THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Steven C. Kirven, Master-In-Equity

Appellate Case No.: 2017-000886

Federal National Mortgage Association.....Respondent,

v.

John D. Dalen, Julie A. Dalen and Wawtockace Hills Property Owners Association.....Defendants,

Of whom

John D. Dalen and Julie A. Dalen, are.....Appellants.

And

John D. Dalen and Julie A. Dalen, Appellants,

v.

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

FINAL BRIEF OF RESPONDENT FEDERAL NATIONAL MORTGAGE ASSOCIATION

Charles S. Gwynne Jr. (SC Bar # 73844)
Rogers Townsend & Thomas, PC
Post Office Box 100200 (29202)
1221 Main Street 14th Floor
Columbia, South Carolina 29201
(803)771-7900
charlie.gwynne@rtt-law.com
Attorney for the Respondent Federal National Mortgage Association

November 2, 2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. HAVE APPELLANTS ABANDONED THEIR ISSUES RAISED ON APPEAL BY MAKING ONLY CONCLUSORY ARGUMENTS WITHOUT ANY LEGITIMATE SUPPORTING AUTHORITY?

I. DID THE TRIAL COURT ERR IN FINDING THAT RESPONDENT FEDERAL NATIONAL MORTGAGE ASSOCIATION HAD STANDING TO BRING THIS ACTION?

II. DID THE TRIAL COURT ERR IN FINDING THAT THE COURT HAD SUBJECT MATTER JURISDICTION OVER THE CASE?

III. DID THE TRIAL COURT ERR IN DISMISSING APPELLANTS' ARGUMENTS THAT SECURITIZATION OF THE NOTE AND MORTGAGE AND ASSIGNMENT OF THE MORTGAGE RENDERED THE DEBT UNSECURED?

IV. DID THE TRIAL COURT ERR IN FINDING THAT RESPONDENT FEDERAL NATIONAL MORTGAGE ASSOCIATION PRESENTED A COMPETENT FACT WITNESS AT THE FINAL FORECLOSURE TRIAL?

V. DID THE TRIAL COURT ERR IN PROCEEDING WITH A NON JURY TRIAL?

VI. DID APPELLANTS FAIL TO REFUTE THE MASTER'S LEGAL CONCLUSIONS WITH CITATION TO AUTHORITIES?

STATEMENT OF THE CASE

This lawsuit arises out of the foreclosure of a residential real estate mortgage. Bank of America, N.A. successor by merger to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P ("BANA"), filed its Lis Pendens, Summons, and Complaint on October 31, 2011. (R. pp. 71-76). On February 21, 2012, Appellants John D. Dalen and Julie A. Dalen ("Appellants") filed an Answer, Affirmative Defenses, Counterclaim, and Demand for Jury Trial. (R. pp. 87-104). On March 26, 2012, BANA filed a Reply to Appellants' Answer. (R. pp. 110-116).

On December 4, 2013, BANA filed a Motion for Summary Judgment. (R. pp. 117-128). On July 9, 2014, the Court issued an Order denying BANA's Motion for Summary Judgment. (R. pp. 6-8).

On November 17, 2014, Appellants filed a Motion for Summary Judgment on Plaintiff's Complaint for Foreclosure. (R. pp. 185-186)[1]. On November 17, 2017, BANA filed a Motion to Strike Jury Trial Demand and Refer to the Master in Equity. (R. pp. 187-188). On January 28, 2015, the Court issued a Form 4 Order denying Appellants' Motion for Summary Judgment and granting BANA's Motion to Strike Jury Trial Demand and Refer to the Master in Equity. (R. pp. 9-10). On February 25, 2015, the Court issued a formal Order denying Appellants' Motion for Summary Judgment and granting BANA's Motion to Strike Jury Trial Demand and Refer to the Master in Equity. (R. pp. 11-18).[2]

On June 1, 2015, BANA filed a Motion to Substitute the Plaintiff to Federal

---

[1] During the lawsuit, Appellants retained attorney William H. Sloan, Jr., Esquire to represent them. However, on August 11, 2016, an Order Relieving William H. Sloan as Counsel for Appellants was filed.

