed and is an ISSUE OF FACT. There is NO established proof the original Note was transferred to the FNMA 2007-91 TRUST pursuant to the material terms of the PSA and MLPA mandating a transfer within the 90 days. Non-negotiable notes are governed under Article 8. (R.pp.414-415)(R.p.455)(R.p.520) (R.pp.480-483) (R.pp.571-645).

At no time does the Respondent/BOA, nor counsel, or a witness certify that anyone pulled the original Note or went to the Trust vault to inspect it. Inasmuch as the Respondent stated they just held the note in the original Complaint, and that they held an "original version of said Note" in the Amended Complaint, there is no established proof of entitlement to foreclose or there exists a debt, or authority for power of sale. NO LEGAL DEBT HAS BEEN ESTABLISHED. THE RESPONDENT/BOA and counsel's refusal to supply requested loan documents and proof of the Chain of Title raises suspicion and is an issue of fact as to "does the original exist." The "original version of said Note" is not properly assigned to various parties, ultimately to FNMA 2007-91 Trust, mandated by the UCC, the law and the Loan documents and the PSA. Then the courts cannot excuse a "MATERIAL BREACH" with a band aid of nuc pro tunc. "Courts are not permitted to "add or excise terms" to a contract, nor are they permitted to "distort the meaning of those used", thereby creating a new contract than that originally intended by the party under the guise of interpreting the writing." Vermont Teddy Bear v. 538 Madison Realty Co, 1 NY Ct. App. 2d at 475, 154 N.Y. S. 2 d 37, 136 N.E. 2d 504 (2004)(citation omitted) if the loan was not in the FNMA 2007-91 TRUST within the 90 days, then there was a MATERIAL BREACH of the PSA AND MLPA TERMS and a BREAK IN THE CHAIN OF TITLE. Issues of Fact exist as to who OWNED THE NOTE and had standing to file this action. The FNMA 2007-91 TRUST is governed by the NEW YORK TRUST LAWS in this case as the TRUST is located in NEW YORK. The remedy is for this Court to acknowledge the breach and is covered convincingly in the APPELLANT DEANER'S MCI REPORT. (M&T Bank V. Smith (FL 6/2010) "Plaintiff then alleged that Wells Fargo was the OWNER of the Note, while the Plaintiff WAS MERELY A SERVICER of the LOAN." (R.p.403, lines 20-21)(R.p.430)

On September 5, 2014, the Appellant's legal counsel, Mr. Sloan, filed the Defendant Deaner's Affirmative Defenses and Counter Claim and answered that Respondent/BOA did not have standing to foreclose, the note was a securitized non-negotiable note needing proper endorsements and many other defenses.

According to NY Common Law, no Trust, first, "until delivery to the Trustee is performed by the settlor, or until the securities are definitely ascertained by the declaration of the settlor, when he himself is the Trustee, NO RIGHTS of the beneficiary in a Trust created without consideration arise." (Sussman v. S, 61 A.D. 2 d 838 (2d Dept, NY 1978), citing Riegel v. Central Hanover Bank & Trust Co, 266 App. Div.586. Next, to complete the gift to the TRUST the delivery must be perfect regarding the property and the circumstances, or in other words, there must be a change of dominion and ownership and neither words or intentions can substitute for the actual delivery. (Vincent v. Putname, 248 NY 76,82-84 (NY 1928). Finally, there must be 4 elements met as (a) a designated beneficiary, (b) a designated trustee that cannot be the beneficiary, (c) a fund or other property properly identified to pass title to the Trustee and (d) the actual delivery of the property, or legal assignment thereof, with the intent to pass legal title to the trustee. (Sussman, Id. IN the APPELLANT DEANER'S NOTE, there was NO VALID TRANSFER OF THE NOTE to the FNMA 2007-91 TRUST or to the RESPONDENT/BOA pursuant to TRUST LAWS. As demonstrated at the trial and submission of the Note, the Note is devoid of dates and endorsements. The PSA mandates a complete chain of title made by Notes endorsed from each Payee to the Trustee. No such endorsements of the Note were produced. ASSIGNING a mortgage WITHOUT ENDORSING THE NOTE that secures it is USELESS. Moreover, the first assignment of the Appellant Deaner's alleged loan of June 26, 2007 was INVALID because the NOTE never made it to the TRUST, so that INVALIDATES any SUBSEQUENT assignments; meaning Respondent/Bank of America has NEVER HAD STANDING in this case. (R.pp.449-451)(R.pp.878-882).

Respectfully, the Respondent/BOA did not have standing to foreclose and the Trial Court's Judgment Order and Sale was in ERROR. This case should be decided by the Court DE NOVO as the Trial Court's dismissal of the Appellant's Affirmative Defenses and Counter Claim was in error, and this Court should construe the evidence in light most favorable to the nonmoving party, here being the Appellant in this case. (R.pp.22-25)(R.pp.410-416) (R.pp.470- 471& 472, lines 1-15) (R. pp. 520-522)(R. pp.526-528) (R.pp.617-639)(R.pp.647-707).

Deflecting the issues to confuse the Court by using falsified documents or focus on assignments of mortgages as if assignments of mortgages control when they DO NOT. THIS causes the Court to ignore the PSA and MLPA mandates that control wherein the Note must be properly assigned and endorsed, not referenced in an assignment of mortgage as the Respondent/BOA has done. The Trial Court fails to explain how the Note was assigned other than claiming the Note follows the mortgage if it is referenced in the Assignment of the Mortgage. The Respondent or Court never produced evidence the Note was actually deposited into the Trust to even permit it to be assigned to BOA. By LAW, if either one of these actions did not occur then Respondent/BOA had NO STANDING TO BRING THE FORECLOSURE ACTION AGAINST APPELLANT DEANER and APPELLANT CLAIMS RECOUPMENT. SC is clear about APPELLANT having the right to challenge standing because standing is based on having a sufficient interest in the outcome of litigation, not privity of contract. NY case law (where the Trust is located) dictates that the Appellant has the right to challenge the TRUST ownership of a Note and Mortgage in a foreclosure case as a means of contesting standing to file suit. AS A MATTER OF LAW, a Trust may not take ownership of a Note and Mortgage or hold it in violation of its Trust documents. (In the matter of James D. Dana, 465 N.Y.S. 2d 102 (N.Y. Sup Ct. 1982) "voiding a transaction that violated a Trust document and upholding a Trust; EPTL-7-2. 4(2) Article 7, "Trust"; part 2 Rules of Governing Trustees," a cardinal principal of law of Trusts is that the instrument under which the Trustee acts is the charter of rights and must act in administering the Trust in accordance with its terms.

FIRST, Loan Document MLCFC 2006-1 PSA, Article II, Mortgage transfer Section 201 et seq. mandates ENDORSEMENTS of the Note before any transfer and mandates the original Note to be kept in the Trust. Since the PSA dictates that the Note must be endorsed and it was not, then the Trial Court erred to permit this foreclosure action and order Judgment and Sale at the trial, no less to permit Respondent/BOA to have standing when it is not named on the Note.

(R.pp.361-388) (R.pp.414-416) (R.pp.449-456) (R.pp.520-521)(R.pp.583-645).

If the Note was not endorsed nor timely deposited pursuant to the PSA terms, then there could be no foreclosure. Also, mirroring the mandates of the PSA, the MortLoanPurAgr(MLPA) mandated the deposit of the Deaner Loan Docs into the PSA to include Original Note and all endorsements and allonges. (R.p.455).

Endorsements to the Trust WERE NEVER PRODUCED by the Respondent/BOA, so how is it the foreclosing party should have physically held the original Note when the original note is to be with the Trustee? Therefore, where are the endorsements to the FNMA 2007-91 REMIC TRUST on the Note? And how is it that Respondent/Bank of America is holding a Note without the endorsement to FNMA 2007-91 REMIC TRUST and claiming in the Judgment Order to be holding the original Note? That is IMPOSSIBLE and misrepresenting the facts, truth, and implying they are owners of the Note in this case is Extrinsic Fraud.

Which now brings us to the Acceleration Letter at the trial hearing, 2/4/15 . The Mortgage Agreement is clear in #22 which states the LENDER must send out the Acceleration Letter, and the Respondent/BOA WAS NOT THE LENDER in 2010 and IS NOT the Lender of date, nor the Owner of the Note and Mortgage, nor the beneficiary or mortgagee, because the Respondent/BOA is merely the SERVICER of the alleged loan. The INVALID ASSIGNMENT FROM MERS was not recorded until May 2011. CONCERNING the Acceleration Letter dated in 2010, the Bank of America witness stated she did not know (1) who originated the Acceleration Letter as it was not signed, (2) where it originated from or (3) when it was mailed. Just to say they mailed it is merely an allegation, and the Appellant Deaner in an Affidavit denied receiving it as it was not mailed to the property address as required in the Mortgage #15. In addition the dates on the Acceleration Letter did not give Appellant Deaner the required 30 days to cure required in #22 (c) of the Mortgage, stating "a date, not less than 30 days from the date the Notice is given to the Borrower". These laws of merit were covered by the Appellant's previous attorney, Mr. Sloan, at the trial which are shown in the Designations, the Closing Arguments by Mr. Sloan in his Letter dated February 24, 2015 to Referee Harvey as Mr. Harvey requested at trial. (R.p.442-451&455-456)(R.pp.518-521). PAGE 28

The Trial Court erred in not dismissing this case then and there...and Appellant Deaner claims an "abuse of discretion." The Trial Court is legally and ethically bound to follow the Mortgage Agreement, not legislate from the bench. Equity should grant favor in behalf of the Appellant Deaner as the homeowner in a foreclosure proceeding as foreclosure is a grave inequity against a Senior Citizen and is elder abuse when the foreclosure is a wrongful foreclosure requiring damages as well as punitive damages and recoupment in favor of Appellant Deaner in this case . Appropriate to dismiss case, Rule17(a)&Rule12 (b)SCRCP.

