

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

William B. Jackson, Jr., Master-In-Equity

Case No. 2018-001303

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

INITIAL BRIEF OF APPELLANT

November 26, 2018

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## STATEMENT OF THE ISSUES ON APPEAL

### I. ERRORS OF LAW

- A. DID THE LOWER COURT ERR BY FAILING TO REALIZE MORTGAGES THAT ARE BASED ON INFLATED APPRAISALS FALSIFIED DOCUMENTATION, FRAUDULENT APPRAISAL INFORMATION, INTENTIONAL MISSTATEMENT OF MATERIAL FACTS, FORGERY, MISREPRESENTATIONS OF MATERIAL FACTS OR OMISSION OF MATERIAL FACTS ARE NOT ENFORCEABLE?
- B. DID THE LOWER COURT ERR BY NOT CONSIDERING THE JUDICIAL ADMISSIONS IN THE APPELLANT'S NOTARIZED AND VERIFIED PLEADINGS AND STATEMENTS OF FACT IN FILED AFFIDAVITS THAT EXPOSED THE FORGERIES, FRAUDULENT REPRESENTATIONS, MISREPRESENTATION OF MATERIAL FACTS AND CONCEALMENT OF MATERIAL FACTS BY THE PERPETRATORS THAT DEFRAUDED WELLS FARGO OUT OF \$75,000.00 THAT INCLUDED WELLS FARGO'S OWN EMPLOYEES AT WELLS FARGO HOME MORTGAGE?

### II. ABUSE OF DISCRETION

DID THE LOWER COURT ABUSE ITS DISCRETION BY DENYING THE APPELLANT'S MOTION TO STOP THE FORECLOSURE SALE AND FOR INJUNCTIVE RELIEF TO PROTECT THE PUBLIC FROM BEING VICTIMIZED BY GRANTING SUMMARY JUDGMENT BASED SOLELY ON ATTORNEY ARGUMENTS AND NOT ON STATEMENTS IN NOTARIZED AND VERIFIED PLEADINGS, AFFIDAVITS, EYEWITNESS TESTIMONY, THE ACTUAL FACTS, THE EVIDENCE, THE EXHIBITS DEPOSITIONS AND INTERROGATORIES ON FILE IN THE COURT'S RECORDS?

## INTRODUCTION

There is no valid or lawful mortgage on 423 Bayne Street in Orangeburg, South Carolina, hereinafter also referred to as the property or Exhibit 113, because no lawful brokering occurred and no lawful certification. This appeal is to stop the foreclosure sale of an unlawful and verifiable "Mortgage Fraud" to the general public that is an illegally brokered loan by the Seller -- Thomas Jacobs', an illegal predatory lending scheme and a home improvement and mortgage fraud that was falsely certified by attorney Debra C. Galloway and Stephanie Hammond at the Player Law Firm on December 21, 2007.

The value of 423 Bayne Street is based on an inflated, falsified, forged by name substitution and fraudulent #7-59 appraisals that were done by Jim H. Austin, III in 2007 (WF00001 -26, WF00078 & R. pp. ) [Note: WF means Wells Fargo]

Based on documents with his name and signature, Jim H. Austin, III, forged the Appellant's name on the #7-59 appraisals he originally performed for the borrower, turned seller – Thomas Jacobs/Goldengate Mortgage. (WF00003, WF00016 & R. pp. ) South Carolina's judiciary and officers of the court have a legal duty and responsibility to protect the public from being victimized by mortgage fraud of any kind and to protect the innocent from being victimized by the criminal activity and unlawful schemes of others. The Appellant's statements and averments in verified and/or notarized pleadings relative to this blatant mortgage fraud that is C.A. Case #2008-CP-38-1024, have never been refuted, denied, controverted or contested in any manner in over 10 years.

Loan #0174072777 is not a legitimate mortgage and should not be in a foreclosure proceeding or offered for sale to the general public in a public auction for the reasons stated in ¶ 1 on page 1. In fact, this case should be dismissed with prejudice, the mortgage cancelled and restitution paid to the Appellant. The Respondent's employees at

Wells Fargo Home Mortgage (“WFHM”) and especially, Janet Frotscher, have known this loan is a verifiable mortgage fraud since 12/22/2007 and definitely February 21, 2008. (App’s Ex.s 45, 47, WF00120 & 125 & R. pp. )

The Appellant’s assertions and stipulations for this case are not based on wishful thinking, speculation or some erroneous belief. They are based on and supported by the solid authority of the Federal Bureau of Investigation (FBI) and the *Mortgage Fraud Reports* of 2006 and 2007, FDIC Policy Statements, United States Codes, the 2006 Financial Crimes Enforcement Network (FinCEN) SARs Report, South Carolina’s Code of Laws, the Uniform Commercial Code, the United States and South Carolina’s Constitution that guarantee equal protection of the laws, the *Mortgage Fraud Statutes* in 13 states, the condition of the property in the Court’s records since 2008, the Restatement (2nd) of Torts, Contracts or Agency, the Respondent’s own documents (WF00001-134 & R.pp. ) and citations from authorities: *To wit...*

A. **(Excerpts) from the FBI Mortgage Fraud Reports 2006 & 2007 the Lower Court ignored**

(1) *FBI 2006 Mortgage Report*: “[E]ach Mortgage Fraud scheme contains some type of "material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase or insure a loan." (R. p. )

(2) *FBI 2007 Mortgage Fraud Report*: “[M]ortgage Fraud is defined as the intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan.” “[f]inance-related occupations, including accountants, mortgage brokers, and lenders were the most common suspect occupations associated with reported mortgage fraud. Perpetrators in mortgage industry occupations are familiar with the mortgage loan process and therefore know how to exploit vulnerabilities in the system. Victims of mortgage fraud may include borrowers....” (R. p. )

(3) *FBI Financial Crime Report to the Public 2007 – Mortgage Fraud Indicators*:

**“1. Inflated Appraisals (*Jim H. Austin, III*)**

2. Commissions/Bonuses to Brokers and Appraisers
3. **Falsifications on Loan Applications** (*David Terrell & Employees at WFHM*)
4. Requested to Sign Blank Application, Requested to Sign Blank Bank Forms
5. **Fake Supporting Loan Documentation** (*Thomas Jacobs, Jim H. Austin, III, attorney Debra C. Galloway, Stephanie Hammond, David Terrell and Wells Fargo's own employees at WFHM and especially, Janet Frotscher*)
6. Requested to Sign Other Types of Blank Forms”

**B. (Excerpts) from the FBI Statement of Common Mortgage Fraud Schemes the Lower Court ignored**

(1) *Property Flipping*: “Property is purchased, falsely appraised at a higher value and then quickly sold. What makes property flipping illegal is that the appraisal information is fraudulent. The schemes typically involve one or more of the following: fraudulent appraisals, doctored loan documentation.....,”

(2) *Inflated Appraisals*: “An appraiser (*Insert: Jim H. Austin, III*) acts in collusion with a borrower (*Insert: Thomas Jacobs – turned seller*) and provides a misleading appraisal report to the lender (*Insert: Wells Fargo*). The report inaccurately states an inflated property value (*Insert: \$75,000.00*).” (WF00004, WF00017, R. pp. & T. p. 11, Line 20)

(3) Basing a residential mortgage on falsified documentation, inflated appraisals, fraudulent appraisal information (*Insert: Loan #0174072777*), intentional misstatement, misrepresentation, or omission of a material fact to defraud a federal reserve bank is a criminal act. (18 USC § 1344)

**C. (Excerpts) from the FDIC Policy Statement 5000 the Lower Court ignored**

*FDIC Policy Statement 5000* clearly states in pertinent parts... “[T]he Uniform Retail Credit Classification and Account Management Policy establishes standards for the classification and treatment of retail credit in financial institutions. -- For purposes of this policy, retail credit also includes loans to individuals secured by their personal residence, including first mortgage, home equity, and home improvement loans. ----- Actual credit losses on individual retail credits should be recorded when the institution becomes aware of the loss, but in no case should the charge-off exceed the time frames stated in this policy. This policy does not preclude an institution from adopting a more conservative internal policy. Loans in bankruptcy should be classified Loss and charged off within 60 days of receipt of notification of filing from the bankruptcy court or within the time frames specified in this classification policy, whichever is shorter, unless the institution can clearly demonstrate and document that repayment is likely to occur. ----- **Fraudulent loans should be classified**

**Loss and charged off no later than 90 days of discovery or within the time frames adopted in this classification policy, whichever is shorter.** [Boldness and underlining added for emphasis.]

**D. Code of Federal Regulations & United States Codes the Lower Court ignored:**

Based on the legal definition of mortgage fraud and documents in the Court records with their name(s) and/or signature and the Appellant's personal knowledge of the events, Wells Fargo's own employees, especially, Janet Frotscher, the so called Broker - David Terrell/Golden Gate Mortgage, Inc., the Appraiser - Jim H. Austin, III, Thomas Jacobs/Goldengate Mortgage's original borrower turned seller, attorney Debra C. Galloway and Stephanie Hammond are the participants in the Court's record that are involved in a mortgage fraud scheme that is clearly defined by legal precedents, the Code of Federal Regulations ("CFR") and United States Codes ("USC"); i.e.,

- (1) 12 CFR § 1731.2(c) & (e)
- (2) 24 CFR Part 35 – Subpart A: § 35.80, § 35.86 and § 35.96(a)-(f)
- (3) 15 USC § 1681n(a)
- (4) 18 USC § 1001(a), § 1014, § 1344(1)-(2) & § 1346

Wells Fargo, as principal to its agents at the Player Law Firm, i.e., attorney Debra C. Galloway and the borrower turned seller – Thomas Jacobs/Goldengate Mortgage – violated 24 CFR Part 35 – Subpart A on 12/21/2007 – “*Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*” at 1415 Board River Road in Columbia, South Carolina (WF00102, App's Ex.s 68-69 & R. pp. )

(1) *Crystal Ice Co. of Cola. v. First Colonial Corp.*, 257 SE 2d 496 (SC: S. Ct. 1979) “[It] is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. {See 3 Am. Jur. (2d), Agency, § 273, *et seq.*; 3 C.J.S. Agency § 432, *et seq.*; American Freehold Land Mortgage Co. v. Felder, 44 S.C. 478, 22 S.E. 598 (1895); Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E. (2d) 545 (1943)}”.

(2) Section 219(1) of the Restatement (Second) of Agency (1957) sets out a central principle of agency law "[A] master is subject to liability for the torts of his servants committed while acting in the scope of their employment."