[2] The Court filed a duplicate Order on May 15, 2015.

National Mortgage Association. (R. pp. 191). On September 23, 2015, the Court issued an Order granting BANA's Motion to Substitute the Plaintiff and making BANA a Counterclaim Defendant. (R. pp. 19-22).

On March 9, 2016, BANA filed a renewed Motion for Summary Judgment as to Appellants' Counterclaims. (R. pp. 195-197). On March 21, 2016, BANA filed a Memorandum of Law in Support of its Renewed Summary Judgment Motion. (R. pp. 198-224).

On May 5, 2016, Appellants filed a Notice of Demand and Motion to Dismiss for Lack of Subject Matter Jurisdiction. (R. pp. 225-232). On July 28, 2016, the Court Issued an Order granting BANA's Renewed Motion for Summary Judgment as to Appellants' Counterclaims. (R. pp. 29-41). On August 8, 2016, Appellants filed a Motion for Reconsideration of the Court's July 28, 2016 Order. (R. pp. 233-246). On October 13, 2016, the Court issued an Order denying Appellants' Motion to Dismiss (R. pp. 48-50). On October 13, 2016, the Court issued an Order denying Appellants' Motion for Reconsideration of Order granting BANA's renewed Motion for Summary Judgment as to Appellants' Counterclaims. (R. pp. 44-47).

On March 2, 2017, a final foreclosure hearing was held before the Honorable Steven C. Kirven, Master-in-Equity for Oconee County. (R. pp. 55-70).

On March 15, 2017, Appellants filed an Objection and Notice of Motion, and Motion for a New Trial and/or Amendment of Judgment on Grounds of Fraud and Denial of Due Process of Law. (R. pp. 283-297). On March 17, 2017, the Court issued an Order denying Appellants' Motion for a New Trial and/or Amendment of Judgment on Grounds of Fraud and Denial of Due Process of Law. (R. pp. 53-54).

On March 31, 2017, the Appellants filed their Initial Brief and Designation of Matter to be Included in the Record on Appeal appealing the Court's Judgment of Foreclosure and Sale filed March 6, 2017 and Order denying Motion for a New Trial filed March 17, 2016.

STATEMENT OF THE FACTS

This appeal involves the outcome of a non-jury final foreclosure trial held on March 2, 2017 in which Respondent Federal National Mortgage Association was granted a Judgment of Foreclosure and Sale by order of the Honorable Steven C. Kirven, Master-in-Equity for Oconee County. (R. pp. 55-70).

On or about December 20, 2007, Appellant John D. Dalen executed a Fixed Rate Note ("Note") in the amount of $118,750.00 in favor of Quicken Loans, Inc. ("Quicken Loans") (R. pp. 916-918). That same day, Appellants also executed a Mortgage ("Mortgage") on the property located at 109 Wood Valley Drive Westminster, SC 29693 ("Property"), which secured the Note and was delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Quicken Loans, Inc., its successors and assigns. (R. pp. 919-934). The Mortgage was recorded in the Office of the Register of Deeds for Oconee County on December 21, 2007 in Book 2551 at Page 206. (R. pp. 919-934). This Mortgage was assigned to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. by assignment dated May 9, 2011 and recorded on May 16, 2011 in Book 2975 at Page 40. (R. pp. 935-936). Subsequently, this Mortgage was assigned to Federal National Mortgage Association, by assignment dated April 13, 2015 and recorded on April 22, 2015 in Book 3382 at Page 237. (R. pp. 935-936). Appellant John D. Dalen failed to make the required payments under the terms of the Note; the Note remained in default after December 1, 2010. (R. p. 393, line 25-p. 394, line 3). As of March 2, 2017, Appellant John D. Dalen owed $114,875.72 in principal, $49,130.92 in interest, and $42,289.27 in other associated fees and costs related to the Mortgage. (R. p. 58-62).