Equity should always favor the homeowner when there is wrongful foreclosure proceedings, and the Respondent has not PROVEN WITH CLEAR AND CONVINCING EVIDENCE OWNERSHIP of the note, nor lawful damages, or entitlement rights to foreclose. In addition, the Respondent/Boa did not prove beneficiary rights or the status of mortgagee at the Trial, and just saying so is mere allegations and misrepresenting the truth to Appellant Deaner in this case.

In the Bank of New York v. Silverberg, et al case, (SUPREME COURT, Appellant Second Department), "Mers was never the lawful holder or assignee of the Note and the ASSIGNMENT OF THE MORTGAGE IS A NULLITY...and MERS was WITHOUT THE AUTHORITY to ASSIGN the POWER TO FORECLOSE TO THE PLAINTIFF. Consequently, the Plaintiff failed to show it had standing to foreclose. This court is mindful of the impact this decision may have on the mortgage industry in New York, and perhaps the Nation. Nonetheless, the law must not yield to the expediency and the convenience of the lending institutions. PROPER PROCEDURES MUST BE FOLLOWED TO ENSURE THE RELIABILITY OF THE CHAIN OF OWNERSHIP, TO SECURE THE DEPENDABLE TRANSFER OF PROPERTY, AND TO ASSURE THE ENFORCEMENT OF THE RULES THAT GOVERN REAL PROPERTY." AND, this case ordered on the law is to DISMISS THE COMPLAINT against the Silverbergs insofar as asserted against them for LACK OF STANDING IS GRANTED. (Bank of New York V. Silverberg, 86 AD3d 274, 281, 283 (2d Dept. 2011). (Bank of New York Mellon V. Shaffer, Ohio 7/2013) void v. void, standing/jurisdiction, default judgment void)(R.pp.22-25).

In addition, Appellant's attorney at the trial, Mr. Sloan, covered in his closing summary argument as follows: (R. pp. 517-522).

1. Bank of America NOT OWNING THE NOTE (R. p. 520)
2. MERS only having AUTHORITY TO ACT ON BEHALF OF QUICKEN LOANS, Inc. (the Appellant Deaner's ORIGINAL LENDER) (R. p. 518)
3. THE DEFICIENCIES WITH THE RIGHT TO CURE LETTER such as the Respondent failing to prove that the letter should be deemed as sent per No. 15 of the Mortgage Agreement, no genuine proof of mailing, the Bank of America Witness at the Trial did not know who mailed it, when it was mailed and where it was mailed from. In addition, it was not mailed to the PROPERTY ADDRESS as required in the Mortgage Agreement. The Bank of America witness testified it was mailed on August 15, 2010 and only gave until September 15, 2010 to cure not allowing the required 30 days to cure. Clearly, in No 22 of the Mortgage, it is a necessary perquisite for the Respondent to foreclose that they sent the right to cure letter and to accelerate the entire balance due and were the LENDER OF RECORD. The Appellant claims the Respondent/BOA is not the Lender of Record and could not have sent the Acceleration Letter, therefore, no Acceleration Letter was ever sent to the Appellant in her case from a Lender, and further, (R. p. 431, lines 13-15) (R. pp. 442-449) (R .p. 506, lines 1-16) (R. p. 510) (R. pp. 518-520).

the Appellant has denied ever receiving an Acceleration Letter. (Kurian v. Wells Fargo, FLA 4th D Ct App 2013)."Bank failed to prove that any notice was sent by first class mail."(R.p.442-449)(R.p.470-471&472,lin1-15)(R.pp518-520) The Respondent/BOA is only the SERVICER, and has no authority from the Appellant Deaner in her Mortgage for BOA to pretend to be the Lender of Record or fraudulently imply they are the Lender, because they are the only the Servicer. The Appellant has absolutely no Lender relationship with Bank of America as they merely collect payments and have no legal rights, entitlement rights, beneficiary rights, mortgagee rights or power of sale rights concerning the Appellant's Note or Mortgage due to the BREAK IN THE CHAIN OF TITLE and other matters of law and causes of action.(R.pp518-521)

4. The Respondent/BOA is not the Lender per No. 22 of Mortgage. Quicken Loans, Inc. remained the Mortgagee of record, the Lender, for the mortgage via Aiken County Register of Deeds until 2011, after the Right to Cure Letter was sent out by Respondent/BOA in 2010. (R.pp.446-448) (R.pp.449-451).
5. Respondent has failed to show standing to bring this lawsuit at the time that the suit was filed. Plaintiff has failed to prove by preponderance of the evidence at trial that they had standing to bring this action at the time the suit was filed. Although the Respondent relies on possession of the original note at the trial, there is NO EVIDENCE of this at the TIME THAT THE SUIT WAS FILED or at the trial. The original Note would be endorsed to FNMA.

The original Lender was Quicken Loans, Inc., and there is an endorsement on the note from Quicken Loans to Countrywide Bank, FSB. Subsequently, there is an "endorsements in blank" from Countrywide which Respondent relies on to maintain standing in this case. However, THE ENDORSEMENT HAS NO DATE and the signatures are rubber stamped. Respondent, in relying on one witness who reviewed its business records, could not state when the endorsements aforementioned were made. Who stamped the endorsement? Since no dates, anyone could have rubber stamped the endorsement. THERE IS AN ISSUE OF AUTHENTICATION OF THE PROMISSORY NOTE. (Bennet v. Deutsche Bank National Trust Company (FLA 4th D Ct App 2013). Appellant Deaner states that in fraud, the victim is in a position of reliance on false and deliberately misleading information provided by the perpetrators, in this case Bank of America and counsel.(R.p.432,lin1-8). In addition, concerning the Appellant's "Affirmative Defenses and Counter Claim" submitted at trial, the Respondent/BOA DID NOT REBUT, #5, Appellant Deaner's denial MERS was the nominee in the Chain of Title or anyone else in the Chain of Title had ownership in her Note and Mortgage, #7, Appellant Deaner's denial Respondent has a valid assignment in order for Respondent to have standing in this case, #12, Appellant denied Respondent had standing to bring this action merely by claiming a corporate merger with Countrywide AS IT IS NECESSARY to PROVE it still OWNED the Note and Mortgage in this

action when the merger took place, #15, Appellant denied Respondent is the valid mortgagee as defined in the mortgage, #18, Appellant denied there was a default and the Respondent has not produced convincing evidence otherwise, #22, Appellant denied receiving the Right to Cure Letter (it WAS NOT sent to the property address) as required in the Mortgage Agreement, #24, Appellant claimed the Respondent/BOA lacks the Standing needed to maintain this foreclosure action, #24, Appellant claimed the ORIGINAL NOTE is required for the Plaintiff to maintain this action and the Respondent is not the Person entitled to enforce as required by 36-3-301, SC CODE OF LAWS to bring this foreclosure action, #28, Appellant denied the VALIDITY OF THE MORTAGE ASSIGNMENT in this case since it came from Mortgage Electronic Registration Systems, Inc., a non-party and not listed on the Note, #30, Appellant claimed the ownership of the note and mortgage has been separated in this action based on the mortgage being the name MERS, Inc., who is never mentioned on the Note. THE ALLEGED DEBT IN THIS CASE IS AT BEST AN "UNSECURED DEBT" and therefore, the Appellant should be able to assert HOMESTEAD RIGHTS and/or owe the Respondent/BOA NOTHING since the Appellant has received a discharge of the alleged debt in her Chapter 7 bankruptcy, # 31, Appellant claimed Respondent/BOA has failed to plead the agency relationship between MERS and Quicken Loans, the original creditor

as to the Mortgage Assignment, #33, Appellant claimed the Respondent/BOA failed to plead or show proof of the agency relationship between the owner of the note and the Plaintiff who is nothing but the Servicer, #35, Appellant denies the Respondent/Boa has suffered and damages as the results of any alleged failure of the Appellant to pay (a non-proven alleged debt), #37, appellant claimed the Respondent/BOA failed to plead its capacity to sue and Respondent has not mentioned what State it is incorporated in, nor have they stated whether they have authority to maintain this proceeding in South Carolina, #39, Appellant claimed the Respondent/BOA failed to plead it was the OWNER of the Note in this case at the time that the case was filed, #40, Appellant claimed the Court can dismiss the case under Rule 12-b-6, SCRCP, for failure to state facts sufficient where relief can be granted or under Rule 12-b-1, SCRCP as the Court would then LACK SUBJECT MATTER JURISDICTION. #42-50, Appellant claimed the Note IS NOT a negotiable instrument under the South Carolina UCC SC Code of Laws 36-3-301, therefore, the Note must have VALID ASSIGNMENTS to be transferred. As this is not the case, the Respondent/BOA lacks standing to bring this action, #52, Appellant claimed the Respondent/BOA has violated the Fair Debt Collection Practices Act, 15 USC 1692, et seq., FDCPA, by misrepresenting the nature of the debt in communications with the Appellant when they are only the Servicer.