Rule 9(b), SCRCF, requires averments of fraud to be stated with particularity. Therefore, Wells Fargo's underwriters and the so called Broker -- David Terrell/Golden Gate Mortgage, Inc. both used an unauthorized credit report on 10/3/2007 (WF00066-73 & R. pp. ) Attorney Debra C. Galloway and Stephanie Hammond, falsely certified the mortgage on 12/21/2007 (WF00058, 60, 97 & R. pp. ) and along with the Appraiser -- Jim H. Austin, III (WF00001-27, 78 & R. pp. ) who falsely certified repairs were completed on 9/14/2007, forged the Appellant's name on a #7-59 appraisal, inflated the value and fraudulently represented the property by 10/9/2007, Thomas Jacobs/Goldengate Mortgage (App's Ex. 36, WF0004, 27, 29, 88, 90-91, 93 & R. pp. ) who illegally brokered the loan, the so called Broker -- David Terrell/Golden Gate Mortgage, Inc., (WF00030-32, 66-73, 80-85, 88 & R. pp. ) who falsified documents, covered up the illegal brokering activity of Thomas Jacobs, inflated the Appellant's income by December 4, 2007 and Wells Fargo's own employees (App. Ex.s 8-10, WF00029, 34-35, 66-73, 120, 125 & R. pp. ) who inflated the Appellant's income, ordered the second #7-59 appraisal that entrapped the Appellant and forged her initials on an altered contract of sale by December 20, 2007 all the above named knowingly falsified, or concealed or covered up material facts with materially fraudulent representations to Wells Fargo. David Terrell, Thomas Jacobs and Janet Frotscher to a government agency, i.e., SCDCA, (R. pp. ), WFHM employees to the Office of the Comptroller of the Currency ("OCC") (R. pp. ) and knowingly participated in a scheme or artifice that defrauded Wells Fargo out of \$75,000.00 with fraudulent representations that deprived the Appellant of the intangible right of honest services

E. **(Excerpts) Financial Crimes Enforcement Network (FinCEN) Mortgage Loan Fraud Report - 11/ 2006 the Lower Court Ignored**

“[S]uspicious activity reporting confirms that fraud for profit is often committed with the complicity of industry insiders such as mortgage brokers, real estate agents, property appraisers, and settlement agents (attorneys and title examiners) --- “[T]ypical fraudulent activities associated with this category in the SAR filing sampling are: appraisal fraud; fraudulent flipping.....”--- “[A]ll fraudulent flipping and nearly all other organized fraud schemes that were reviewed relied on fraudulent appraisals.”

F. **South Carolina Code of Laws the Lower Court ignored**

Thomas Jacobs/Goldengate Mortgage brokered loan #0174072777 not David Terrell/Golden Gate Mortgage, Inc. David Terrell never contacted the Appellant, never met the Appellant, never sent or gave the Appellant any loan applications or information and was not at 423 Bayne Street in Orangeburg, South Carolina on 11/26/2007. The borrower turned seller – Thomas Jacobs presented Goldengate Mortgage as the lender. (WF00001-27 & R. pp. ) The Appellant considered Wells Fargo as an affiliate of the lender at the time in 2007. Therefore, loan #0174072777 is an “Illegally Brokered Loan” under South Carolina law; i.e., SC Code of Laws....

- (1) § 16-13-10(A)(B)
- (2) § 34-3-110 (A)-(C)
- (3) § 37-5-108(1)-(2)
- (4) § 37-23-40(1)-(2) & § 37-23-50(A)-(B)
- (5) § 40-58-20(40)
- (6) § 40-58-30(A)(B)(D) & § 40-58-50(E)(1)
- (7) § 40-58-70 (1)-(3)

All the Appellant’s affidavits relative to Debra C. Galloway and Stephanie Hammond substantially comply with Rule 11(c), SCRPC. Stephanie Hammond was not at the closing on 12/21/2007 and was never in the presence of the Appellant. (R. pp. ) Therefore, she could not have witnessed the Appellant signing any documents. Based on the Appellants personal knowledge of the circumstances and events, Wells Fargo’s filed

documents in the Court's records and South Carolina's Code of Laws, loan #0174072777

is a "Falsely Certified" mortgage. (R. pp. ), i.e., SC Code of Laws.....

( 8) § 26-1-95 & § 26-1-160(A)(B)(2)(5)

( 9) § 30-5-30(A)(B)

(10) "[A] public officer who negligently makes a defective or untrue certificate is liable, together with his surety, on his official bond for any damages resulting from such negligent act. Again in *United States Fidelity & Guaranty Co. v. State*, 211 Miss. 864 (Miss. 1951), the court held that "[w]here a notary is called on to perform an act which he is authorized by law to perform, and he does so carelessly or fraudulently, he and his surety are liable for any loss proximately resulting therefrom. A notary public is not an insurer, but he is under a duty to his clients to act honestly, skillfully and with reasonable diligence."

(11) "[A] notary public is always liable for all actions, whether intentional or unintentional. This liability is unlimited to financial losses and damages. Even if the notary public is guilty of negligent or intentional acts, the notary will be personally liable to the injured party." In *United States Fidelity & Guaranty Co. v. State*, 211 Miss. 864 (Miss. 1951), the court stated, "[t]hat a notary public is liable on his official bond, for wrongful official acts resulting in loss or injury. It is not necessary that the wrongful act of the notary shall be the sole cause of the loss. If it is a concurring cause and plays a part in bringing about the injury, the liability for the loss is fixed. A notary public engages in misconduct by affixing the notarial stamp and signature to an acknowledgment that the subscriber personally appeared on a specific date. A notary who knowingly purports to authenticate a document which, in fact, has not been properly authenticated, to the detrimental reliance of innocent third parties, is liable for fraud."

**G. The Uniform Commercial Code (UCC) the Lower Court ignored**

*ARTICLE III* of the Uniform Commercial Code 305(1) and § 36-3-305 SC Code of Laws are virtually identical. § 36-3-305(a)(1)(ii)-(iii) SC Code of Laws clearly states the following in pertinent parts: "[a] Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on.. (ii) .. illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms."

**H. United States & South Carolina Constitutional provisions the Lower Court ignored that provides for a jury trial and equal protection of the laws**

(1) UNITED STATES CONSTITUTION - AMENDMENT VII: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.”

(2) UNITED STATES CONSTITUTION – AMENDMENT XIV: that clearly states in pertinent parts.. “[A]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

(3) STATE OF SOUTH CAROLINA CONSTITUTION – ARTICLE 1 - § 3: states in pertinent parts.. “[T]he privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

(4) STATE OF SOUTH CAROLINA CONSTITUTION – ARTICLE 1 - § 14: In pertinent parts.. “[T]he right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.”

**I. The Appellant’s description of the actual condition of 423 Bayne Street the Lower Court ignored**

The Appellant is not only a litigant, the Appellant is also an eyewitness. The eyewitness description and condition of 423 Bayne Street in 2007 has been in the public records of Civil Action Case #2008-CP-38-1024 in the Court of Common Pleas in Orangeburg, South Carolina since July 31, 2008 on pages 27-34 when the Appellant filed her *First Amendment to Answer to Complaint with Counterclaims*. This description has never been refuted, denied, contested or proven false in 10 years and the house’s actual condition can be verified by anyone with reasonable intelligence. (Appellant’s Exhibit 113, the property) and (R. pp. )

**J. Thirteen (13) states in which mortgage fraud is defined and prosecuted as a statutory offense that the Lower Court ignored.**

Arizona Rev. Stat. § 13-2320(A)(1)-(4); Colorado Rev. Stat. § 18-4-401(9)(a)-(e); Florida Stat. Ann. § 817.545(2)(a)-(d); Georgia Code Ann. §§ 16-8-102 to 16-8-106; Kentucky Rev. Stat. Ann. § 286.8-990; Maryland. Code Ann. Real Property, § 7-401 to 7-409; Minnesota Stat. § 609.822; Mississippi Code Ann. § 97-23-107; Missouri. Rev. Stat. § 570.310; N.Y. Penal §§ 187.00 to 187.25; North Carolina Gen. Stat. §§ 14-118.10 to 14-118.17; Utah Code Ann. §§ 76-6-1203 to 76-6-1204; Washington Rev. Code § 19.144.080.

**K. Restatement (2nd) of Torts & Contracts the Lower Court ignored**

From *Miles v. Perpetual Savings & Loan*, 58 Ohio St.2d 97 (1979) “[R]e-statement of Torts 2d 119, Section 551, subsections (1) and (2), states, in essence, that ‘[a] party is under a duty to speak, and therefore liable for non-disclosure, if the party fails to exercise reasonable care to disclose a material fact which may justifiably induce another party to act or refrain from acting, and the non-disclosing party knows that the failure to disclose such information to the other party will render a prior statement or representation untrue or misleading.’ See *Restatement of Torts 2d*, at Comment h to subsection 2(c) and *Illustrations 1 and 2*, at page 122; cf. *Equitable Life Ins. Co. of Iowa v. Halsey, Stuart & Co.* (1941), 312 U.S. 410; *Fruit Dispatch Co. v. Wolman*, (1925), 124 Me. 355, 128 A. 740.”

In *Herrod v. First Republic Mortg. Corp.*, 625 S.E.2d 373 (W. Va.2005), the court cited, “[a] misrepresentation may make a contract voidable if it is either fraudulent or material.” *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* “[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the

misrepresentation was made by the other party to the contract or a third person. See *Restatement (Second) Contracts § 163 (1981)* (“It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.”).

“[O]ne of the interests protected by the law of deceit is ‘the interest in formulating business judgments without being misled by others’ into making unwise decisions which result in financial loss.” *Fleming & Gray, Misrepresentation, Part I, 37 Maryland L. Rev. 286-287 (1977)*. “[I]t is well established that an action for fraud and deceit is maintainable not only as a result of affirmative misrepresentations, but also for negative ones, such as the failure of a party to a transaction to fully disclose facts of a material nature where there exists a duty to speak. *Prosser on Torts (4 Ed. 1971) 695-696, Representation and Nondisclosure, Section 106; 37 American Jurisprudence 2d 197-201, Fraud and Deceit, Sections 144 and 145; Barder v. McClung (1949), 93 Cal.App.2d 692, 697, 209 P.2d 808.*”

(1) “[F]raud in the Factum” has been described as the kind of fraud that arises when a party signs a document without full know-ledge of the character, supporting documentation, representations or the essential elements that brought the agreement into existence.” *McLemore v. Landry*, 898 F.2d 996, 1002 (5th Cir.), cert. denied sub no; *River Villa Ptsp. v. Sun Belt Fed. Bank, F.S.B.*, 111 S.Ct. 428 (1990). “[T]his kind of fraud renders any underlying agreement void.” *FDIC v. Gordy*, 928 F.2d 1558, 1565 (11th Cir.1991). (R. p. )

(2) *US v. Fredette*, 315 F. 3d 1235 (10th Cir. 2003) “[T]he term “false or fraudulent pretenses, representations, or promises” means a statement or an assertion which concerns a material or important fact or a material or important aspect of the matter in question and that was either known to be untrue at the time that it was made or used, or that was made or used with reckless indifference as to whether it was, in fact, true or false, and made or used with the intent to defraud. A material fact is a fact that would be of importance to a reasonable person in making a decision about a particular matter or transaction.”