At the trial on March 2, 2017, Respondent presented the testimony of William Rankin ("Rankin"), a Litigation Officer with Seterus, the Respondent's loan servicer. (R. p. 387, line 8-p. 388, line 5). Rankin testified that he had personal knowledge of the records kept and maintained in connection with Appellants' loan as part of his job duties. (R. p. 387, line 22-p. 388, line 16). Rankin also testified as to the fact that the Note was endorsed in blank and that Seterus was in physical possession of the original Note through its attorney, which was present in the courtroom during the trial. (R. p 389, lines 14-18). The Note and the Mortgage were admitted into evidence over the objection of Appellants. (R. p. 390, line 13-p. 391, line 8, pp. 16-934). Rankin further testified that the Mortgage had been assigned from the original lender to Respondent by way of two Assignments of Mortgage and a copy of the two Assignments of Mortgage were admitted into evidence over the objection of Appellants. (R. p. 391, line 12-p. 392, line 7, pp. 935-936).

Rankin testified that Appellant John D. Dalen eventually failed to make his loan payments and that the loan went into default under the terms of the loan documents. (R. p. 392, lines 8-11). Rankin testified that the loan was due and owing for the December 2010 payment. (R. p. 393, line 25-p. 394, line 3). A copy of the loan payment history was then admitted into evidence over the objection of the Appellants. (R. p. 394, lines 4-20). Rankin then provided a breakdown for the Court as to what the total amount due was on the loan. (R. p. 395, line 20-p. 398, line 13, pp. 1005-1075).

At the trial, Appellant John D. Dalen made four main arguments. First, he objected to the entire proceeding based on the argument that a) the court lacked subject

matter jurisdiction, b) it was an unlawful foreclosure, and c) he was entitled to a jury trial. (R. p. 381, line 25-p. 386, line 7, p. 395, lines 8-10). Second, Appellant John D. Dalen also objected to the proceedings by arguing that Rankin was not a competent fact witness because he was employed by Seterus and not the Respondent. (R. p. 390, lines 18-25). Third, he argued that securitizing the Note resulted in Respondent being paid in full and it is therefore not possible for the Appellants to be in default under the terms of the Note. (R. p. 404, line 21-p. 405, line 7). Finally, Appellant John D. Dalen argued that there has not been a proper "chain of title" based on evidence of fraud due to the date of the Assignment of Mortgage in the case to BANA. (R. p. 405, line 14-p. 107, line 17).

Following the trial, on March 6, 2017, the Master-in-Equity entered a final Judgment of Foreclosure and Sale in favor of Respondent, finding inter alia, that Respondent has standing to persecute this action, that the witness's testimony supported a finding that Appellant John D. Dalen defaulted under the terms of the Note and Respondent was entitled to foreclose its Mortgage lien on the property, and that Appellants' default on the loan resulted in a total damages amount of $206,295.91. (R. p. 56-62).

Appellants' initial brief on appeal rambles, is incoherent, and presents little or no substantive legal support for their arguments. At best, Appellants appear to challenge 1) the standing of the Respondent; 2) the trial court's subject matter jurisdiction; 3) the validity of the Assignment of Mortgages; 4) the Appellants' "denial" of a jury trial; and 5) Respondent's failure to provide a competent witness for trial.

The Master-in-Equity's final Judgment of Foreclosure and Sale and Order denying Appellants' Motion to Reconsider Judgment should be affirmed on several grounds. First, South Carolina law is clear that the servicer of a mortgage loan, as well as the Note holder, has authority to prosecute a foreclosure action, and actual "ownership" of the Note and Mortgage is not required. Second, the trial court had proper subject matter jurisdiction to hear the case and the Appellants were not entitled to a jury trial involving an equitable foreclosure cause of action. Third, Appellants' contention that securitization of the Note and Mortgage or the Assignments of Mortgage rendered the debt invalid and/or unsecured are contrary to well-established South Carolina law. Finally, Respondent's witness at trial was competent to testify and his testimony supported the findings in the Master's Orders.