See Bellistri V.Ocwen MO E.Dist.App 2009) (R.pp.410-417)(R.p.893,line1-22).

(R.pp. 413-416)

THE SERVICER IS NOT THE TRUE OWNER OF HER NOTE, and #53, the Appellant claimed the Fair Debt Collection practices Act calls for $1,000 for each violation plus attorney fees when the debt collector, in this case, the Respondent/BOA, misrepresents the nature of the debt, specifically who the debt is owed to. By not ruling in APPELLANT DEANER'S FAVOR in these facts of merit, then these are MATERIALLY HARMFUL ERRORS against Appellant. (R.pp.410-417) (R.p.712-720).

All of the above were dismissed by the Trail Court and the Appellant is appealing the Referee/Trial Court's failure to act "according to the essential requirements of justice" in these oversights when the Respondent/BOA did not REBUT OR prove with clear and convincing evidence of these matters at the trial. The BURDEN OF PROOF is on the Respondent/BOA at the trial.

APPELLANT DEANER CONTINUES TO ASK THE COURTS FOR THE REQUIRED DOCUMENTS FROM THE RESPONDENT/BANK OF AMERICA TO PROVE THROUGH THE ENDORSEMENTS, NEGOTIATIONS, ASSIGNMENTS AND TRANSFERS THAT A DEBT DOES NOT EXIST AND BANK OF AMERICA IS NOT THE OWNER OF THE NOTE AND MORTGAGE, nor has entitlement rights or power of sale to foreclose.

Appellant claims a WRONGFUL FORECLOSURE attempt action by the Respondent/Boa allowed by the Trial Court. The theory that a foreclosure is wrongful is because it is being initiated by a non-holder of the mortgage and has also been phrased as (1) the foreclosing party lacks standing to foreclose or (2) the chain of title relied upon by the foreclosing party contains BREAKS or DEFECTS. (See, Scott V. JP Morgan Chase Bank, N.A. (2013) 214 Cal.App. 4th 743, 764; Herrara V. Deutsche Bank National Trust Co., supra, (Cal. App.4th 5/2011), Deutsche bank not entitled on wrongful foreclosure claim because it failed to show a chain of ownership that would establish it was the true BENEFICIARY under the deed of trust.(R.pp.414-415)(R.p.468, lines 14-19)(R.p.455)(R.p.650).

In Appellant's Motion to Vacate Judgment Order and Cancel sale hearing, the Appellant put before the Trial Court clear and convincing evidence in the Mortgage Compliance Investigator Chain of Title and Mortgage Fraud Report, with the notarized Affidavit in accordance with Fed. Rule 60 (b). The breaks and defects in the Chain of Title and all the other defects with the Respondent/BOA attempts to foreclose on the Deaner Note are fraudulent as they are not the Owners of Appellant Deaner's note or mortgage. For time sake the MCI Report is enclosed in the Designations for an in depth review of the TRUTH in this case. Therefore, "the acceptance of the note and mortgage by the trustee after the date the trust closed, would be VOID." (WELLS FARGO Bank, N.A. v. Erobobo (April 29, 2013, 39 Misc. 3d 1220 (A), 2013 WL 1831700, slip opn. P.8; see Levitin & Twomey, Mortgage Servicing, supra, 28 Yale J. on Reg. at p.14, fn. 35 (under New York Law, any transfer to the trust in contravention of the trust documents is VOID). Relying on Erobobo, a bankruptcy court recently concluded, "that under New York Law, assignment of the Saldivars' Note after the start up day is VOID ab initio." (R.pp.583-645). (Bank of New York Mellon v. Shaffer Ohio 2013) "since the trial court lacked subject matter jurisdiction, and its default judgment was therefore void, Shaffer was not required to comply with the time requirements of Civil Rule 60(b) in order to be entitled to an Order Vacating the Judgment).
(R.pp. 583-645) (State &Federal violations and fraud)(R.p.455, line 3-24).

ALSO, In Glaski v. Bank of America, National Association, et al, the CAL Fifth Appellant District Court stated, "We conclude that Glaski's factual allegations regarding post-closing date attempts to transfer his deed of trust into the WaMu Securitized Trust are sufficient to state a basis for CONCLUDING THE ATTEMPTED TRANSFERS WERE VOID." As a result, Glaski has stated cognizable claim for "wrongful foreclosure" under the theory that the entity invoking the power of sale (i.e., Bank of America in its capacity as trustee for the WaMu Securitized Trust was not the holder of the Glaski deed of Trust.) (SEE Appellant's Affirm Defenses& Counter Claim and MSI Report) In the Appellant Deaner's case, the Respondent/Bank of America is only the Servicer of the ALLEGED LOAN. The Note the Respondent/BOA is holding is not even endorsed, negotiated, assigned or transferred to the Fannie Mae 2007-91 REMIC TRUST AS shown in the Trial Transcript documents and further supported by the MCI Report....SO FORECLOSURE IS VOID. (Cal SUPREME COURT denied Bank of America's request not to publish the Glaski case(2/27/2014 setting a precedent on, if the entity wants to foreclose, they must own the debt, assignment must be valid and transfered in the 90 days) And as the Court can see, this foreclosure action IS NOT being conducted at the direction of the correct party. In Cromarty V. Wells Fargo N.A., Florida Dist Ct App (2013), "We agree with the borrowers argument as to standing and reverse."(R.p.430, lines7-11) (R.p.449 & 450,line1-14) (R.pp.452-455) (R. p. 804) (R. p. 842). PAGE 37

Furthermore, in "Good Faith" the Appellant sent by Fed-X to the Chief Financial Officer, Mr. Bruce R. Thompson received on March 31, 2015, a "Tender of Payment" in the form of the International Promissory Note (hereafter, IPN) which is legal tender in the United States and a cash item backed by the U.S. Treasury and the Federal Reserve. Although a bank attorney declined the payment, the debt is discharged as it was declined, but not returned to the rightful Owner of the Note who is Appellant Deaner as Recorded in her UCC 3 governed by UCC 3-603 concerning Tender of Payment. For the Respondent/BOA, not discharge the alleged debt in "Good Faith", according to UCC 3-603 is "BAD FAITH". (See Def's Motion to Discharge Debt Due To Tender Of Payment To Plaintiff On Order Of Judgment) Respondent/BOA continues to OPPRESS and inflict emotional pain on Appellant Deaner for over three years now with a wrongful foreclosure ORIGINAL COMPLAINT, refusing to accept the IPN after several Letters of Requests to Mr. Bruce R. Thompson, Chief Financial Officer, Mr. Jason Agaton, Customer Advocate and Louise Bowes of Bank Rome LLP, and now they have sold a non-existant Note to another company by the name of Seterus which is punitive actions, a sham and RICO. (R.pp.725-793)(R.p.848) "Tender of Payment" destroys a lien. The Respondent/Boa does not OWN a Note to Sell, nor proven a debt exists to sell. Is this criminal felony activity? (R.p.655) (R.pp.777-786)(R.pp.792-793)(R.pp.820-829) (R.p.845, lines,1-11).

"It is the general rule that courts have power to vacate a foreclosure and sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud or where there has been such a mistake that to allow it to stand would be **INEQUITABLE** to purchaser or parties." (Lo V. Jensen(2001) 88 Cal. App 4th1093, 1097-1098 (Lo), quoting Bank of America etc, Assn V. Reidy (1940) 15 Cal.2d 243, 248; see also, Angell V. Superior Court (1999) 73 Cal App. Court 4th 691,700.) CASE LAW instructs that the elements of an EQUITABLE CAUSE OF ACTION to set aside a foreclosure are: (1)the trustee or mortgagee caused an illegal, fraudulent, or willfully OPPRESSIVE sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually, but not always, the trustor or MORTGAGOR was PREJUDICED OR HARMED; and (3)in cases where the trustor or MORTGAGOR challenges the sale, the trustor or MORTGAGOR tendered the amount of the secured indebtedness or was excused from tendering. (Bank of America, etc, Assn V. Reidy, supra 15 Cal.2d at p.248 (1940). (R.pp.549-560) (R.pp.723-786).