The US Supreme Court has ruled in 3 separate cases to uphold the common law maxim: Fraud Vitiates Everything. Nudd v. Burrows, 91 US 426 (1875), (holding that “Fraud destroys the validity of everything into which it enters.”) Boyce’s Executors v. Grundy, 3 Pet. (28 US) 210 (1830), (“Fraud vitiates everything.”) and United States v. Throckmorton, 98 US 61, 70 (1878) (“Fraud vitiates the most solemn contracts, documents and even judgments.”)

(3) In Nelson v. Production Credit Ass’n of the Midlands, 930 F.2d 599, 605 (8<sup>th</sup> Cir. 1991) the Court held the following, (“Court would not impose a duty on a lender to use reasonable care in making a loan.”)

(4) Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975). “[It] is well settled that the courts will not aid in an action to enforce an illegal transaction; however, the principle is recognized that, if there is an independent contract, not forbidden by law, on which the action is brought, the independent contract is enforceable even though it be with respect to the proceeds of an illegal transaction. Rountree v. Ingle, 94 S.C. 231, 77 S.E. 931; Owen v. Davis, 1 Bailey 315.”

(5) Jackson v. Bi-Lo Stores, Inc., 313 S.C. at 276, 437 S.E. 2d at 170 “[A] contract which contravenes public policy is void, and an action cannot be maintained for either its breach or for inducing its breach.” W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 129, at 994 & n. 68 (5th ed. 1984); James O. Pearson, Jr., Annotation, Liability for Interference With Invalid or Unenforceable Contract, 96 A.L.R.3d 1294 (1979).

(6) Herrod v. First Republic Mortg. Corp., 625 S.E.2d 373 (W. Va.2005) “[A] securitization model \_ a system wherein parties that provide the money for loans and drive the entire origination process from afar and behind the scenes \_ does nothing to abolish the basic right of a borrower to assert a defense to the enforcement of a fraudulent loan, regardless of whether it was induced by another party involved in the origination of the loan transaction, be it a broker, appraiser, closing agent, or another.” “[B]anking transactions -- cannot be permitted to avoid liability by those who are actually providing the funding and often controlling the transaction.” See Kurt Eggert, Held up in Due Course: Predatory Lending, Securitization, and the Holder in Due Course Doctrine, 35 Creighton L. Rev. 503 (2002).”

(7) Schmidt v. Milhauser, 130 A.2d 572, 576 (Md. 1957) (quoting Bishop v. E.A. Strout Realty Agency, 182 F.2d 503, 505 (4th Cir. 1950)) (“[T]here is nothing in law or in reason which requires one to deal as though dealing with a liar or a scoundrel, or that denies the protection of

the law to the trustful who have been victimized by fraud. The principle underlying the caveat emptor rule was more highly regarded in former times than it is today; but it was never any credit to the law to allow one who had defrauded another to defend on the ground that his own word should not have been believed.”)

## STATEMENT OF THE CASE

### A. Background Relative To This Appeal

This appeal is from an Order of the Master-In-Equity, the Honorable James B. Jackson, Jr., that denied the Appellant’s motion for injunctive relief. (R. p. ) on June 18, 2018. The purpose of the relief being sought is to stop the foreclosure sale by public auction of a verifiable mortgage fraud. This appeal is in accordance with § 14-3-330, SC Code of Laws, Rule 72, SCRCF and Rule 201(a), SCACR.

Since the Appellant is *pro se* and not practiced in the art of oral arguments, like an attorney, the Appellant relies on her filed notarized and verified pleadings to state her case that she fully expects Judges to read before or during the hearings. The elements of this case have been in the Court’s records since 2008. Lawyers not present at an event or Judges that are not present at an event must accept documents and allegations *prima facie* or on face value until proven or disproven. The burden of proof is on the plaintiff filing the complaint. The Defendant is innocent until proven guilty. This action is about an illegal predatory lending scheme, an illegally brokered loan, a home improvement and mortgage fraud that are supported by falsified, forged and altered documents and loan documents that were falsely certified by Debra C. Galloway and Stephanie Hammond at the Player Law Firm located on 1415 Broad River Road in Columbia, South Carolina on December 21, 2007 (WF00059, 60, 97 & R. pp. )

#### 1. An Illegal Predatory Lending Scheme

The Appellant has characterized loan #0174072777 as an illegal predatory lending

scheme because the loan meets the definition of a high cost home loan when compared to the income of the obligator that is identified in § 37-23-40(1)-(2), *SC Code of Laws*. The Appellant considers the loan abusive because predatory lending has been defined by the Federal Deposit Insurance Corporation (FDIC) as imposing “abusive” and “unfair” loan terms on borrowers. Paying for a mortgage fraud is “abusive” and “unfair”. In fact, South Carolina’s *High Cost and Consumer Home Loan Act* that became the law in South Carolina on January 1, 2004, was enacted to protect home buying consumers from predatory lending practices or from unconscionable lenders and loan practices.

The Appellant realized the seller lied about lowering the price during the closing when she got back home. The Appellant’s husband immediately tried to cancel the loan on December 22, 2007. (App, Ex.s 1, 4, 81, 92, p. 2, ¶ 3 & R. pp. ) In response to the Appellant’s husband’s message, Kathryn R. Perkinson, (WF00042 & R. p. ) returned the call on December 24, 2007 and advised the Appellant not to cancel the loan until she had a chance to work things out with the seller. If the seller completed the repairs mentioned and the house according to the appraisal, there will not be any fraud. However, if he did not, then fax all the information about the fraud to Des Moines, Iowa to 1-866-278-1179 and contact her at 919-474-9240 or 919-474-5547 and fax to 919-784-9453. (App. Ex. 1, & R. p. ) Kathryn R. Perkinson’s mentioning of an appraisal, supported her husband’s statement that Wells Fargo had to use an appraisal in order to pay Thomas Jacobs \$75,000 for 423 Bayne Street. The Court must realize all the knowledge the Appellant has now, was not known to the Appellant from September to December 21, 2007.

The reason why the Appellant calls it an illegal lending scheme is because, to avoid compliance with the aforesaid South Carolina Act, Wells Fargo’s employees at

WFHM and the so called Broker - David Terrell/Golden Gate Mortgage, Inc., falsified the Appellant's earnings on their applications. (WF00031-32, 34-35 & R. pp. ) Compare income with the W-2 Form. (WF00061-62 & R. pp. ) The fraud was verified after receiving the closing documents from the Player Law Firm on 01/12/2008.

2. **An Illegally Brokered Loan By The Borrower Turned Seller Thomas Jacobs/Goldengate Mortgage**

Loan #0174072777 is also an illegally brokered loan under South Carolina law. According to South Carolina's Department of Consumer Affairs ("SCDCA") that anyone can call for themselves, Thomas Jacobs was not; and as of the writing of this brief, still is not a licensed loan broker or loan originator in the State of South Carolina. It is also important for the Court to realize much of the knowledge the Appellant has now about mortgage fraud came from the staff at the SCDCA. (App. Ex. 92, pp. 5-7 & R. pp. )

3. **The So Called Broker David Terrell/Golden Gate Mortgage, Inc., & Janet Frotscher**

The Appellant did not know the so called Broker – David Terrell/Golden Gate Mortgage, Inc., was credited with brokering loan #0174072777, until February of 2008 when she received the letter from Janet Frotscher dated February 21, 2008, that responded to the documents sent to her Executive Resolution Team on February 5<sup>th</sup> and 7<sup>th</sup>, 2008. (WF00120, ¶ 5, & R. p. ) Prior to 2/21/2008, the 803-238-3550 number was the contact number for Thomas Jacobs. The number is to David Terrell's Golden Gate Mortgage, Inc. (App. Ex. 81, & R. p. )

All the RESPA documents filed by Wells Fargo with an 11/26/2007 or November 26, 2007 or any other rendering of this date with the Appellant's signature and with the heading Golden Gate Mortgage, Inc., are fraudulent representations because they are forgeries. On 11/26/2007, Thomas Jacobs came to 423 Bayne Street not David Terrell

with documents for Goldengate Mortgage, not Golden Gate Mortgage, Inc. (App. Ex.s 8-10, WF00001-27, & R. pp. ) The Appellant has no idea what happened to the loan application and RESPA documents she signed for Goldengate Mortgage.

It is important to note the different rendering and spelling of the name Goldengate Mortgage as it is spelled on documents used by and for Thomas Jacob (WF00001-27 & R. pp. ) and Golden Gate Mortgage, Inc., as spelled on documents and paperwork, including letterhead stationery for David Terrell. (App.'s Ex.s 37, 49, (WF00030-32, 66-73, 80-85 & R. pp. ). The Appellant will not speculate that this might be how the fraud was executed on Wells Fargo and her. In addition to the name differences and similarities, there is no evidence in the Court's records that David Terrell brokered the loan. Other than his forgeries and fraudulent representations, there are no phone records, meeting records, preliminary paperwork, dates, eyewitness testimony or affidavits.

David Terrell has never stated in 10 years that he personally worked with the Appellant on dates and at times to obtain a mortgage loan. David Terrell has never stated in any manner of form that he knows the Appellant, has seen the Appellant or met the Appellant. David Terrell has never stated he sent or gave the Appellant any loan paperwork, nor does any such documentation exist in the Court's records. As already stated in this brief and Court records, on 11/26/2007, David Terrell was not at 423 Bayne Street and the Appellant was not at 3102 Millwood Avenue in Columbia, South Carolina. Regardless of how David Terrell got the Appellant's information, it is still a violation of South Carolina's statutory law(s) and United States Codes. (Review Brief, pp. 2-10)

All #7-59 loan documents Wells Fargo filed in this case were done for the borrower turned seller – Thomas Jacobs/Goldengate Mortgage and not for the Appellant. Even Janet Frotscher, from Wells Fargo Home Mortgage ("WFHM"), in her letter dated

February 21, 2008, did not realize Golden Gate Mortgage, Inc., did not order an appraisal for the Appellant. (App.'s Ex. 45, WF00120 at ¶ 5 & R. p. )

The appraisal order is for Goldengate Mortgage. (WF00001-27 & R. pp. ) By referring to the Satisfaction Completion Certificate (#7-59) in her letter dated June 2, 2008, Janet Frotscher unknowingly admitted Thomas Jacobs is the borrower that met with Jim H. Austin, III on September 14, 2007 and not the Appellant. In the same letter and paragraph, she referred to Golden Gate Mortgage as the broker and not Golden Gate Mortgage, Inc. (App.'s Ex. 47, WF00125 at ¶ 4, & R. p. ) This is important to know. Writing Thomas Jacobs' Golden Gate Mortgage looks like this: **Goldengate Mortgage**. Speaking it sounds like this: **Golden Gate Mortgage**.