STANDARD OF REVIEW

The Court may affirm for any ground appearing in the record. Rule 220(c), SCACR; *see also* Mortgage Elec. Sys., Inc. v. White, 384 S.C. 606, 614, 682 S.E.2d 498, 502 n. 2 (Ct. App. 2009)(citing I'On v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000)).

"A mortgage foreclosure is an action in equity." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). "In an appeal from an action in equity, tried by a judge alone, the Court may find facts in accordance with its own view of the preponderance of the evidence." Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). "However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." Pinckney v. Warren, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

"Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." Id. at 38788, 544 S.E.2d at 623.

ARGUMENTS

I. APPELLANTS HAVE ABANDONED THEIR ISSUES RAISED ON APPEAL BY MAKING ONLY CONCLUSORY ARGUMENTS WITHOUT ANY VALID SUPPORTING AUTHORITY

Appellants have raised issues in this appeal by making only conclusory arguments without providing any valid statutory or common law in support of their allegations. As a result, Appellants have abandoned these arguments and they should not be considered by this Court.

In essence, abandonment is akin to issue preservation. "A bald assertion, without supporting argument, does not preserve an issue for appeal." In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). "An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011).

Additionally, the South Carolina Appellate Court Rules provide that "[t]he brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority." Rule 208(b)(1)(D), SCACR. "Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal." Ellie, Inc. v. Miccichi, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004).

Here, Appellants list three issues for the Court's consideration in their Initial Brief and appear to make their arguments in both the "Statement of Facts" and "Argument" sections. (Initial Brief of Appellant pages v. and 2-18). While Appellants' Initial Brief does cite case law, Appellants make little or no attempt to connect their

arguments with the substance of the allegedly supportive case law. Appellants simply make conclusory statements throughout their Initial Brief and then imply, without any legal analysis, that various cases, many from jurisdictions outside South Carolina, support their position. The burden is on the Appellants to argue their position using the case law and statutory authority and not shift the burden to the Court to speculate as to how the legal authority was meant to be used to support the Appellants' arguments. Based on this, the Appellants have abandoned their issues on appeal.

II. THE TRIAL COURT PROPERLY HELD THAT RESPONDENT FEDERAL NATIONAL MORTGAGE ASSOCIATION HAD STANDING TO BRING THE ACTION

Appellants' argument that Respondent lacks standing to prosecute the foreclosure action appears to relate to Appellants' mistaken belief that Respondent was required to show a proper "chain of title" from the original lender to the Respondent. (Initial Brief of Appellant pp. 2-9). This argument by the Appellants demonstrates a clear misunderstanding and misinterpretation of South Carolina law.

Appellants' arguments, to the best Respondent can decipher them, ultimately assert that (1) Respondent lacked standing to prosecute the foreclosure action because Respondent cannot prove a "chain of title" of the Note; (2) Respondent was not the "owner" of the Note because of a fraudulent Assignment of Mortgage; and (3) the mortgage loan is invalid and/or unsecured in light of an alleged securitization of the Note and Mortgage. (*See generally* Initial Brief of Appellant). Appellants' arguments, however, are baseless and contrary to both the evidence presented in this case and South Carolina law. Accordingly, the Trial Court properly entered final Judgment of

Foreclosure and Sale in favor of Respondent and properly denied Appellants' Motion to Reconsider Judgment.

"'Generally, a party must be a real party in interest to the litigation to have standing.'" Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010) (quoting Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006)). South Carolina law is clear that a loan servicer is a real party in interest to a foreclosure action and has the ability to prosecute a foreclosure action. *See* Bank of Am., N.A. v. Draper, 405 S.C. 214, 222-223, 746 S.E.2d 478, 482 (Ct. App. 2013). In addition, pursuant to S.C. Code Ann. § 36-3-301, the person entitled to enforce an instrument includes "the holder of the instrument." Id. A "holder" of the instrument is defined to include "the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession." S.C. Code Ann. § 36-1-201(21).