Appellant Deaner has been "PREJUDICED AND HARMED" by Bank of America filing this wrongful foreclosure case against her without Owning the Note and Mortgage and by not proving it at time of filing the Complaint or to the very present. (See Original Complaint, page 3, Wherefore, (1) note held, not owned)

DUE TO THE UNDISCLOSED INFORMATION, AND NUMEROUS MISREPRESENTATIONS including the Lender's INTENTION TO SECURITIZE THE ALLEGED LOAN, the fact that the Appellant's PROMISSORY NOTE IS A CASH ITEM under BANKING OPERATIVE LAW, and the LENDER/BORROWER RELATIONSHIP would be lost forever, the loan itself was absolutely **"unconscionable", illegal and void at the inception** as there was no regard to the Appellants ability to repay the loan knowing her business was in real estate and the banks were on the verge of collapse then. (R.pp.583-645), (BankofAmerica is not the Mortgagee in this case)(R.p.430,line7-11)(R.pp.16-20)

These multiple non-disclosures and misrepresentations are both procedural and substantive in nature and have been pointed out in original Motion to Dismiss and Motion to Vacate Judgment Order and Cancel Sale. (R.pp.243-346) (R.pp.355-358) (R. pp. 571-707) (R.pp.712-720)(R.pp.875-885)(R.pp.900-909).

Appellant Deaner claims fraud in the inducement, all fraud in the MCI Report, extrinsic an intrinsic fraud, fraud in the concealment, securities fraud, intentional infliction of emotional distress, slander of title, federal and state violations, declaratory relief, damages, punitive damages, recoupment and attorney fees and expenses in this wrongful foreclosure case filed against the Appellant in March 2012.

WHEREFORE, Appellant Deaner, requests the foreclosure Judgement Order and Sale of Appellant's real property be dismissed with prejudice, damages, punitive damages, attorney fees and expenses and recoupment of the original promissory note and the IPN Note amounts, declaratory relief and any other relief this Court deems fair and equitable.

(See all enclosed Designations 1-49)

The trial Court's failure to act in favor of the Appellant's case was MATERIALLY HARMFUL to the Appellant. The doctrine of "Unclean Hands "precludes a Plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the Defendant." Ingram V. Kasey's Assocs., 340 S.C. 98, 107 n. 2, 531 S.E.2d 287,292n 2 (2000). It is FRAUD which misleads a court in determining issues and induces the Court to find for the party perpetrating the fraud, Id (Chewning V. Ford Motor (2003), and Extrinsic Fraud is fraud that induces a person not to present a case or deprives a person of the Opportunity to be heard such as placing a Bond on an indigent person.

VIII FACTS

A. The Respondent/Plaintiff, BANK OF AMERICA, (hereafter BOA) filed a Complaint it held the note and MERS assigned said Note and mortgage. At inception and filing in March 2012, no proof of stating BOA owned the Note, or legal proof given BOA OWNED the note or mortgage in original complaint. (R.pp.8-10)

B. The Appellant/Def.Deaner filed a Motion To Dismiss, 4/12/12.

C. The Respondent/BOA, filed an Amended Complaint, 8/28/14, and stated they held a "version of the original note", but not owners.

D. Discovery revealed that the BANK, BOA, did not possess required documentation of its ownership of the note and mortgage loan as BOA refused to supply Defendant the necessary requested proof of ownership, agency authority, chain of title and entitlement to foreclose with numerous other requests for documentation.

E. Defendant requested all securitization and PSA documents of the endorsements, negotiations, transfers and deliveries in order to prove the chain of title and perfection of the alleged lien and was refused this required information.(Interrogatories)&(R.pp.875-871)

F. The Bank moved for summary judgment.(R.pp.158-207)(R.p.212)

G. The Appellant/Defendant objected due to no proof of ownership of note or any legal rights or authority to foreclose or power of sale, no documents provided to prove ownership and acceleration letter was sent in 2010 not by the Lender of Record in accordance with #22 of the defendant's mortgage.(R.pp.335-346)(R.p.347-358)

H. The Trial Court remanded to trial on 2/4/15 due to merits of law.

I. The Trial court granted an Order of Judgment in favor of the Plaintiff, 3/10/15, when the Plaintiff had no proof of ownership or evidence at trial, and in addition, the acceleration letter was sent by Bank of America, the Servicer, who was not the Lender of record in 2010 as the invalid assignment was recorded in 2012. No legal proof of a debt was supplied at the trial except for a Computerized Sheet with no authentication by the Bank of America witness as to where they came from, who originated them or when they were originated. There was no payoff from Fannie Mae recorded in the computerized sheets or the original promissory note entry, and therefore, the computerized sheets are untrustworthy. THESE ARE ALL "MATERIALLY HARMFUL ERRORS". (R.p.427-515) (R.p.517-522)

J. The Defendant requested a Motion To Reconsider the Judgment order based on the Acceleration letter not being sent by the Lender as required in #22 of the Mortgage and not sent timely by theServicer denying the Defendant the full 30days to cure.(R.p538)

K. The Referee denied the Request for Reconsideration and gave the Respondent/BOA, favorable judgment and power of sale without the Respondent/Plaintiff/BOA, proving any authority of OWNERSHIP of the note and mortgage, without a legal Acceleration Letter mailed, without endorsement dates and an endorsement to Fannie Mae/Fannie Mae 2007-91 REMIC TRUST on the note and without any proof the note was in legal guidelines of the PSA Agreement to the Trust bringing into question the authenticity of the note WHICH ARE ALL MATERIALLY HARMFUL ERRORS.(R.p.544)(R.pp.517-522)(R.pp.571-645)(R.p720, lin74-100).

L. The Defendant sent by Fed-X, 3/29/15, to Chief Financial Officer of Bank of America, Mr. Bruce R. Thompson a legal and binding "Tender of Payment" immediately payable in full at sight of the alleged debt in the amount of $147,000 including interest in "Good Faith" although there is no debt owed by the Appellant. .

(R.p.550-558)(R.p.725-769) PAGE 43

M. The Defendant placed a Motion To Vacate the Judgment Order and Reverse or Cancel Sale and supplied the Referee with evidentiary proof that Respondent BOA, was not the owner of the note, had no legal rights, title rights or beneficiary rights to foreclose, nor had any legal rights or authority to a power of sale as explained in comprehensive detail in the Mortgage Compliance Investigator's CHAIN OF TITLE Analysis and MORTGAGE FRAUD Investigative REPORT (MCI REPORT). (R.pp.570-645).

N. The Trial Court denied the MotionToVacate/PrejudicetoAppellant.

O. The Defendant then placed a Motion For Reconsideration of the Motion to Vacate as well as a Motion to Discharge the Debt Due To Tender of Payment. (R. pp. 802-814)(R. pp. 816-827).

P. The Trial Count denied both requests/is Prejudicial to Appellant.

Q. The Defendant placed a final Motion to Reconsider Defendant's Emergency Motion to Vacate Judgment and Order and Reverse or Cancel Sale, and a, Motion to Order Return of the International Promissory Note or Discharge the Debt, and a Motion To Proceed FORMA PAUPERIS to gain due process of law.(R. pp. 831-871).

R. The Trial Court Order is scheduled for a hearing 7/23/2015.

IX CLAIMS AND ARGUMENTS

1. **BECAUSE Respondent/BOA did not own the Note and Mortgage at the filing of the original complaint, Respondent is barred by lack of standing and the Trial Court lacks subject matter jurisdiction and this foreclosure case should be dismissed with prejudice, lis pendens and the INVALID MERS assignment removed from Appellant Deaner's County records to clear her title.**
2. **BECAUSE, Respondent/BOA, predecessors and successors, failed to endorse, negotiate, assign and transfer the original Note to the Fannie Mae 2007-91 REMIC TRUST according to the New York Trust Laws and the PSA Guidelines prior to the Trust closing date, the foreclosure is VOID, and should be dismissed with prejudice and clearing of title as in #1.(R.p.455)**
3. **BECAUSE, legal tender of payment was made to the Respondent/BOA in the amount of $147,000 in "Good Faith" although no debt is proven, and was made in compliance with Anderson V. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (Ct.App 1987), the Trial Court's Judgment Order and Sale should be made VOID, the ALLEGED DEBT DISCHARGED and RECOUPMENT paid to the Appellant in this wrongful foreclosure case with clearing of title as in #1.**
4. **Because the Respondent/BOA perpetrated extrinsic fraud and intrinsic fraud upon the Appellant and the Trial Court by PRETENDING to be the Lender mailing Acceleration Letter and PRETENDING to OWN the Note, this foreclosure should be dismissed with prejudice with clearing of title as in #1.**

5. Because the respondent/Boa did not prove there is a debt, had any agency relationship authorizing the entitlement to foreclose on the Appellant Deaner's real property this foreclosure case should be dismissed with Prejudice and clearing of title as in #1. (R.p.655, lines 8-18).
6. Because the Respondent/BOA violated the South Carolina conversion laws by changing the Appellant's promissory note into a stock certificate in a REMIC Trust in violation of the Mortgage Agreement and without written authorization by Appellant Deaner, this case should be dismissed with prejudice and clearing of title as in #1. (R. pp. 308-338) (R. pp. 583-645).
7. Because no debt was proven and owed to the Respondent/BOA or any damages proven by the Respondent/BOA, this foreclosure case should be dismissed with prejudice and clearing of title as in #1.(R. pp. 452-453).
8. Because the Respondent/BOA violated New York Trust Laws and the PSA Guidelines and the promissory note was not delivered to the Trust within the time guidelines, this foreclosure is VOID, and should be dismissed with prejudice and clearing of title as in #1. (R. p. 455, lines 3-24).
9. Because no consideration was proven to be paid by the Respondent/BOA, the foreclosure and verified legally in the MCI Report, this case should be dismissed with prejudice and clearing of the title as in #1.(R.p.452,lines 1-25) (R.p.344, lines 18-25). PAGE 46

10. Because the Respondent/BOA alleged debt is unsecured due to splitting of the Note and Mortgage by MERS and the Securitization process of changing the note to a stock certificate, the Appellant 's bankruptcy discharged the unsecured debt and the Appellant is protected by the Homestead Exemption, and this foreclosure should be dismissed with prejudice and clearing of the title as in #1. ((R.pp.583-645)(R.p.326, lines 104)(R.p.518).