On November 26, 2007, all the loan paperwork that included the RESPA documents and the Residential Loan Application were hand written and not typed. Included with the paperwork, was a broker agreement that Thomas Jacobs told the Appellant she had to sign or Goldengate Mortgage as written and **Golden Gate Mortgage** as spoken would not approve the loan. (App. Ex. 245, p. 10, ¶ 34, R. p. ) Unknown to the Appellant, on 11/26/2007, Thomas Jacobs was the lender and the broker for a scheme or artifice to defraud Wells Fargo out of \$75,000.00 and she was the innocent victim of his scheme. For 10 years, the perpetrators of the fraud have covered it up with silence.

#### **4. A Home Improvement And Mortgage Fraud**

In ¶ 1, in her letter dated February 21, 2008, Appellant's Exhibit 45 and the Wells Fargo's Exhibit WF00120, Janet Frotscher acknowledged receiving the Appellant's correspondence that is dated February 5, 2008 and February 7, 2008 and in ¶ 4, she acknowledged receiving the information about the appraisals. What she did not mention

was she received the fraudulent representations and omissions on the #7-59 appraisals that were used to establish value for the loan and Thomas Jacobs \$75,000.00 payment.

The evidence Janet Frotscher received are Appellant's Exhibits 8-12. (R. pp. ) Janet Frotscher knowingly accepted the fact that the value of loan #0174072777 is inflated and is based on Jim H. Austin, III's fraudulent appraisal representations and she did nothing about it. In fact, she began accusing the Appellant as being the buyer that met with Jim H. Austin, III. (App. Ex. 47, WF00125 & R. pp. )

No repairs were begun or completed at 423 Bayne Street in Orangeburg, South Carolina from September 14, 2017 to the filing of the complaint in June of 2008. The property is identified in the Court's records as Appellant's Exhibit 113. Jim H. Austin, III's #7-59 appraisals are a fabrication. There is no central air, patio or deck, working fire place, new walls, floors, fixtures or new appliances. (App. Ex.s 8-12, 26 & R. pp. )

There is evidence of deferred maintenance, termite and water damage from leaking roofs, mold and mildew damage and a host of other problems that existed at the property in 2007 that the Appellant does not need to itemize in this brief. Contrary to the statements in his appraisal, Jim H. Austin, III was not at the property on October 8<sup>th</sup> or 9<sup>th</sup> in 2007. Therefore, the information on the first page about the date of his appraisal is also a fraudulent representation. (WF00001 & 14 & R. pp. ) Moreover, not only is the date of the appraisal a fraudulent representation, so are the photographs of the house. Jim H. Austin, III's photographs of the property and house are from a much earlier point in time, much earlier. There are two (2) tall trees in front of the property not one. If Wells Fargo's agents and the Court have difficulty believing this undeniable fact, come to 423 Bayne Street and let your own eyes and sensibilities tell you the truth. The evidence is clear and convincing that the value of 423 Bayne Street is based on fraudulent appraisal

representations. Therefore, based on the facts, the physical evidence and the truth that loan #0174072777 is based on fraudulent representations that constitute a mortgage fraud that is unlawful, the Court's decision should be consistent with evidence and the facts.

#### 5. The Forged And Altered Contract Of Sale

The Contract of Sale was altered and forged after it was signed by the Appellant. (App. Ex.s 140-141, WF00028-29 & R. pp. ) The forgery was done by Wells Fargo's own employees at WFHM. Appellant's Exhibits 140 and 141 support this conclusion. Appellant's Exhibits 140 and 141 come from Wells Fargo; notice, on Exhibit 141 there are no forged initials or dollar amount changes. (R. pp. )

WF00028-29 (R. pp. ) also come from Wells Fargo; notice the forged initials and dollar amount changes. Both sets of exhibits; from the Appellant and from Wells Fargo, have an "AS IS" clause. The Appellant does not recall "AS IS" on the Contract of Sale she signed for Thomas Jacobs on November 26, 2007. This means he added it after it was signed. This might explain why Thomas Jacobs never gave the Appellant a copy of the Contract of Sale. All copies come from Wells Fargo. A forged and altered Contract of Sale is null and void under current legal precedents and forgery is illegal in the State of South Carolina and in the United States. In addition, forged documents have no legal standing. Wells Fargo's own employees at WFHM forged the Appellant's initials and made the dollar amount changes. Based on the evidence, the "AS IS" was added after the Appellant signed it and before it was sent to Wells Fargo.

*State v. Lee-Grigg*, 649 SE2d41 (Ct. App. 2007) - "[F]orgery consists of the fraudulent making or altering of a writing by one intending to defraud, prejudice, or damage another person. *Black's Law Dictionary* 650 (6th ed.1990). It has been defined as a false making of an instrument, on its face purporting to be good and valid, with a design to defraud, prejudice, or damage another. See *State v. Walton*, 107 S.C. 353, 356, 93 S.E. 5, 6 (1917); *State v. Floyd*, 36 S.C.L. 58 (5 Strob. 58) (S.C.App.L.1850)."

“[In] order to constitute forgery by uttering or publishing a forged instrument or writing the instrument must be uttered or published as true or genuine, known by the party uttering or publishing it that it is false, forged, or counterfeited, and intended to prejudice, damage or defraud another person. See S.C.Code Ann. § 16-13-10(A) (2003); *State v. Pace*, 337 S.C. 407, 417, 523 S.E.2d 466, 471 (Ct.App.1999) (citing *State v. Wescott*, 316 S.C. 473, 450 S.E.2d 598 (Ct.App.1994)); *State v. Singletary*, 187 S.C. 19, 196 S.E. 527 (1938); *State v. Murray*, 72 S.C. 508, 52 S.E. 189 (1905).”

“[T]he crime of forgery involves: (1) a false making or material alteration of some written instrument; (2) that is the apparent foundation of some legal liability; and (3) that is uttered or published with the intent to defraud or prejudice another. *Walton*, 107 S.C. at 356, 93 S.E. at 6 (defining the offense of forgery as “[t]he material altering, with intent to defraud, of any writing, which, if genuine, might apparently be the foundation of a legal liability.”); see also William Shepard McAninch & W. Gaston Faurey, *The Criminal Law of South Carolina* 421 (4th ed.2002).”

“[To] constitute forgery, it is essential that the falsely made or altered instrument possess some apparent legal efficacy; otherwise it would have no tendency to defraud. *State v. Webster*, 88 S.C. 56, 58, 70 S.E. 422, 423 (1911). As long as a forged instrument is the apparent foundation of legal liability, “the instrument need not be complete in all its particulars to amount to forgery.” *McAninch* at 422 citing *State v. Bullock*, 54 S.C. 300, 32 S.E. 424 (1899).”

Wells Fargo’s employees and David Terrell/Golden Gate Mortgage, Inc. were not the only persons forging the Appellant’s name and signature to loan documents in 2007. Jim H. Austin, III also forged the Appellant’s name onto the #7-59 appraisals he did for Thomas Jacobs by name substitution. (WF00001-13, WF00014-26 & R. pp. )

**6. The Signed Loan Documents At The Player Law Firm, Violation Of 24 CFR Part 35 – Subpart A, False Certification Of A Mortgage, Debra C. Galloway & Stephanie Hammond**

On December 21, 2007, Thomas Jacobs met the Appellant outside the law offices of the Player Law at 1415 Broad River Road in Columbia, South Carolina; and after a brief discussion about problems at 423 Bayne Street that relate to this case, but not relative to this appeal, they entered the law offices together. Thomas Jacobs introduced the Appellant to attorney, Debra C. Galloway. Shortly after he introduced attorney

Galloway to the Appellant, he left. Since the Appellant did not know he was suppose to stay and attorney Galloway did not seem to mind, the closing proceeded.

From this point onward, the Court must deal with the issue of fraudulent concealment of material facts and fraudulent inducement by Thomas Jacobs who assured the Appellant the price of 423 Bayne Street would be lowered during the closing and the fraudulent concealment and fraudulent inducement of Wells Fargo's closing agent, at the Player Law Firm, attorney Debra C. Galloway. The question the Court needs to answer is: Did attorney Galloway and Thomas Jacobs have a duty to disclose material facts concerning the purchase of 423 Bayne Street to the Appellant before he left?

Before the actual closing began, attorney Galloway asked the Appellant was everything in Agreement. The Appellant said yes and the closing proceeded. The Appellant fully expected the price of 423 Bayne Street to be lowered during the closing. During the closing, the Appellant told attorney Galloway, 423 Bayne Street was built in 1950. (App. Ex. 26, & R. p. ) Did attorney Galloway have a duty to disclose to the Appellant and to Wells Fargo that the closing could not go forward because it would violate provisions of *24 CFR Part 35-Subpart A*, because certain provisions and requirements had to be met prior to closing? (Appellant Ex.s 68-69 at #7 & R. pp. )

In addition, the Player Law Firm's *Parties Acknowledgement & Affidavit* is defective and has no legal and binding value because attorney Galloway acting in her capacity as a Notary, did not date it pursuant to the requirements of § 26-1-90(D)(1) that prohibits notarizing a signature on a blank or incomplete document and § 26-1-120(F)(3) requires the document to be dated. As the Court can plainly see, there is no month, day or year on the affidavit. (Appellant Exhibits 68-69 & R. pp. )

Did attorney Galloway have a duty to disclose to the Appellant and to her principal, Wells Fargo, the material fact that the closing could not proceed because it would violate a federal regulation and her witness; Stephanie Hammond, was not at the closing on 12/21/2007 and therefore, the mortgage could not be certified? Consequently, due to the failures and fraudulent concealment of material facts by attorney Galloway, as Wells Fargo's agent on the dates and times in question, the Appellant was fraudulently induced to contract by Thomas Jacobs and Wells Fargo via its agent the Player Law Firm.

On December 21, 2007, Wells Fargo's agent had the power to stop the closing before it began and knowingly chose to proceed and in the process violated *24 CFR Part 35-Subpart A*, falsely certified the mortgage and willfully participated in fraudulent inducement to contract by her silence relative to these matters as an attorney and as a notary. Based on the facts, Wells Fargo's mortgage, loan and note are void as a binding contract on the Appellant. Therefore, the judgment should be vacated, the foreclosure sale ended, the mortgage cancelled and restitution paid to the Appellant.

Fraudulent inducement requires one party to a contract to make some sort of statement or active nondisclosure which has induced the aggrieved party's actions. *Restatement, Second of Contracts § 167*. If fraudulent inducement is proven, the contract becomes voidable. A voidable contract is a contract in which the aggrieved party has the option to either enforce the contract or cancel the contract. The *Restatement* defines fraud in the inducement "[as] a misrepresentation that induces a party's manifestation of assent if it substantially contributes to his decision to manifest assent."

