

# The South Carolina Court of Appeals

HSBC Bank of USA, National Association, as Trustee  
for the Holders of the Deutsche ALT-A Securities, Inc.  
Mortgage Loan Trust, Mortgage Pass-Through  
Certificates Series 2007-A4, assignee of Bank of  
America N.A., successor by merger to BAC Home Loans  
Servicing, L.P., f/k/a Countrywide Home Loans  
Servicing, Inc., Appellant,

v.

Clifford L. Ryba; Beverly Ryba; Regions Bank; First  
Federal Savings and Loan Association of Charleston,  
Citibank (South Dakota) N.A., and Carol Garfield  
Goldberg, Defendants,

Of whom Carol Garfield Goldberg is the Respondent.

Appellate Case No. 2016-001054


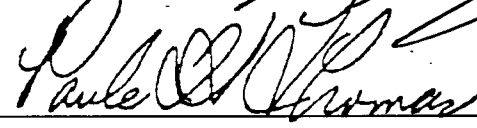
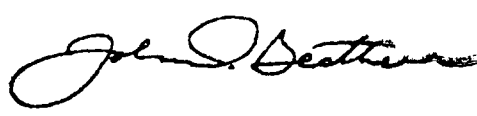
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## ORDER

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After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded. Appellant did not appeal the merits of the master's findings of fraud in its initial appellate brief, but presented arguments on the merits in its petition for rehearing. *See* Jean Hoefler Toal, et. al., *Appellate Practice in South Carolina* 391 (3rd ed. 2016) ("The purpose of a petition for rehearing is not to present points that a lawyer did not present to the court in his briefs, nor is the purpose of a petition for rehearing to have the case tried in the appellate court a second time."); *see also Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). Appellant requested that the court address an equitable subrogation argument that Appellant made in its reply to Respondent's counterclaims; however, Appellant admits that it failed to include its reply to the counterclaims in the record on appeal. *See Helms*

*Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487–88 (2005) ("Appellant ha[s] the burden of providing a sufficient record."); *Schultze v. Schultze*, 403 S.C. 1, 8, 741 S.E.2d 593, 597 (Ct. App. 2013) ("For this court to evaluate the merits of a disputed issue, the appellant must provide the court with a sufficient record pertaining to that issue; otherwise, there is nothing for this court to review."). Appellant further requested that the court take judicial notice of documents that were not admitted into evidence. See Rule 210(h), SCACR ("[T]he appellate court will not consider any fact which does not appear in the Record on Appeal."); Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); see also *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984) ("[W]e hold that original judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable."); *id.* (holding the contents of a deed did not constitute "indisputable matter" subject to judicial notice even though the deed was a public record). Lastly, Respondent lived on the property subject to this foreclosure action and her *lis pendens* was filed prior to Appellant initiating this action. See *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) ("[Standing] concerns an individual's 'sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court.'" (quoting 1A C.J.S. *Actions* § 101 (2005))); see also S.C. Code Ann. § 36-3-306 (Supp. 2018) ("A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds . . ."). Hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ C.J.  
  
\_\_\_\_\_ J.  
  
\_\_\_\_\_ J.

Columbia, South Carolina

cc:  
Erica Greer Lybrand, Esquire  
B. Lindsay Crawford, III, Esquire

**FILED**

June 28, 2019

Nicholas Ray Sanders, Esquire  
James K. Holmes, Esquire  
Allen Mattison Bogan, Esquire  
Nicholas Andrew Charles, Esquire