11. Because the Respondent/Boa comes to the Court with "UNCLEAN HANDS", this foreclosure case should be dismissed with prejudice (the SOUTH CAROLINA SUPREME COURT does not look favorably upon those who are underserving and try to use the Court Rules to obtain a benefit they do not deserve. (FirstUnNatBkof SC V.Soden,1998)and clearing of the title as in #1.

12. Because the Respondent/BOA breached the Mortgage Agreement by not sending the Acceleration Letter as required in #15 and #22, violated the Right to Cure and gave no evidence at the Trial of mailing the Acceleration Letter, or giving the 30 days to cure and did not mail it to the property address as required in the Mortgage Agreement, this case should be dismissed with prejudice and the clearing of the title as in #1. (R.pp.442-449)(R.p.473, lines 12-26)(R.pp.518-522) (R.p.503,lines 41-55,#15 & p. 506, lines 1-16 #22).

CASES SUPPORTING CLAIMS AND ARGUMENTS

1. Wells Fargo v. Byrd, 178 Ohio App. 3d 722, 2008-Ohio-463, 897 N.E. 2d) "if a plaintiff offered no evidence that it OWNED THE NOTE AND MORTGAGE when the Complaint was filed, it would not be entitled to judgment as a matter of law" Wells Fargo, Litton Loan V. Farmer, 867 N.Y.S. 2d 21 (2008), "Wells Fargo does not OWN the mortgage loan, therefore, the matter is dismissed with prejudice."(R.p.10,line24-25)(R.p.452-453)(R.p.430, line7- 11)
2. Wells Fargo V. Reyes 867, N.Y.S. 2d 21 2008) "Dismissed with prejudice, fraud on the Court, 7 sanctions. Wells Fargo never Owned the Mortgage."
3. Stachnik V. Winkel, 394 Mich. 375, 387; 230 N.W. 2d 529, 534 (1975), In determining whether the Plaintiff comes before the Court with "Clean Hands", the PRIMARY FACTOR sought to MISLEAD OR DECEIVE the other party, not whether that party relied upon the Plaintiff's misrepresentations. Also, Kirby v. Bank of America, M. Sjolander Deposition. "Lawyer responsible for False Debt Collection Claim, Fair Debt Collection Practices Act, 15 USCS 1692-1692o, Heintz V. Jenkins, 514 U.S. 291; 115 S. Ct. 1489, 131 L.Ed 2d (1995), and FDCPA Title 15 U.S.C. Sub Section 1692. (Respondent/BOA is not OWNER of the Note, and BOA Lawyers are Responsible for knowing the Carpenter v. Longan U.S.SUPREME COURT LAW) and the depositions Sjolander& DeMartini before filing a foreclosure.

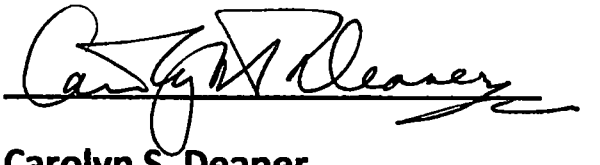
4. In Countrywide V. Kemp, Linda DeMartini, a top official at Bank of America acknowledged on the record in a deposition that Countrywide never conveyed the mortgages to the Trust, and that Countrywide Notes "weren't endorsed except on a case-by-case basis generally long after securitization ostensibly occurred. This would mean that the mortgage-backed securities composed of Countrywide loans are, in fact, non-mortgage backed securities. This would result in ALLEGED LOAN being unsecured. Countrywide never transferred Notes. A failure of the transfer of mortgages into securitized trusts would Cloud the Title and would create CONTRACT RESCISSION.
5. Matrix Financial Services Corp V. Frazer et al Op. No 26859, SC SUPREME COURT, Aug 16, 2010) "this Court will not grant a discretionary, equitable remedy to a party who refused to follow the laws of this state." Id (R.p.520).
6. In Niday v. GMAC, OREGON SUPREME COURT, 7/18/2012, "what evidence is not sufficient to establish authority to foreclose? Merely producing the note, however, is also insufficient to establish the right to foreclose. The original Note by itself does not establish who qualifies as its holder (i.e., person in possession with the RIGHT to enforce the Note). The Note by itself does not establish who is the owner. Although GMAC claimed to "hold" the note as Servicer, GMAC did not claim to be the owner or to be acting on its own behalf in the foreclosure proceeding." ALSO, the ruling was the beneficiary is the "original Lender." (R.p.10,line 24-25)(R.p.520,lines 17-41).

X CONCLUSION

For the reasons stated in this Final Brief, and the U.S.SUPREME COURT RULING of Carpenter v. Longan,(1872) and the SOUTH CAROLINA SUPREME COURT RULING in Young V. Peoples's Bank (1933) concurring the US SUPREME COURT RULING, in Plaintiff must be OWNER of the Note, this Court should reverse the Trial Court's Judgment Order, Cancel the Sale of the Appellant Deaner's real property, discharge the debt and waive bond due to legal "Tender of Payment" made in "Good Faith", and grant the Appellant full recoupment in this case, damages and attorney fees & expenses.

November 10, 2016

Respectfully submitted,



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Tab 5

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas Case No. 2012-CP-02-00699
Referee James Martin Harvey, Jr.

APPELLATE CASE NO. 2015-001119

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME LOANS SERVICING, LP,

Respondent

v.

CAROLYN DEANER,

Appellant.

FINAL BRIEF OF RESPONDENT BANK OF AMERICA, N.A.

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FACTUAL AND PROCEDURAL SUMMARY

This foreclosure action was instituted by Respondent Bank of America, N.A. ("BANA") on March 19, 2012. (R. pp. 8–14.) Upon filing the original Complaint, BANA sent to Defendant Carolyn Deaner ("Deaner") a Notice of Foreclosure Intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01 (*see* R. p. 14), and Deaner filed a response requesting foreclosure intervention review on May 31, 2012 (R. p. 43). Accordingly, the case was continued while Deaner underwent foreclosure intervention review. On April 9, 2013, Deaner's application for a loan modification was denied because Deaner did not qualify for a loan modification or loss mitigation due to an inability to create an affordable payment under the program requirements and guidelines. (R. pp. 46–48.) Thereafter, Deaner proceeded to file a series of answers and related motions and objections contesting, *inter alia*, the validity of the mortgage lien and BANA's standing to prosecute the foreclosure action. (*See, e.g.*, R. pp. 67–104, 106–155, 243–307, 340–346.)

Prior to the filing of this foreclosure action, Deaner filed a voluntary Chapter 7 bankruptcy petition in the Southern District of Georgia on March 4, 2011, and Deaner was discharged from bankruptcy and the action closed on January 17, 2012. (R p. 348.) Deaner listed BANA's predecessor in interest and the Property in her bankruptcy petition, acknowledging that the mortgage loan at issue in this case was a valid first mortgage lien, and Deaner attested that she had no counterclaims or rights to setoff claims to declare in the bankruptcy action. (*See* R. pp. 348, 217–218.) Accordingly, the Special Referee granted summary judgment in favor of BANA as to the Counterclaims and Affirmative Defenses asserted by Deaner in light of the attestation contained in Deaner's prior bankruptcy petition. (*See* R. pp. 348–353.)

On August 28, 2014, BANA filed an Amended Complaint. (R. pp. 397–408.) On September 8, 2014, Deaner filed an Answer, Affirmative Defenses and Counterclaim to the Amended Complaint, alleging, *inter alia*, that BANA lacks standing to maintain the foreclosure action; the Assignment of the Note and Mortgage by MERS to BANA was invalid; ownership of the Note and Mortgage were "split," thereby causing the debt to become unsecured and, therefore, discharged in Deaner's Chapter 7 bankruptcy; and that BANA had failed to demonstrate an agency relationship with the original lender or the owner of the Note. (R. pp. 410–417.) BANA filed a Reply to Deaner's Counterclaim on September 17, 2014. (R. pp. 419–423.)