(a) "[W]here a person is fraudulently induced to sign or endorse a bill or note in the reasonable belief that he is signing something else, he cannot really be said to have made or indorsed the bill or note; hence the ancient plea of *non est factum* is applicable. He is in effect stating that this is not his contract; in fact, it is not a contract at all." *12 Williston on Contracts § 1488, at 333*.

(b) Allen Realty Corp. v. Holbert, 227 Va. 441, 450, 318 S.E.2d 592, 597 (1984) “[C]oncealment or non-disclosure of material facts may exist where there is evidence of a deliberate decision not to disclose a material fact and knowledge by that party that the other party is acting on the assumption that the fact does not exist.” Cohn v. Knowledge Connections, Inc., 266 Va. 362, 368, 585 S.E.2d 578, 581 (2003); Spence v. Griffin, 236 Va. 21, 28, 372 S.E.2d 595, 599 (1988).

(c) Triggs v. Risinger, 772 S.W.2d 381, 382 (Mo.App.1989 “[T]he passive nondisclosure of information, one party has an affirmative duty to disclose information, and that party's failure to disclose the information serves as a substitute for the false representation element required in fraud.”); see, also, Scott v. Hill, 330 Mo. 490, 50 S.W.2d 110, 111 (1932)”

(d) Smith v. General Motors Corp., 979 S.W.2d 127, 129 (Ky.Ct. App.1998); Osterberger v. Hites Construction Co., 599 S.W.2d 221, 227 (Mo.App. 1980). “[I]t is, of course, well established that mere silence is not fraudulent absent a duty to disclose.” Smith, 979 S.W.2d at 129. “[A] duty to disclose may arise from a fiduciary relationship, from a partial disclosure of information, or from particular circumstances such as where one party to a contract has superior knowledge and is relied upon to disclose this knowledge.” *Id*”

(e) Hallquist v. Midden, 196 S.W.3d 601, 604 (Mo.App. E.D.2006) “[W]hether a legal duty exists is a question of law.” “[A] legal duty owed by one party to another may arise under at least three sources: (1) the legislature; (2) the law; or (3) a contract.” Cupp v. National Railroad Passenger Corp., 138 S.W.3d 766, 771 (Mo.App. E.D.2004). “[I]n nondisclosure cases, a party's silence amounts to representation where the law imposes a duty to speak.” Andes, 853 S.W.2d at 943.

(f) “[S]ection 551 of the Restatement (Second) Torts, makes it clear that under some circumstances a person's failure to disclose information constitutes a positive misrepresentation.” Kesselring v. St. Louis Group, Inc., 74 S.W.3d 809, 814 (Mo.App. E.D.,2002).

## **B The Hearing On January 24, 2018**

### **1. Attorney Erica G. Lybrand**

As the Appellant has stated from the beginning, going to hearings makes her nervous and she is not an articulate speaker. Therefore, since 2008, the Appellant has not performed very well at hearings. This is why the Appellant relies on the strength of her pleadings because she has time to think through how the pleading will be organized.

On January 24, 2018, the Appellant and Wells Fargo's attorney Erica G. Lybrand appeared before the Honorable Judge B. Jackson, Jr.. Attorney Lybrand began with a statement relative to the renewed motion for summary judgment, gave a brief history of the case and as expected mischaracterized what this case is about. This case is not about an issue with the purchase price or just issues with an unwritten agreement with the borrower turned seller Thomas Jacobs. And as expected, attorney Lybrand pointed out that the Appellant never denied signing the note or taking out the loan. (T. p. 4, Lines 1-25) There is no fraud without signed documents that are legally binding.

Attorney Lybrand gave Judge Jackson a brief history of the case beginning with Judge Goodstein's partial summary judgment order on March 31st, 2014, a brief discussion of the nature of the judgment, issues relative to compliance with the administrative order of 2011 and the Appellant's motion to alter or amend that was denied in April of 2014. She mentioned the order of reference that was filed with the Master-In-Equity in May of 2014, the Appellant's motion to vacate the partial summary judgment order and a motion for a new trial that was also denied. (T. p. 5, Lines 1-25)

Attorney Lybrand informed Judge Jackson that no hearings were held on the Appellant's motions and Judge Goodstein decided the motions without a hearing on July 17, 2014. She gave some background relative to the Appellant's first appeal that was dismissed because it was considered untimely on November 9, 2016 by the Appellate Court that affirmed the lower court motion denying the motion to vacate. She informed Judge Jackson that the remittance was sent on March 17, 2017, that she sent the Appellant a renewed notice for foreclosure intervention pursuant to the administrative order, requested a response from the Appellant relative to foreclosure intervention and notified Judge Jackson that the Appellant did not respond to her request by the deadline

date of November 17, 2017. (T., p. 6, Lines 1-25 & R. pp. )

Attorney Lybrand continued by informing Judge Jackson that the Appellant responded to the original request for foreclosure intervention with conditions. Attorney Lybrand erred when she said the Appellant wanted Wells Fargo to create policies. The Appellant asked Wells Fargo did they have a policy, program, process or procedure that could modify a fraudulent loan, note and mortgage. (T. p, 7, Lines 1-16, App. Ex. 123 & R. p, ) Attorney Lybrand told the Judge about her certificate of compliance, the Appellant's counterclaims that were adjudicated and she was now before the Court to seek a summary judgment to the foreclosure claim. (T. p. 7, Lines 17-25)

Attorney Lybrand then referred to her verified statement of account affidavit that was filed with the motion for summary judgment that included \$144, 643.76 as the amount due, another \$1,740.97 in interest and \$12,853.00 in attorney fees. She ended her arguments by referring to the Appellant's November 30<sup>th</sup>, 2017 objection to the motion for summary judgment and the affidavit refuting the verified statement account. (T. p. 8, Lines 1-25)

## 2. The Appellant's Arguments

The Appellant argued that this case is about an illegal predatory lending scheme in which falsified documents were used and she reminded Judge Jackson that Wells Fargo was duly notified about the fraud associated with the loan and she pointed out that Wells Fargo's attorneys knew as well, because her defense is in her *Answer to Complaint* that was filed in 2008. The Appellant spoke in general terms about notary fraud (T. p. 32, Lines 1-8 & 20-25; [Note: **Stephanie Hammond is misspelled. It is Stephanie Hammond not Stephanie Hamlet**], appraisal fraud (T. p. 17, Line 13; p. 21, Lines 1-11 & p 31, Lines 11-12), falsified income (T. p. 27, Lines 7-9) and mortgage fraud. (T. p. 9, Lines 17-25, p.

10, Lines 1-9; p. 26, Lines 13-14; p. 28, Lines 11-25; p. 45, Lines 1-12 & 18-25; p. 47, Lines 21-25; p. 48, Lines 3-17. p. 49, Lines 10-11) Specifics are in the pleadings

During the course of the hearing, the Appellant showed Judge Jackson exhibits that are in the Court's records. A copy of Jim H. Austin, III's fraudulent #7-59 appraisals WF00001-26, the altered and forged Contract of Sale, Appellant's Exhibits 140-141 and WF00028-29 and Wells Fargo's documents WF00058, WF00060 and WF00097 that show Stephanie Hammond's name and signature as a witness when she was not at the closing. The Appellant stated that her demand for a jury trial was denied in 2008 (T. p. 22, Lines 18-19); and Judge Jackson stated that she was not going to get a jury trial and that the Appellant was not entitled to one and he repeated you're not going to get one. (T. p. 22, Lines 20-25) Judge Jackson asked the Appellant do you want to try and work something out to pay the mortgage. (T. p. 25, Lines 7-20) The Appellant's answer was noncommittal. (T. p. 25, Lines 13-25, p. 26, Lines 1-25, & p. 28, Lines 11-25)

## **STATEMENT OF THE FACTS**

### **A. Events Prior To Litigation That Are Relative To This Appeal**

The Appellant is a 59 year old African American woman who works at Orangeburg Area Mental Health Center in Orangeburg, South Carolina. As stated in this brief, the closing for the property took place on December 21, 2007 at the Player Law Firm. The mortgage price is unknown because Thomas Jacobs assured the Appellant that the price would be lowered during the closing. (App. Ex. 245, ¶ 33, p. 10; ¶ 36, p. 11 & R. pp. ) The \$75,000.00 price was subject to repairs completed. (WF00009 & 22, & R. pp. ) No repairs were completed. (App.'s Ex. 113 – the house at 423 Bayne Street) The proof that Thomas Jacobs was lying is WF00109. (R. p. )

The Appellant's husband and Thomas Jacobs verbally agreed; without repairs and based on the condition of the property in 2007, it was worth \$14-\$15,000.00 with a land value of around \$19,000.00 with an appraised value of \$30-\$35,000.00 that included the land plus the house. (App. Ex. 245, p. 10, ¶ 31 & R. pp. ) This is the lowering of the price the Appellant expected at the closing. The only question the court has to answer is this: On, 11/26/2007, was the Appellant justified in relying on the representations of Thomas Jacobs; as the seller, that he would lower the price during the closing?

Contrary to the fraudulent representation of material facts; and in many cases outright lies, by former attorney for Wells Fargo, Elizabeth Scott Moise who is credited with writing the partial summary judgment order that led to this debacle that was signed by Judge Goodstein on 3-27-2014, "*Defendant and her lawyer attended the closing.*" The Appellant has always been *pro se* and did not have a lawyer at the closing. (App. Ex. 329, #12, p. 3, & R. p. ) The Appellant did not receive the closing documents for review before the closing and was rushed through the signing by attorney Galloway. The closing documents and the appraisal did not arrive until January 12, 2008.

After receiving the closing documents on January 12, 2008, the Appellant notified Wells Fargo on January 14, 2008. In addition to notifying Wells Fargo of the fraud, the Appellant called the City of Orangeburg Police Department, the FBI's field office in Columbia, South Carolina and the Attorney General for the State of South Carolina.