The evidence produced at trial proved that Respondent had standing to bring this action. Rankin, the witness from Respondent's loan servicer, testified at trial that Seterus was servicing the Appellants' loan and he was aware of this based on his job duties. (R. p. 387, line 8-p. 388, line 16). The witness also testified that the Note was endorsed in blank, Seterus was in physical possession of the original Note through its attorney, and the Note was present in the courtroom during the trial. (R. p. 389, lines 14-18). Respondent's possession of the original Note endorsed in blank undoubtedly demonstrated its standing to prosecute the foreclosure action in this case; thus proving how Appellants' argument on appeal clearly fails. Therefore, the Master-in-Equity's

Judgment of Foreclosure and Sale and Order denying Appellants' Motion to Reconsider should be affirmed.

III. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE COURT HAD SUBJECT MATTER JURISDICTION OVER THE CASE

Appellants appear to argue that due to an alleged "fraudulent" Assignment of Mortgage, that fact alone divested the Court of subject matter jurisdiction to hear the case. Appellants provide no legal basis to support this position.

"'Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008); Dove v. Gold Kist, 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (quoting Bank of Babylon v. Quirk, 472 A.2d 21, 22 (Conn. 1984); accord Balcon, Inc. v. Sadler, 244 S.E.2d 164 (N.C.App.1978) (citing 21 C.J.S. Courts § 23, pp. 36-37). "The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law." S.C. Const. Ann. Art. V, § 11. "The equity court is considered a division of the circuit court, and the master-in-equity, as judge of the equity court, is entitled to all the benefits and subject to all the requirements of the South Carolina Bar and the rules of the Supreme Court in the same respect as circuit court and family court judges." S.C. Code Ann. § 14-11-15. "When some or all of the causes of action in a case are referred to a Master-in-Equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be

to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules." S.C. Code Ann. § 14-11-85.

This action was properly referred to the Oconee Master-in-Equity. Pursuant to case law, statute, and The Constitution of the State of South Carolina, the Master-in-Equity clearly had subject matter jurisdiction to hear the case and issue a final judgment on all causes of action.

IV. THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANTS' ARGUMENTS THAT SECURITIZATION OF THE NOTE AND MORTGAGE RENDERED THE DEBT UNSECURED OR THAT THE ASSIGNMENT OF MORTGAGE PREVENTED THE RESPONDENT FROM PROCEEDING WITH THE FORECLOSURE.

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

Furthermore, South Carolina law is clear that Appellants lack standing to challenge an assignment to which they are not a party. "Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract." R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n., 384 F.3d 157, 164 (4th Cir. 2004) (internal quotation marks and citations omitted) (applying South Carolina law). A mortgagor is only a party to the mortgage, and because an assignment or mortgage is a

separate contract to which the mortgagor is not a party, a mortgagor cannot question its validity.

Assignments of mortgage are not transfer documents, convey no right or interest in the note or loan, and are a nullity as to the issue of standing. The recording of an assignment of mortgage gives notice to third parties regarding the new holder of the debt, but it does not transfer the debt itself. See S.C. Code Ann. § 30-7-30 and § 30-7-40. Further, an assignment does not even have to be recorded, and failure to record an assignment of mortgage does not affect the rights of an assignee. BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 623-24, 731 S.E.2d 547, 549 (2012), reh'g denied (Sept. 6, 2012). South Carolina law "does not require both possession of the note and a written assignment of the mortgage to prove ownership..." In re Woodberry, 383 B.R. 373, 376 (Bankr. D.S.C. 2008) "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of the mortgage.'" Midfirst Bank, SSB v. C.W. Haynes & Co., Inc., 893 F. Supp. 1304, 1318 (D.S.C. 1994)(citing Hahn v. Smith, 157 S.C. 157, 154 S.E. 112 (1930); Ballou v. Young, 42 S.C. 170, 20 S.E. 84 (1894)). "The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee. . . ." South Carolina Nat'l Bank v. Halter, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct.App.1987) (citing Hahn, 157 S.C. 157, 154 S.E. 112). Therefore, enforcement of a note in South Carolina does not require the plaintiff to have a written assignment of the mortgage. Woodberry, 383 B.R. at 377.