On February 4, 2015, a trial on the merits was held before the Special Referee, and the Honorable J. Martin Harvey, issued a final Judgment of Foreclosure and Sale in favor of BANA as to its foreclosure action and the counterclaim asserted by Deaner on February 25, 2015. (R. pp. 524–535.) On March 16, 2015, Deaner submitted a Motion to Reconsider Judgment. (R. pp. 537–538.) A hearing was held on Deaner's Motion to Reconsider on March 23, 2015, and the Special Referee denied Deaner's Motion to Reconsider Judgment on April 1, 2015. (R. pp. 544–548.) Deaner then filed a Notice of Appeal on May 7, 2015, from the Trial Court's April 1, 2015 Order denying Deaner's Motion to Reconsider. (R. p. 565.)

STATEMENT OF FACTS

On or around June 26, 2007, Deaner executed a Fixed Rate Note (the "Note") in the amount of $97,600.00 in favor of Quicken Loans, Inc. ("Quicken Loans"). (R. pp. 527, 480–483.) That same day, Deaner also executed a Mortgage (the "Mortgage") on the property located at 704 Kershaw Drive, Aiken, South Carolina 29641 (the "Property"), which secured the Note and was delivered to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for

Quicken Loans. (R. pp. 527, 402, 494–509.) The Mortgage was recorded in the Office of the Register of Deeds for Aiken County in Book 4149 at Page 773. (R. p. 527.) The Note and Mortgage were subsequently assigned to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP on April 29, 2011 (the "Assignment"), and the Assignment was recorded in the Office of the Register of Deeds for Aiken County in Book 4356 at Page 932 on May 9, 2011. (R. pp. 527, 488.) Respondent BANA is the successor by corporate merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP. Deaner failed to make the required payments under the Note, and the loan remained in default after July 1, 2010. (R p. 528.) As of February 4, 2015, Deaner owed $94,178.44 in principal, $30,818.90 in interest, and $21,026.15 in other associated fees and costs related to the Mortgage. (R. pp. 529–530.)

At trial, BANA presented the testimony of Diane Deloney ("Deloney"), an assistant vice president with the Mortgage Resolution Team at BANA. (R. p. 4, lines 1–7.) Deloney testified that BANA is the loan servicer for Deaner's loan, and Fannie Mae is the investor for the loan. (R. p. 430, lines 14–18.) Deloney testified that BANA and its predecessors in interest began servicing Deaner's loan within one or two months after origination. (R. pp. 449, lines 11–17.) Deloney testified that she had personal knowledge of the records kept and maintained in connection with Deaner's loan as part of her job duties. (R. p. 430, lines 19–25, 1–6.) Deloney also testified as to the fact that the Note was endorsed in blank and that BANA was in physical possession of the original Note, which was present in the courtroom during the trial. (R. p. 432, lines 12–17.) The Note and the Mortgage were admitted into evidence without objection. (R. p. 432, lines 1–2; R. p. 433, lines 18–20.) Deloney further testified that the Mortgage had been assigned from the original lender to BAC Home Loans Servicing, LP and that BANA is the

successor by merger to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loan Servicing, LP. (R. p. 434, lines 13–24.) A copy of the Assignment was also admitted into evidence without objection. (R. p. 435, lines 14–16.)

Deloney testified that Deaner eventually failed to make her loan payments and that the loan went into default under the terms of the loan documents. (R. p. 436, lines 5–8.) Deloney testified that the loan was due and owing for the July 2010 payment and all payments due and owing thereafter. (R. p. 436, lines 7–14.) A copy of the loan payment history was then admitted into evidence without objection. (R. p. 436, lines 19–21; R. p. 437, lines 20–22.)

Deloney then testified that an acceleration letter dated August 16, 2010, (the "Acceleration Letter") was sent to Deaner by first-class mail according to BANA's business records. (R. p. 437, lines 15–17; R. p. 438, lines 20–25, 1–8.) A copy of the Acceleration Letter was admitted into evidence without objection. (R. p. 438, lines 15–16; R. p. 439, line 17.) Deloney testified that the Acceleration Letter was mailed to the address on file for sending loan-related notices to Deaner. (R. p. 457, lines 1–4; R. p. 458, lines 5–8.) Deaner provided no objection to this testimony regarding her mailing address. (R. p. 458, lines 5–25.) Deloney then provided a breakdown for the Court as to what the total amount due was on the loan. (R. p. 439, lines 1–17; R. p. 440, lines 18–25.)

In closing arguments to the Court, counsel for Deaner stated that Deaner was *not* contesting BANA's standing to bring the foreclosure action. (R. p. 469, lines 10–14.) Rather, Deaner's trial counsel argued only that BANA, as servicer of the loan, had not proved that it sustained any damages with respect to the unpaid principal and interest on the loan. (R. p. 469, line 16.) Deaner's trial counsel then focused his argument on the fact that BANA had not presented satisfactory evidence that the Acceleration Letter was mailed in accordance with the

terms of the Mortgage. (R. p. 470, lines 17–25, 1–4.) Following the trial, on March 10, 2015, the Special Referee entered a final Judgment of Foreclosure and Sale in favor of BANA, finding, *inter alia*, that BANA was the real party in interest to prosecute the foreclosure action as both servicer of the loan and holder of the Note, that the witness's testimony supported a finding that the Acceleration Letter had been sent to Deaner in compliance with the terms of the Mortgage, and that Deaner had failed to cure the default on the loan resulting in a total damages amount of $145,023.49. (R. pp. 527–528.)

After final judgment of foreclosure was granted in BANA's favor, Deaner filed a Motion to Reconsider Judgment, asserting that BANA had failed to prove at trial that it had sent a "right to cure" letter in conformity with the terms of the Mortgage. (R. p. 528.) On April 1, 2015, the Special Referee issued an Order denying Deaner's Motion to Reconsider after finding that the evidence and testimony presented at trial met BANA's burden of proof that notice of acceleration was properly given to Deaner pursuant to the terms of the Note and Mortgage. (R. pp. 544–548.) Deaner then appealed the Special Referee's Order denying her Motion to Reconsider to this Court. (R. p. 565.) After filing her Notice of Appeal, Deaner filed additional motions with the court below, including a Motion to discharge the judgment debt due to her alleged "tender of payment." (R. pp. 725–730.) Deaner's Motion to Discharge the debt was also denied by the Special Referee by Order entered June 1, 2015. (R. pp. 795–800.)

Deaner's initial brief on appeal is rambling, incoherent, and presents no specific arguments on appeal.[1] At best, Deaner's initial brief appears to challenge the Special Referee's finding of fact following the February 4, 2015, trial that BANA had standing to prosecute the foreclosure action. (*See* Appellant's In. Br. pp. 7, 9–10, 12–14, 17, 32.) However, Deaner did

[1] BANA notes that Deaner's initial brief should be rejected in its entirety for multiple violations of the appellate rules, and the fact that Deaner is now appearing *pro se* does not alter this result. *See* Rule 208, SCACR.

not appeal from the final Judgment of Foreclosure and Sale. (*See* R. p. 565.) Rather, the only Order from which Deaner appealed, the Special Referee's April 1, 2015 Order, addressed the single issue presented in Deaner's Motion to Reconsider Judgment regarding the sufficiency of the evidence to support the Special Referee's finding that the Acceleration Letter was properly sent. (*See* R. p. 538; R. pp. 544–548.) In her Initial Brief, Deaner also appears to challenge the Special Referee's June 1, 2015 Order, which rejected Deaner's argument that the debt should be discharged based on her alleged "tender" of an "International Promissory Note." (*See* Appellant's In. Br. p. 38.) Again, however, Deaner did not appeal from the Trial Court's June 1, 2015 Order. (*See* R. p. 565.) Therefore, the myriad issues regarding standing, securitization, and "tender" or payment that Deaner presents in her Initial Brief are not properly before this Court.

Even assuming, *arguendo*, that Deaner had preserved such arguments for appellate review, Deaner's arguments suffer from multiple fatal defects and are easily dismissed. First, South Carolina law is clear that the servicer of a mortgage loan, as well as the Note holder, has authority to prosecute a foreclosure action, and actual "ownership" of the Note and Mortgage is not required. Second, Deaner is judicially estopped from challenging the validity of the mortgage loan, as she represented under oath in her bankruptcy action that the subject mortgage loan was a valid first lien on the Property and that she had no counterclaims or claims in setoff. Third, Deaner's contentions that securitization of the Note and Mortgage rendered the debt invalid and/or unsecured and that MERS lacked authority to assign the Note and Mortgage to BANA is contrary to well-established South Carolina law and law from throughout the country. Fourth, Deaner's arguments regarding her alleged "tender" of the debt are nothing more than a sham and were properly dismissed by the Special Referee.

Finally, although Deaner does not appear to present any cogent argument that the Trial Court erred in denying her Motion to Reconsider Judgment, the sole Order from which Deaner has actually appealed, the Special Referee's finding of fact that BANA sent a notice of acceleration to Deaner in conformity with the terms of the Mortgage is properly supported by the evidence produced at trial. Accordingly, the Special Referee's final Judgment of Foreclosure and Sale and Order denying Deaner's Motion to Reconsider Judgment should be affirmed.