All these law enforcement agencies said there was nothing they could do because Wells Fargo had paid the seller, not the Appellant. Therefore, Wells Fargo had to bring charges and they advised the Appellant to get a good lawyer. Therefore, contrary to attorney Moise's misrepresentation in the order she wrote for partial summary judgment, the Appellant did not believe the appraisal was incorrect, the Appellant knew it was

incorrect. (App.'s Ex. 329, #17, p. 4, & R. p. )

The Appellant was not the property owner in October of 2007 when Thomas Jacobs was the borrower. (App. Ex. 10, WF00016, & R. p. ) The Appellant did not provide the so called Broker – David Terrell/Golden Gate Mortgage, Inc., with her financial information or documents. The Appellant's documents were given to Thomas Jacobs/Goldengate Mortgage on 11/26/2007. (App.'s Ex.'s 10 & 245, pp. 10-11 ¶¶ 34-35, & R. pp. ) The Appellant's income at that time of \$1,119.05 is based on overtime pay for a two week period and not on her regular pay of \$10.00 dollars an hour. The Appellant's income was inflated by Wells Fargo's personnel and by the so called Broker – David Terrell/Golden Gate Mortgage, Inc. (WF00031 & 34, & R. pp. )

The misrepresentations, misstatements and in some instances outright lies by attorney Elizabeth Scott Moise in the order she is credited with writing for the partial summary judgment order that Judge Goodstein signed on 3-27-2014 should have been considered as "Fraud upon the Court" pursuant to the federal rules so that no judgment tainted by fraud of any kind can stand. The Appellant was not asked to move because of yard work, it was because the owner, Tommy Mitchell, wanted to sell 5074 Coburg Lane to someone else because the bank that approved the loan for him to sell the property to the Appellant wanted the rent payments to be used as down payment and it was not in early October, it was in September of 2007. (App. Ex. 18, & R. p. )

The Appellant's husband did not contact Thomas Jacobs to purchase a home it was to rent or lease and the lease was never signed by the Appellant's husband. (App. Ex. 30 & R. p. ) The Appellant's husband looked at several homes and decided to lease 423 Bayne Street -- not buy it -- because he was familiar with the former home of his friend, Bradford C. Lucas. The Appellant did not move in and started cleaning in the month prior

to closing, the Appellant's husband had already cleaned the house and restored it to livability. It was not repaired. (App. Ex. 113 – the property, 423 Bayne Street)

Contrary to Elizabeth Scott Moise's misrepresentations, there were no negotiations to purchase 423 Bayne Street from Thomas Jacobs. "*Defendant admits that neither she or her husband advised Wells Fargo of any of the representations that Jacobs made to them*". (App. Ex. 329, p. 2, ##1-6 & R. p. ) This statement is not a misrepresentation, it is an outright lie and the Appellant's notarized and verified pleadings, exhibits and Janet Frotscher's letters prove this is an outright lie. (App. Ex. 4, WF00120, 125 & R. pp. )

In Appellant's Exhibit 329, #11 on page 3, #23 on page 5, and #27 on page 6, are also not just misstatements or misrepresentations, they are outright lies. The Appellant has repeatedly stated that she does not know who at Wells Fargo altered the Contract of Sale, forged her initials on it or just like the so called Broker, falsified her income, but it was done by Wells Fargo's personnel. (App. Ex. 329, & R. pp. ) In addition, the Appellant knows for a fact that WFHM ordered the second #7-59 appraisal. (WF00001-13 & R. pp. )

Only Wells Fargo's personnel knew there was no appraisal with the Appellant's name on it in January of 2008. Wells Fargo's personnel did not believe it was true when the Appellant spoke with them by telephone on January 14, 2008. After telling the Appellant someone would get back with her, Wells Fargo faxed; what they thought was the correct appraisal, to the Appellant on February 5, 2008. Look at the fax date at the top of Appellant's Exhibits 8-10. It is the same appraisal from the so called Broker with Jim H. Austin, III's fraudulent representations.

Wells Fargo's personnel knew that the so called Broker did not order an appraisal for the Appellant and Jim H. Austin, III had not done one for the Appellant. Since no one

had ordered an appraisal for the Appellant, between February 5, 2008 and June 27, 2008, someone at Wells Fargo had an appraisal ordered. This is the second #7-59 appraisal WF00001-13, & R. pp. ) that Nelson Mullins Riley & Scarborough, LLP sent to the Appellant in late October or early November of 2008. Without an appraisal for the Appellant with a \$75,000.00 value, the mortgage fraud was too blatant and much too easy to prove and it still is.

In May of 2008, the Appellant filed a mortgage fraud complaint with SCDCA. (App. Ex. 152 & R. p. ) In all fairness to attorney Elizabeth Scott Moise, she did point out some facts that verify the Appellant's counterclaim that Wells Fargo's note is proof of a successful scheme or artifice to defraud the Bank out of \$75,000.00 and for whatever reason, Wells Fargo's personnel were complicit in the scheme that victimized the Appellant.

In the partial summary judgment order attorney Moise is credited with writing for Judge Goodstein to sign, she made 4 incredible "Statements of Fact": (1) "*Defendant has no evidence of Jacobs or Jim H. Austin, III ("Austin" or sometimes "appraiser") notifying Wells Fargo of Jacobs's representation to Defendant and her husband*". (App. Ex. 329, p. 2, #6, & R. p. ). This is the very essence of a scheme to defraud by second or third parties and no confessions exist in the record. (2) "*Defendant has never paid the taxes and insurance on 423 Bayne Street.*" (App. Ex. 329, p. 4, #18. & R. p. )

When it comes to the taxes, WFHM told the Appellant to send the tax statements to Des Moines, Iowa due to litigation. When it comes to the property insurance, no agent in Orangeburg, the Appellant's husband spoke to, would insure it for \$75,000.00 in 2008. The agents said, "*It is too over valued in its present condition.*" This is more evidence of Jim H. Austin, III's inflated value that would have been proven in Court if there had been

a jury trial like the Appellant demanded in 2008 and in subsequent pleadings filed in this case. (App. Ex. 341, pp. 1-20, & R. pp. )

(3) “*Defendant believes Wells Fargo was also victimized by the seller and appraiser.*” (App. Ex. 329. p. 4, #21) This is a fact not a belief. (4) “*the mortgage and note are unenforceable because of the alleged malfeasance by the seller and appraiser.*” (App. Ex. 329, p. 6, #26, & R. p. ) Defrauding a federal reserve bank is a crime. (Review Brief, pp. 2-13) Mortgage fraud is also unlawful in the State of South Carolina and prosecuted as a statutory offense in 13 states. (Review Brief, pp. 9-10, ¶ J )

Additional facts the Court needs to know that are misrepresented by Wells Fargo’s hired attorneys. The Appellant did not live in the house rent free or mortgage free. Thomas Jacobs and the Appellant’s husband had a verbal agreement. If he could make the house livable for lease purposes, he did not have to pay any lease payments for 6 months. The lease period began in October of 2007. Therefore, no payments would have been due until April of 2009. (App. Ex. 30 & R. p. ) Making payments on a mortgage fraud means you accept the fraud. Thomas Jacobs paid the mortgage payment in January of 2008 (R. p. ) The Appellant made a “Good Faith” payment to work things out to end the fraud in February of 2008. (R. p. ) Wells Fargo was notified in March of 2008, that no further payments will be sent because the Appellant will not be a willing participant in a mortgage fraud. (R. p. )

**B. Procedural History Relative To This Appeal**

Since this case has been in the Courts for 10 years, the procedural history will only include what is relative to this appeal. On June 27, 2008, Wells Fargo filed a Lis Pendens, Summons and Complaint of Foreclosure due to the Appellant’s supposedly default on the note and to seek foreclosure of the mortgage. (R. pp. )

On July 18, 2008, the Appellant filed her Answer to Complaint that clearly stated her defense. (App. Ex. 297, p. 1, ¶ 1, & R. p. )

“That this action for the foreclosure of a mortgage upon certain real estate in Orangeburg County, South Carolina is an attempt by the Plaintiff to perpetuate a Predatory Lending Scheme in which a falsified appraisal was used to inflate the value of the real estate identified in this complaint. I have refused to participate in this scheme. Therefore, the Plaintiff has filed a foreclosure proceeding in an attempt to coerce or force me to participate in this scheme by accepting terms that will only extend the scheme and in due course defraud or swindle me out of \$75,000.00 plus interest one month at a time, one payment at a time. Either I accept the terms or lose my home by foreclosure.”

On July 31, 2008, in Appellant’s Exhibit 298, the Appellant filed a notarized *First Amendment to Answer to Complaint with Counterclaims* that described the actual condition of 423 Bayne Street on pages 27-34. (R. pp. )

On August 1, 2008, Wells Fargo's filed an Order of Reference (R. pp. )

On August 12, 2008, the Appellant filed a **Demand for Jury Trial**. (R. pp. )

On November 13, 2008, a hearing was held that limited the Appellant’s Request for Admissions to 20. The Appellant needed more than 20 and good cause was shown, but ignored. In December of 2008, the Appellant’s Jury Trial was postponed. No official reason was given, no hearing was held, no Court Order was issued and it was never rescheduled. The Appellant received a letter from the Clerk of Court to come to room 305. When the Appellant arrived, she was told by the Clerk of Court to have a seat and wait because the attorneys were in the Judge’s chamber.

In May of 2009, the Supreme Court of South Carolina issued its May 22nd Administrative Order #2009-05-22-01. It was during the stay/TRO that attorneys James H. Burns and Elizabeth Scott Moise initiated and participated in the *Massive Filing Fraud* for their “Case Status Updates.” (App. *Objection to Continuance*, 3/28/14, P. 26, ¶ 71, & R. p. ) These 2 attorneys consistently stated *Wells Fargo attempted to contact*

*the Defendant, the Defendant refused to speak with Wells Fargo and the loan was under review.* All of which were absolute lies. (App. Ex. MFF 101 & R. pp. )

On May 19, 2011, the Appellant filed a Notice of Plaintiff's Failure to Comply with the May 22, 2009 Supreme Court of South Carolina Order for Foreclosure Cases. (App. Ex .RTFF 000-C, pp. 1-5, & R. pp. )

. From June to July in 2009, the Appellant participated in foreclosure intervention. However, no company or government agency involved would or could modify loan #0174072777 because of suspected fraud. (App. Ex. 66, & R. pp. ) Not even Wells Fargo's Loss Mitigation Department could or would do anything with the loan because of suspected mortgage fraud. They recommended the Appellant contact an Executive Resolution Team in Des Moines, Iowa. The personnel at Wells Fargo's Loss Mitigation Department were told the Appellant had already contacted an Executive Resolution Team in February of 2008. They were stunned that the loan had not been cancelled.

In October and November of 2009, after litigation began, the Appellant was contacted by GreenPath and Wells Fargo with the same results. Nothing could or would be done because of suspected mortgage fraud. (App. Ex.s 166, 169-170, 173, 179-180, & R. pp. ) Therefore, to help attorney Erica G. Lybrand and the Court clarify matters about foreclosure intervention, in May of 2011, attorneys Burns and Moise filed their first of 3 Notices of Mortgagor's Right to Foreclosure Intervention Pursuant to S. C. Supreme Court Administrative Order No. 2011-05-02-01.