V. THE TRIAL COURT DID NOT ERR IN FINDING THAT RESPONDENT FEDERAL NATIONAL MORTGAGE ASSOCIATION PRESENTED A COMPETENT FACT WITNESS AT THE FINAL FORECLOSURE TRIAL

Appellants' argument that Respondent's witness at trial was not competent to testify at trial is that 1) he did not work for Respondent and 2) he did not understand what Appellant John D. Dalen was referring to when Mr. Dalen questioned him about securitization of mortgage loans. (Appellants' Initial Brief pages 4-9 and R. p. 390, lines18 to 25). As an employee of the Respondent's loan servicer, Rankin properly testified to the business records for the Appellants' loan, provided sufficient evidence to establish the Appellants' default under the terms of the loan documents, and testified to the amount due under the loan documents.

"The business records exception is found in both the South Carolina Code at § 19-5-510 (1985) and Rule 803(6) of the South Carolina Rules of Evidence. Both exceptions require that the evidence be given by a 'custodian or other qualified witness.'" Twelfth RMA Partners, L.P. v. National Safe Corp., 335 S.C. 635, 642, 518 S.E.2d 44, 48 (Ct.App.1999)

"A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness" is not excluded from evidence by the hearsay rule. Rule 803(6), SCRE. Further, "[a] record of an act,

condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission." S.C. Code Ann. § 19-5-510 ("Uniform Business Records as Evidence Act").

In this case, Rankin's testimony laid the foundation for all the exhibits introduced at trial by the Plaintiff. Rankin's testimony established that he worked for the Respondent's loan servicer, he had personal knowledge of the records kept and maintained in connection with Appellants' loan, the Note was endorsed in blank, the loan was in default, and he testified to the current amount due under the loan records. (R. p. 387, line 8-p. 394, lines 20, pp. 916-1075). This testimony established Rankin as a competent witness who met Rule 803(6)'s authentication requirement and the Uniform Business Records as Evidence Act's requirements as a records custodian. Appellants' challenge of Rankin as a competent witness lacks merit. Therefore, the Master-in-Equity's Judgment of Foreclosure and Sale and Order denying Appellants' Motion to Reconsider should be affirmed.

VI. THE TRIAL COURT DID NOT ERR IN PROCEEDING WITH A NON JURY TRIAL

Appellants argue that the trial court improperly denied their right to a jury trial. "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester

v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). "A mortgage foreclosure is an action in equity." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial. Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). The trial court did not err in proceeding with this equitable foreclosure action with a non-jury trial.

VII. APPELLANT FAILED TO REFUTE THE MASTER'S LEGAL CONCLUSIONS WITH CITATION TO AUTHORITIES

Again, if this Court were to find that Appellants have preserved issues for appellate review, Appellants have failed to refute or counter any of the Master's legal conclusions in the Orders with citation to authorities. As further grounds for affirmance, Respondent hereby incorporates by reference all of the Master's legal conclusions and legal authorities set forth in the Final Orders.

CONCLUSION

Based on the foregoing and any additional sustaining grounds appearing in the record, Respondent respectfully requests that the Court affirm the Master in Equity's Orders entered on March 6, 2017 and March 17, 2017.

Respectfully submitted,

Charles S. Gwynne Jr. (SC Bar # 73844)
Rogers Townsend & Thomas, PC
Post Office Box 100200 (29202)
1221 Main Street 14th Floor
Columbia, South Carolina 29201
(803)771-7900
charlie.gwynne@rtt-law.com
Attorney for the Respondent

November 2, 2017

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondent Federal National Mortgage Association certifies that the foregoing Final Brief of Respondent Federal National Mortgage Association complies with Rule 211(b), SCACR.

Charles S. Gwynne Jr. (SC Bar # 73844)
Rogers Townsend & Thomas, PC
Post Office Box 100200 (29202)
1221 Main Street 14th Floor
Columbia, South Carolina 29201
(803)771-7900
charlie.gwynne@rtt-law.com
Attorney for the Respondent
Rogers Townsend & Thomas, PC and its staff are debt collectors

November 2, 2017