ARGUMENT

I. The Special Referee's finding of fact that BANA sent a notice of acceleration to Deaner in conformity with the terms of the Mortgage is properly supported by the evidence produced at trial.

As stated herein above, the only Order from which Deaner has appealed to this Court is the Special Referee's Order entered April 1, 2015, denying her Motion to Reconsider Judgment. (*See* R. p. 565.) Deaner's Motion to Reconsider asserted that the Acceleration Letter introduced at trial was not sent to the Property address as required under the terms of the Mortgage and that the Special Referee erred in finding and concluding that the notice was properly sent. (*See* R. p. 538.) In considering Deaner's Motion, the Special Referee found that the evidence and testimony presented at the trial was sufficient to meet BANA's burden of proof that the acceleration notice was properly given to Deaner pursuant to the terms of the Mortgage. (*See* R. pp. 544–548.) The Special Referee's finding and conclusion were proper in light of the evidence and testimony presented in this case.

Paragraph 15 of the Mortgage governs the parties' obligations with respect to giving notices. (*See* R. p. 503.) Pursuant to Paragraph 15 of the Mortgage, "[a]ny notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail. . . . The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender." (R. p. 503.) At trial, BANA's

corporate witness, Deloney, testified that the Acceleration Letter dated August 16, 2010, was sent to Deaner by first-class mail according to BANA's business records. (R. p. 438, lines 23–25, 1–5.) A copy of the Acceleration Letter, reflecting a first-class mailing bar code, was admitted into evidence without objection. (R. p. 438, lines 15–16; R. p. 439, line 17; R. p. 448, lines 9–12; R. pp. 510–511.) Deloney testified that the Acceleration Letter was mailed to the address on file for sending loan-related notices to Deaner. (R. p. 457, lines 1–4; R. p. 458, lines 5–8.) Deaner provided no objection to this testimony regarding her mailing address. (R. p. 458, lines 5–25.) Indeed, Deaner offered no evidence to rebut BANA's evidence that the Acceleration Letter was properly sent to Deaner's mailing address of record, aside from Deaner's self-serving testimony that she simply didn't receive the letter. (R. p. 463, lines 11–22.) Although Deaner testified that she "probably" could have paid the funds to cure the default reflected in the Acceleration Letter, Deaner admitted that she made no payments on the loan since June of 2010. (R. p. 463, lines 1–10; R. p. 464, lines 7–9.)

In light of these facts, the Special Referee properly found and concluded that the evidence and testimony presented at trial was sufficient to meet BANA's burden of proof that the Acceleration Letter was properly sent to Deaner pursuant to the terms of the Mortgage. Accordingly, the Special Referee's Order denying Deaner's Motion to Reconsider Judgment should be affirmed.

II. This Court lacks jurisdiction to consider Deaner's issues regarding standing, securitization, and her alleged "tender" of the debt.

The vast majority of Deaner's initial brief on appeal appears to challenge BANA's standing to prosecute the foreclosure action on multiple grounds, including that BANA did not prove "ownership" of the Note and Mortgage and that securitization of the Note and Mortgage and MERS's Assignment of the loan documents somehow rendered the Note and Mortgage

invalid and/or unsecured. (*See generally* Appellant's In. Br.) Indeed, Deaner's initial brief appears to be an amalgamation of multiple filings by Deaner in the foreclosure action over the last two years. (*See, e.g.*, R. pp. 67–104, 106–155, 243–307.) Deaner also raises the issue in her Initial Brief that the Special Referee improperly rejected Deaner's argument that the debt should be discharged based on her alleged "tender" of an "International Promissory Note." (*See* Appellant's In. Br. p. 38.) However, none of these issues were raised in Deaner's Motion to Reconsider Judgment. (*See* R. p. 538.) Rather, these issues were addressed either at the February 4, 2015 trial and resulting Judgment of Foreclosure and Sale entered March 10, 2015, or in the Special Referee's June 1, 2015 Order. (*See* R. pp. 526–534, 795–800.) Because Deaner has failed to notice an appeal from either the Judgment or the June 1, 2015 Order, this Court lacks jurisdiction to consider Deaner's issues.

Under South Carolina law, a party intending to appeal an order or judgment entered by a Special Referee must serve notice of their appeal within thirty (30) days after receipt of that order or judgment. Rule 203, SCACR. Indeed, "[t]he requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004). Furthermore, under South Carolina law, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Thus, when an issue is not addressed in a trial court's judgment or order, and the appellant does not bring a motion to alter or amend the judgment or order pursuant to Rule 59(e), SCRCP, the issue is not preserved for appellate

review. *See, e.g., S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp.*, 347 S.C. 333, 343, 554 S.E.2d 870, 875 (Ct. App. 2001) (holding that issue raised by appellant to trial court that was never ruled on by the trial court was not preserved for appellate review (citing *Noisette v. Ismail*, 304 S.C. 56, 403 S.E.2d 122 (1991) (issue was not preserved for appellate review where the trial court did not explicitly rule on the appellant's argument and the appellant made no Rule 59(e), SCRCP, motion to alter or amend the judgment))).

Here, Deaner's global arguments concerning standing, securitization (including the authority of MERS to assign the Note and Mortgage), and tender are predicated on the contention that the Special Referee erred by (1) finding as fact that BANA had standing as both servicer of the loan and holder of the Note to prosecute the foreclosure action, (2) finding as fact that the mortgage loan was a valid lien on the Property, and (3) rejecting Deaner's argument regarding her "tender" of payment. (*See generally* Appellant's In. Br.) None of these issues were addressed in Deaner's Motion to Reconsider Judgment or the Special Referee's April 1, 2015 Order, from which Deaner appealed. Thus, this Court lacks jurisdiction to consider these issues raised by Deaner, as Deaner has failed to notice an appeal from either the March 10, 2015 Judgment of Foreclosure and Sale or the June 1, 2015 Order, the thirty (30) day time frame for Deaner to appeal either of these rulings has expired, and ultimately, these issues were not addressed in the Order being appealed from, even if they had been raised at the hearing on Deaner's Motion to Reconsider. Therefore, to the extent Deaner's appeal is based on these issues, it should be dismissed.

III. To the extent Deaner's arguments concerning standing, securitization, and tender are preserved for review, they suffer from multiple fatal defects and are easily dismissed.

Assuming, *arguendo*, that Deaner had preserved her arguments concerning standing, securitization, and tender for appellate review, Deaner's arguments suffer from multiple fatal

defects and are easily dismissed. Deaner's arguments, to the best BANA can decipher them, ultimately assert that (1) BANA lacked standing to prosecute the foreclosure action because BANA did not prove that it was "owner" of the Note; (2) the mortgage loan is invalid and/or unsecured in light of an alleged securitization of the Note and Mortgage and the "splitting" of the Note from the Mortgage; and (3) MERS lacked authority to assign the Note and Mortgage to BANA, and therefore the Assignment is invalid and fails to convey an interest in the mortgage loan to BANA. (*See generally* Appellant's In. Br.) Deaner's arguments, however, are baseless and contrary to both the evidence presented in this case and well-established law in both South Carolina and around the country.

Specifically, as discussed in more detail below, South Carolina law is clear that the servicer of a mortgage loan, as well as the Note holder, has authority to prosecute a foreclosure action, and actual "ownership" of the Note and Mortgage is not required. *See infra* Section III.A. In addition, Deaner is judicially estopped from challenging the validity of the mortgage loan, as she represented under oath in her bankruptcy action that the subject mortgage loan was a valid first lien on the Property and that she had no counterclaims or claims in setoff. *See infra* Section III.B. Moreover, Deaner's contentions that securitization of the Note and Mortgage rendered the debt invalid and/or unsecured and that MERS lacked authority to assign the Note and Mortgage to BANA is contrary to well-established South Carolina law and law from throughout the country. *See infra* Section III.C. Finally, Deaner's arguments regarding her alleged "tender" of the debt are nothing more than a sham and were properly dismissed by the Special Referee. *See infra* Section III.D. Accordingly, the Trial Court properly entered final Judgment of Foreclosure and Sale in favor of BANA and denied Deaner's Motion to Reconsider Judgment.

A. South Carolina law is clear that the servicer of a mortgage loan, as the Note holder, has authority to prosecute a foreclosure action, and actual "ownership" of the Note and Mortgage is not required.

"'Generally, a party must be a real party in interest to the litigation to have standing.'" *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010) (quoting *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006)). South Carolina law is clear that a loan servicer is a real party in interest to a foreclosure action and has the ability to prosecute a foreclosure action. *See Bank of Am., N.A. v. Draper*, 405 S.C. 214, 222-223, 746 S.E.2d 478, 482 (Ct. App. 2013) (citing *Bankers Trust (Delaware) v. 236 Beltway Inv.*, 865 F. Supp. 1186, 1191 (E.D.Va.1994) (concluding that both lender and servicer have standing to foreclose even if servicer is not the holder of the mortgage)). In addition, pursuant to S.C. Code Ann. § 36-3-301, the person entitled to enforce an instrument includes "the holder of the instrument." *Id.* Notably, this statute expressly provides that "[a] person may be a person entitled to enforce the instrument *even though the person is not the owner of the instrument* or is in wrongful possession of the instrument." *Id.* (emphasis added). A "holder" of the instrument is defined to include "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(21).