The second notice arrived in June of 2011. The Appellant's response to the first and second notices was the same: Based on her prior experience with foreclosure intervention, the Appellant asked the following question: **Does Well Fargo have a policy, process, procedure or program that can modify a fraudulent, loan, note and**

**mortgage?** In a letter dated June 29, 2011, attorney Moise finally admitted Wells Fargo does not have a policy, process, procedure or program that can modify a fraudulent loan note and mortgage. (App. Ex. 123, & R. p. ) On August 1, 2011, attorney James H. Burns filed a Certificate of Compliance with Administrative Order No. 2011-05-02-01. (R. p. )

**On August 13, 2011, the Appellant filed a Rule 41(b) Motion to Dismiss With Prejudice with supporting memorandum that was never heard.** (App. Ex. 98 & R. pp. ) On December 6, 2011 a hearing was held, in which the Appellant was barely allowed to speak and the Appellant's witness was not allowed to give any testimony or speak at all. On March 7, 2012, Judge Goodstein signed the Order Granting Plaintiff's Motion to Compel Discovery, Issuing Stay, and Granting Motion for Continuance. (R. p. ) On 09/06/2012, a hearing was held, in which Judge Goodstein gave the Appellant 5 minutes to state her Rule 41(b) Motion to Dismiss with Prejudice. The Appellant told Judge Goodstein 5 minutes was unreasonable. In addition, at the hearing, the Appellant's witness was ushered out of the Court room and not allowed back in.

On June 27, 2013, Wells Fargo filed a Motion for Summary Judgment. (R. pp. ) On July 17, 2013, the Appellant filed an opposition to the motion and "Demanded a Jury Trial". with "Judicial Notice Requested Pursuant to Rule 201, SCRE." (R. pp. )

On March 27, 2014 Judge Goodstein signed the order granting Wells Fargo partial summary judgment. (R. pp. ) On April 7, 2014, Judge Goodstein signed the Order denying the Appellant's motion to Alter or Amend the partial summary judgment. (R. p. ) On May 5, 2014, Judge James B. Jackson, Jr., signed the Order of Reference to Master in Equity. (R. p. ) On July 11, 2014, Judge Goodstein signed the Order denying the Appellant's motions for a New Trial . (R. p. ) On July 30, 2014, the Appellant filed her

notice to Appeal and her certificate that no transcript will be ordered. (R. pp. )

On October 1, 2016 in an unpublished opinion 2016-UP-472, the appeal was considered untimely because the Appellant waited for Judge Goodstein's ruling on her motions to alter or amend and a new trial. (R. p. )

On January 20, 2017, the Appellant's petition for a rehearing en banc was rejected by the Appellate Court. (R. p. ) On March 10, 2017, V. Claire Allen filed a Remittur that sent the case back to the lower court.(R. p. ) On October 20, 2017, Wells Fargo filed a motion to restore the case to active docket. (R. pp. ) On October 30, 2017, the Appellant filed her objection to the motion. (R. pp. )

On November 26, 2017, Wells Fargo filed a renewed motion for summary judgment. (R. pp. ) On November 30, 2017, the Appellant filed her objections to the motion and an affidavit refuting and objecting to the certificate of compliance. (R. pp. ) On December 27, 2017, the Appellant received a scheduling notice from the Clerk of Court for Wells Fargo's motion for summary judgment. (R. p. )

On January 5, 2018, the Appellant received a notice for the summary judgment hearing. (R. pp. ) On January 22, 2018, Wells Fargo filed a Memorandum in support of the summary judgment motion. (R. pp. ) On January 24, 2018 , the hearing was held in the courtroom of the Honorable Judge James B. Jackson, Jr. (Review Brief, pp. 23-26 & T. pp. 1-53)

On February 1, 2018, Judge Jackson, notified the Appellant that Judge Goodstein's rulings could not be changed by him. (R. p. ) On February 8, 2018, the Appellant filed a notice to petition the Court for a Writ of Mandamus or a Writ of Certiorari. (R. pp. ) Due to errors, a Notice of Errata was filed on February 12, 2018. (R. pp. ) On February 22, 2018, the Clerk of Court notified the Appellant of the Order

granting summary judgment and the foreclosure sale. (R. pp. )

On June 11, 2018, the Appellant file an emergency motion for injunctive relief to stop the foreclosure sale. (R. pp. ) On June 18, 2018, Judge Jackson denied the motion. (R. pp. ) On July 14, 2018, the Appellant filed her Notice of Appeal to the Appellate Court and to the lower Court with proof of service. (R. pp. ) On July 18, 2018, the Appellant received a letter from the Clerk of the Appellate Court accepting the appeal. (R. pp. ) From July 20, 2018 to September 17, 2018, the Appellant took the necessary steps to substantially comply with Rule 207, SCACR. Letters of notification and acceptance were exchanged between the Appellant and the Clerk of the Appellate Court and sent to the Office of Court Administration, (R. pp. )

From September 18, 2018, to October 29, 2018 the Appellant was in contact with Court Reporter Suesan Richardson. On October 30, 2018 the Appellant received the transcript from Mrs. Richardson so that the "Initial Brief could be filed. (R. pp. )

### STANDARD OF REVIEW

The Appellant's Standard of Review for this appeal is *de novo*. This case involves questions of South Carolina's Code of Laws, Code of Federal Regulations, United States Codes and constitutional provisions. The entire record needs a review to determine if there is clear and convincing evidence to support findings of mortgage fraud.

(1) Lewis v. Lewis, 709 SE 2d 650 (2011) – "[T]he second concept is the tenet that *de novo* standard of review" does not relieve an appellant from demonstrating error in the trial court's findings of fact. *See Crowder v. Crowder*, 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965) (citing Forester v. Forester, 226 S.C. 311, 85 S.E.2d 187 (1954)) ("It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence."); Inabinet v. Inabinet, 236 S.C. 52, 55-56, 113 S.E.2d 66, 67 (1960) (citing Twitty v. Harrison, 230 S.C. 174, 94 S.E.2d 879 (1956)) ("Our duty in

equity cases to review challenged findings of fact as well as matters of law does not require that we disregard the findings below or that we ignore the fact that the trial judge, who saw and heard the witnesses, was in better position than we are to evaluate their credibility; nor does it relieve appellant of the burden of convincing this court that the trial judge erred in his findings of fact."); Gilbert v. McLeod Infirmary, 219 S.C. 174, 184, 64 S.E.2d 524, 528 (1951) ("We have jurisdiction in appeals in equity to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of verdict by jury."); Wise v. Wise, 60 S.C. 426, 449, 38 S.E. 794, 802-03 (1901) ... "

(2) State v. Whitner, 732 SE 2d 861 (2012) "[Q]uestions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below. Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010); Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)"

(3) BLOODY POINT PROPERTY OWNERS v. Ashton, 762 SE 2d 729 (Ct. App 2014) "[T]he determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court. Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct.App.2008). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." Carson v. CSX Transp., Inc., 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

## ARGUMENTS

### I. ERRORS OF LAW

- A. DID THE LOWER COURT ERR BY FAILING TO REALIZE MORTGAGES THAT ARE BASED ON INFLATED APPRAISALS FALSIFIED DOCUMENTATION, FRAUDULENT APPRAISAL INFORMATION, INTENTIONAL MISSTATEMENT OF MATERIAL FACTS, FORGERY, MISREPRESENTATIONS OF MATERIAL FACTS OR OMISSION OF MATERIAL FACTS ARE NOT ENFORCEABLE?

The Appellant argues that the lower court erred when it denied her motion for injunctive relief because the lower court failed to consider the fact that mortgages based on falsified documentation, inflated appraisals, fraudulent appraisal information, intentional misstatement, misrepresentation, or omission of a material fact are unlawful and if proven by clear and convincing evidence, the mortgage must be cancelled to end the fraud -- not

auctioned to the general public so another innocent person can be victimized by the fraudulent representations in the loan's supporting documents.

(1) § 40-58-70 – *SC Code of Laws* effectively states in pertinent parts; “[I]n addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person in the course of a mortgage loan transaction to: (1) misrepresent the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan. This includes presenting the broker in the guise of a lender or pursuing a course of misrepresentation through agents or otherwise; (2) intentionally misrepresent or conceal a material factor, term, or condition of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a mortgagor; (3) engage in a transaction, practice, or course of business which is unconscionable, as provided in Section 37-5-108, or which operates a fraud upon a person in connection with the making of or purchase or sale of a mortgage loan;”

(2) § 16-13-10(A) *SC Code of Laws* states in relevant parts.... “[A] It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or willfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; (3) falsely make, forge, counterfeit, alter, change, deface, or erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or (4) willingly act or assist in any of the premises, with an intention to de-fraud any person. (B) A person who violates the provisions of this section is guilty of a: (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;”

(3) § 34-3-110 - *SC Code of Laws* clearly states in pertinent parts..“(A) A person knowingly may not execute, or attempt to execute, a scheme or artifice to defraud a federally chartered or insured financial institution; or obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises. (B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.”

(4) § 40-58-30(A) *SC Code of Laws* clearly states in pertinent parts.. “[A] person may not act as a mortgage broker in this State without first being licensed with the administrator.” § 40-58-30(B) *SC Code of Laws* clearly states in pertinent parts; “[I]t is unlawful for a person to

employ, to compensate, or to appoint as its agent a loan originator unless the loan originator is licensed pursuant to this chapter,”

(5) § 40-58-50(E)(1) SC Code of Laws clearly states in pertinent parts.. “[A] person may not act as a qualified loan originator in this State without first being licensed with the administrator. It is unlawful for a person to employ, to compensate, or to appoint as its agent a qualified loan originator unless the qualified loan originator is licensed pursuant to this chapter.”

Therefore, because the loan was brokered by the borrower turned seller, Thomas Jacobs/Goldengate Mortgage and not by David Terrell/ Golden Gate Mortgage, Inc., it is an unlawful mortgage loan transaction that is violative of public policy and statutory law in the State of South Carolina and United States Codes.

"The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.” Beach Co. v. Twillman, Ltd., 566 SE 2d 863 (Ct. App. 2002).

**B. DID THE LOWER COURT ERR BY NOT CONSIDERING THE JUDICIAL ADMISSIONS IN THE APPELLANT’S NOTARIZED AND VERIFIED PLEADINGS AND STATEMENTS OF FACT IN FILED AFFIDAVITS THAT EXPOSED THE FORGERIES, FRAUDULENT REPRESENTATIONS, MISREPRESENTATION OF MATERIAL FACTS AND CONCEALMENT OF MATERIAL FACTS BY THE PERPETRATORS THAT DEFRAUDED WELLS FARGO OUT OF \$75,000.00 THAT INCLUDED WELLS FARGO’S OWN EMPLOYEES AT WELLS FARGO HOME MORTGAGE?**

The Appellant’s notarized pleadings and affidavits are pursuant to Rule 11(c), SCRCF and her verified pleadings comply with 18 USC § 1621 and 28 USC § 1746. Therefore, the Appellant argues that the lower court erred by not considering her judicial admissions in her affidavits and pleadings that exposed the fraudulent representations, forgeries and concealment of material facts by the perpetrators; and as stated in this brief and the Court’s records, this includes Wells Fargo’s own employees who were complicit and knowingly participated in an unlawful loan transaction. The Appellant will not speculate that WFHM employees wanted FNMA or FHLMC guaranteed loans.

“[O]nce a pleading has been verified, facts contained within it are judicial admissions that remain part of the record and are admissible against the pleading party, even if the pleading is subsequently amended.” Pinnacle Corp. v. Village of Lake in the Hills, 258 Ill.App.3rd 205, 209, 196 Ill.Dec.567, 630 N.E.2d 502 (1994).

"[J]udicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." In re Fordson Engineering Corp., 25 B.R. 506, 509 (Bankr.E.D.Mich. 1982). "[F]actual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them." American Title Ins. Co. v. Lacelaw Corp., 861 F.2d 224 (9<sup>th</sup> Cir.1988) Ferguson v. Neighborhood Housing Services., 780 F.2d 549, 551 (6th Cir.1986)

South Carolina's judiciary has repeatedly stated in thousands of case law files that "[T]o obtain summary judgment, the moving party must demonstrate there is "no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." Rule 56, SCRPC; Wilson v. Moseley, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997); Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998)

(1) "[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Law v. S.C. Dep't of Corrs., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006) "[I]f triable issues exist, those issues must go to the jury." Mulherin-Howell v. Cobb, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005) "[S]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).

(2) "[A]ll inferences, conclusions and ambiguities, arising from the evidence must be construed most strongly against the moving party." Vermeer Carolina's, Inc. v. Wood/ Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "[E]ven when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000)

(3) "[A] fact is 'material' if a dispute over it might affect the outcome of a suit under the governing law; factual disputes that are 'irrelevant or unnecessary' do not affect the summary judgment determination." Holcomb v. Powell, 433 F.3d at 895 (quoting Anderson v. Liberty Lobby,

Inc., 477 U.S. at 248). “[A]n issue is “genuine” if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party.” See Anderson v. Liberty Lobby, Inc., 477 U.S. at 248;...”

“[T]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, there is a reasonable probability the jury’s verdict was influenced by the wrongly admitted or excluded evidence.” Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); “[A] circuit court’s failure to exercise discretion is itself an abuse of discretion.” State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981); Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997) (“When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”); Balloon Plantation, 303 S.C. at 155, 399 S.E.2d at 441 (“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”)

In White v. ARCO/Polymers, Inc., 720 F. 2d 1391 (5<sup>th</sup> Cir. 1983) the court stated that “[c]lear error exists where (1) the findings are without substantial evidence to support them, (2) the court misapprehended the effect of the evidence, and (3) if, although there is evidence which if credible would be substantial, the force and effect of the testimony, considered as a whole, convinces the Court that the findings are so against the great preponderance of the credible testimony that they do not reflect or represent the truth and right of the case.”

Wells Fargo has failed for 10 years to disprove any of the Appellant’s defenses, or statements of fact or prove their security interest is supported by valid documents. Therefore, no summary judgments should have been granted by Judge Goodstein or Judge Jackson; especially, where there are material facts that have not been effectively and factually challenged and refuted. See Alejandre v. Deutsche Bank Trust Co. Ams., 44 So. 3d 1288, 289 (Fla. 4th DCA 2010) (quoting Cufferi v. Royal Palm Dev. Co., 516 So.2d 983, 984 (Fla. 4th DCA 1987)).

## II. ABUSE OF DISCRETION

DID THE LOWER COURT ABUSE ITS DISCRETION BY DENYING THE APPELLANT'S MOTION TO STOP THE FORECLOSURE SALE AND FOR INJUNCTIVE RELIEF TO PROTECT THE PUBLIC FROM BEING VICTIMIZED BY GRANTING SUMMARY JUDGMENT BASED SOLELY ON ATTORNEY ARGUMENTS AND NOT ON STATEMENTS IN NOTARIZED AND VERIFIED PLEADINGS, AFFIDAVITS, EYEWITNESS TESTIMONY, THE ACTUAL FACTS, THE EVIDENCE, THE EXHIBITS DEPOSITIONS AND INTERROGATORIES ON FILE IN THE COURT'S RECORDS?

The Appellant argues that she has no liability under the security agreement or instrument because according to Janet Frotscher in her letters dated February 21, 2008 (R. p. ) and June 2, 2008 (R. pp. ), the value of Wells Fargo's security interest , i.e., the mortgage and its note are based on the value stated in the appraisal. Wells Fargo used the appraisal to establish value that the Appellant never accepted as valid. Janet Frotscher also stated Wells Fargo based its lending decision on the Appraisal, the Contract of Sale and the Satisfaction Completion Certificate. Two are forgeries and the third is a fraudulent representation of material facts, because no repairs were completed at the property. Therefore, the liability in this case is on those that perpetrated the fraud.

Moreover the Appellant argues that this mortgage fraud has been allowed to continue and is on the cusp of defrauding someone else in a public auction for \$159,237.73 because the lower court based its summary judgments on attorney arguments rather than on statements in notarized and verified pleadings, affidavits, eyewitness testimony, the actual facts, the evidence, exhibits, depositions and interrogatories on file in the Court's records? Liability for this fraud lies with the perpetrators and Wells Fargo's hired lawyers for concealment of material facts or nondisclosure of material facts upon which Wells Fargo justifiably relied and continues to rely. All Wells Fargo's hired lawyers, past and present, violated the Compliance Agreement. (R. p. )

If the supporting documents that support value are fraudulent representations and forgeries, the security agreement that is based upon them is a fraudulent representation as well. There is currently no law that can force the Appellant to knowingly participate in a verifiable mortgage fraud that violates public policy, the statutory laws of the State of South Carolina, United States Codes, federal regulations and constitutional mandates that provide equal protection of the laws so that the innocent are protected from unjust persecution, prosecution and liabilities.

(1) § 36-3-305(a)(1)(ii)-(iii) SC Code of Laws clearly states the following in pertinent parts: "[a] Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on.. (ii) .. illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms."

(2) 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc. (2001) 85 Cal.App.4th 1279 at 1286 where the Court stated: "[I]t is the general rule that courts have power to vacate a foreclosure 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 and parties."

(3) Loving & Evans v. Blick, 33 Cal. 2d 603 (Cal: S. Ct 1949) "[A]s appellant maintains, it has been repeatedly declared in this state that "a contract made contrary to the terms of a law designed for the protection of the public and prescribing a penalty for the violation thereof is illegal and void, and no action may be brought to enforce such contract" (Gatti v. Highland Park Builders, Inc., 27 Cal.2d 687, 689 [166 P.2d 265]; see, also, Haas v. Greenwald, 196 Cal. 236, 247 [237 P. 38, 59 A.L.R. 1493]; Wise v. Radis, 74 Cal.App. 765, 774-776 [242 P. 90]; Holm v. Bramwell, 20 Cal.App.2d 332, 335-337 [67 P.2d 114]; Phillips v. McIntosh, 51 Cal.App.2d 340, 343 [124 P.2d 835]); and that "whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case."

Wells Fargo has failed to prove the documents and the property that support the security interest it purchased from Thomas Jacobs for \$75,000.00 are valid and not fraudulent representations of material facts and were not obtained by unlawful means.

The Appellant further argues that the lower court essentially violated Rules 38(a)-(b), 39(a) and 56(c)-(d), SCRPC.

*Spence v. Wingate*, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) “[R]ule 56(c), SCRPC (providing summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law”)” If there are disputed material facts, summary judgment should have been denied and this case sent to a jury and a trial should have been held to determine and establish what is true and what is not true.

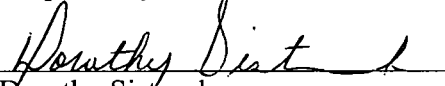
### CONCLUSION

The Appellant argues in her conclusion that the Appellate Court has the authority under *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1934) to set aside a judicial sale when either:(1) the sale price “is so gross as to shock the conscience [;]” or (2) the sale “is accompanied by circumstances from which fraud may be clearly inferred that it warrants the interference of the court.” A gross sales price can also be excessive that it shocks the conscience. The Appellant argues that this case meets the two prong test of “*Poole*” based on the evidence, the facts, the truth and the documents that have been filed in Court.

The Appellant has presented the Appellant Court the facts and the truth so that a “Manifest Injustice” and a “Miscarriage of Justice” can be avoided, not just for the Appellant, but also, for any other innocent person that might become trapped in this fraud that has been perpetuated and maintained by Wells Fargo’s hired lawyers by their concealment of material facts from Wells Fargo and the Court. The Appellant prays that the Appellate Court’s decision is consistent with the evidence and the facts so that this unjust judgment will be vacated, the foreclosure sale ended, the mortgage cancelled and restitution paid to the Appellant. Thank you.

November 26, 2018  
Orangeburg , South Carolina

Respectfully Submitted;

  
Dorothy Sistrunk  
423 Bayne Street  
Orangeburg, SC 29115  
803-268-0716

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

William B. Jackson, Jr., Master-In-Equity

Case No. 2018-001303

RECEIVED

Wells Fargo Bank, N.A., Respondent,

NOV 28 2018

SC Court of Appeals

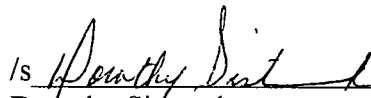
v.

Dorothy Sistrunk, Appellant.

PROOF OF SERVICE

I certify that I served a copy my *"Initial Brief & Designation Of Matters To Be Included In The Record On Appeal"* that is dated November 26, 2018, on Wells Fargo Bank, N.A., by depositing a copy of it in the United States Postal Service (USPS), prepaid, on November 28, 2018, addressed to Wells Fargo's attorney/s and/or agent/s of record that are listed below.

Today's Date:  
November 28, 2018

  
\_\_\_\_\_  
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**Initial Brief, Proof of Service, Certification of Designated Matter**

November 28, 2018

The Honorable Jenny Abbot Kitchings Clerk of Court  
& Deputy Clerk of Court V. Claire Allen  
South Carolina Court of Appeals  
POB 11629  
Columbia, SC 29211

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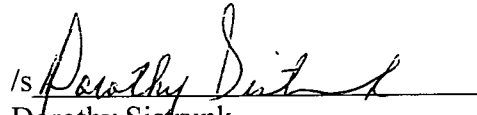
SC Court of Appeals

Re: Wells Fargo Bank, N.A. v. Dorothy Sistrunk  
Civil Action Case #2008-CP-38-1024  
Appellate Case #2018-001303

Ms. Kitchings and/or Ms. V. Claire Allen

On November 26, 2018, the Appellate Court received the original copy of my "Initial Brief" that was stamped by the Clerk of the Appellate Court. Unfortunately, I did not have my "Designated Matters" with me. Today, November 28, 2018, pursuant to Rules 208, 209 and 210, SCACR, I am delivering my "Designated Matters" to be included in the Record on Appeal, Proof of Service and Certification that no irrelevant matter has been included. Copies of the "Initial Brief", along with the Proof of Service, my Certification and this letter to the Clerk of Court will be sent to the parties listed below.

Thank you.

  
Dorothy Sistrunk

CC:

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