In this case, the evidence produced at trial unequivocally proved that BANA was both the holder of the Note and the servicer of the mortgage loan. Deloney, BANA's corporate witness, testified at trial that BANA is the loan servicer for Deaner's loan and that BANA and its predecessors in interest began servicing Deaner's loan within one or two months after origination. (R. p. 430, lines 14–16; R. p. 449, lines 1–17.) Deloney also testified as to the fact that the Note was endorsed in blank and that BANA was in physical possession of the original Note, which was present in the courtroom during the trial. (R. p. 432, lines 10–17.) Moreover,

in closing arguments to the Court, counsel for Deaner stated that Deaner was *not* contesting BANA's standing to bring the foreclosure action. (R. p. 469, lines 10–14.) Since BANA unequivocally demonstrated its standing to prosecute the foreclosure action in this case, Deaner's argument on appeal to the contrary clearly fails. Therefore, the Special Referee's Judgment of Foreclosure and Sale and Order denying Deaner's Motion to Reconsider should be affirmed.

B. Deaner is judicially estopped from challenging the validity of the mortgage loan in light of her attestations filed in the bankruptcy action.

Prior to BANA instituting the subject foreclosure action, Deaner filed a voluntary Chapter 7 bankruptcy petition in the Southern District of Georgia. (*See* R. pp. 348–353; R. pp. 217–218.) In her bankruptcy petition, Deaner confirmed BAC Home Loans Servicing, LP, BANA's predecessor in interest, as the holder of a first mortgage lien encumbering the Property, and Deaner specifically and expressly stated that she had no claims, counterclaims, or rights to setoff claims to declare as assets. (*See* R. pp. 348–353; R. pp. 217–218.) "[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, [s]he may not thereafter, simply because [her] interests have changed, assume a contrary position." *Zimmerman v. Cent. Union Bank*, 194 S.C. 518, 8 S.E.2d 359, 365 (1940) (internal quotation marks and citation omitted). The statements under oath made by Deaner in her prior bankruptcy action in which she maintained that no setoffs or counterclaims existed and acknowledging that BANA had a secured first mortgage lien on the subject Property act as a bar to her assuming a contrary position in this foreclosure action, including in this appeal. Accordingly, Deaner is judicially estopped from asserting that the mortgage lien is invalid or improper in any way. Therefore, the Special Referee did not err in dismissing Deaner's counterclaims and defenses in this action, and the Special Referee's Judgment of Foreclosure and Sale and Order denying Deaner's Motion to Reconsider should be affirmed.

C. Deaner's contentions that securitization of the Note and Mortgage rendered the debt unsecured and that MERS lacked authority to assign the Note and Mortgage to BANA is contrary to well-established South Carolina law and law from throughout the country.

Deaner's assertion that securitization of the loan wipes out the secured mortgage obligation is unsupportable under South Carolina law. As discussed *supra* in Section III.A, the holder in possession of a mortgage-backed promissory note may enforce the note and mortgage without a further showing that it is the beneficial owner of the note. *See Draper*, 405 S.C. at 220–22, 746 S.E.2d at 481–82 (finding that a loan servicer was a real party in interest with standing to enforce the note and mortgage). Accordingly, securitization of the loan cannot affect a holder's right to enforce the note and mortgage.

Furthermore, South Carolina law is clear that Deaner lacks standing to challenge an assignment to which she is not a party, and South Carolina courts have consistently recognized MERS's authority as a nominee to assign rights in mortgage loan debts. "Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract." *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n.*, 384 F.3d 157, 164 (4th Cir. 2004) (internal quotation marks and citations omitted) (applying South Carolina law). A mortgagor is only a party to the mortgage, and because an assignment or mortgage is a separate contract to which the mortgagor is not a party, a mortgagor cannot question its validity. *See Reese v. U.S. Bank, N.A.*, No. 3:11-2990-CMC-SVH, 2012 WL 1952819, at *3 (D.S.C. Apr. 30, 2012). ("Plaintiff lacks standing to contest the Assignment of the Mortgage. Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity." (citing *R.J. Griffin & Co.*, 384 F.3d at 164)); *In re Kain*, No. 08-08404-HB, 2012 WL 1098465, at *8 (Bankr. D.S.C. Mar. 30, 2012) ("*Whatever the context*, it appears that a judicial consensus has developed holding that a borrower lacks standing to (1)

challenge the validity of a mortgage securitization or (2) request a judicial determination that a loan assignment is invalid due to noncompliance with a pooling and servicing agreement, when the borrower is neither a party to nor a third party beneficiary of the securitization agreement, *i.e.*, the PSA." (emphasis in original)); *see also In re MERS Litigation*, No. 09-2119-JAT, 2011 WL 4550189, at *5 (D. Ariz. Oct. 3, 2011) ("Plaintiffs, as third-party borrowers, are uninvolved and unaffected by the alleged Assignments, and do not possess standing to assert a claim based on such."); *Kriegel v. MERS*, No. PC-2010-7099, 2011 WL 4947398, at *5 (R.I. Super. Ct. Oct. 13, 2011) ("The assignment from MERS to FNMA did not cause injury in fact to the Plaintiff, as the assignment did not change his obligation to timely pay the Mortgage Note or suffer the consequences of foreclosure."). Accordingly, because Deaner was not a party to the Assignment, she therefore cannot question its validity. *See R.J. Griffin & Co.*, 384 F. 3d at 164.

Furthermore, South Carolina courts have addressed Deaner's purported arguments regarding MERS, and they have confirmed that MERS's role in assigning mortgages in no way undermines the ability of the assignee to foreclose. *See Reese*, 2012 WL 1952819, at *3 ("Plaintiff's challenge to the Assignment is futile, as the Fourth Circuit in *Horvath v. Bank of New York*, 641 F.3d 617 (4th Cir. 2011), recently rejected a plaintiff's claim that only the original lender had the power to foreclose on a property, not the assignee of MERS."). Indeed, in loan transactions involving MERS, South Carolina courts have recognized MERS's authority to act as a nominee. *See, e.g., Kotsopoulos v. Mortgage Electronic Registration Systems, Inc.*, No. 4:06-1106-TLW-TER, 2007 WL 905094 (D.S.C. Mar. 22, 2007) (dismissing borrower's allegations that MERS had no legal or equitable interest in the note and mortgage); *In re Kain*, 2012 WL 1098465 (rejecting the notion that an assignment by MERS acting as nominee of the lender somehow divided and thereby rendered defective a note and mortgage, and refuting the

plaintiffs' allegations that they were damaged because they were unable to determine the ownership of the mortgage.). Thus, MERS had the authority to properly transfer the Mortgage to BANA, and Deaner's arguments challenging the foreclosure action based upon securitization of the loan or the Assignment of the Note and Mortgage by MERS must be rejected as contrary to South Carolina law. Accordingly, the Special Referee's Judgment of Foreclosure and Sale and Order denying Deaner's Motion to Reconsider should be affirmed.

D. Deaner's arguments regarding her alleged "tender" of the debt are nothing more than a sham and were properly dismissed by the Special Referee.

In her Initial Brief, Deaner alleges that she made "tender" of the judgment debt due by sending BANA an "International Promissory Note" for the full balance due on the mortgage loan. (*See* Appellant's In. Br. p. 38.) However, as this Court has expressly held, "to constitute good tender, the law requires payment to be *in money*, for the proper amount due, made to the proper person, at the proper place." *Keels v. Pierce*, 315 S.C. 339, 343, 433 S.E.2d 902, 905 (Ct. App. 1993) (emphasis added) (citing *Anderson v. Citizens Bank*, 294 S.C. 387, 365 S.E.2d 26 (Ct. App. 1987), *overruled on other grounds*, *Ward v. Dick Dyer & Associates*, 304 S.C. 152, 403 S.E.2d 310 (1991)). More specifically, "[a] check is *not* tender." *Id.* (emphasis added).

Here, Deaner's "International Promissory Note" is nothing more than a negotiable instrument and has the same legal effect as a check. *See* S.C. Code Ann. § 36-3-104. By sending BANA the "International Promissory Note," Deaner merely "tendered" a promise to pay, thereby attempting to substitute one type of evidence of indebtedness for another. Thus, because the "International Promissory Note" does not constitute a payment in money, Deaner did not "tender" the debt due so as to discharge the judgment debt. The Special Referee properly recognized Deaner's sham attempt to "discharge" the judgment debt, and accordingly, the Special Referee's Order should be affirmed.

CONCLUSION

For the foregoing reasons, the Special Referee's Order entered April 1, 2015, as well as the Judgment of Foreclosure and Sale, should be affirmed in its entirety.

Respectfully submitted,

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