90895

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph Strickland Master-In-Equity Judge

Case No. 2017-CP-40-1649

Lyvonne Able, as Petitioner
Representative of the Estate of LYVONNE and
MARY LINDA SMALLS ABLE

Defendant/Appellant/Petitioner

v.

U.S. Bank NA, successor to Bank of America, N.A. successor in interest to LaSalle Bank National Association, on behalf of the registered holders of Bear Sterns Asset-Backed Securities Trust 2005-HE2, Asset-Backed Certificates, Series 2005-HE2

Plaintiff/ Appellant/Respondent

NOTICE OF APPEAL
Pursuant To Rules 203(b) and 233 (b)

Comes Now, Lyvonne Able appeals the order judgment of **FORECLOSURE AND SALE** of the Honorable **Joseph M. Strickland**, 3055, dated August 29, 2019 on **Plaintiff-Appellant-Respondent's MOTION FOR SUMMARY JUDGMENT** pursuant to Rule 56, SCRCP. It was stated in the judgment that after consideration of the pleading, motions, affidavits, and arguments of the parties, that the Court findings and conclusions that the described **FINDINS OF FACTS** were accepted as

evidence by the Court. All statements from number **1** to **23** are statements of events that took place during the years of proceedings, but they in no way serve as evidence that the **Plaintiff-Appellant-Respondent's** has the legal authority to foreclose and sell the property for simple reason that was disclosed by the **Defendant-Appellant -Petitioner's** initially in the suit. It is at this time that the higher court accept a '*Writ of Injunction'* from the **Defendant-Appellant-Petitioners** to foreclose and sale until the out-come of the Appeals proceedings

That reasons for this is found in the '*Qualified Written Request'*, the demand for full disclosure of the facts of the financial transaction at the beginning and the evidence that the **Defendant-Appellant-Petitioner's** submitted, but was not allowed to be addresses as evidence.

In addition the judge made no effort to enforce any '*due process of law' and judicial procedure* by requiring and demanding the **Defendant-Appellant-Petitioner's** to cross examine the **Plaintiff-Appellant-Respondent's** as the council for the Plaintiff acted as witness, therefore the mentions facts and findings does not support the authority or legal right to foreclose as a failure to enforce and conduct a due process of law.

In sections **A, B, C, D, E F, G, H, I, J, K, L** and **M** of the **JUDGMENT OF FORECLOSURE AND SALE**, the **Plaintiff-Appellant-Respondent's** claim cannot be supported to enforce a foreclosure proceedings because that same issue still remains to be settled, and that is what was the **ORIGIN OF THE CREDIT AND THE SOURCE OF THE FUNDS.**

There is a lot historical evidence and case law to support that the Bank is not the proper party. They never gave the **Defendant-Appellant-Petitioners** anything of value what was used to secure the property. After an analysis of the closing statement, all of the figures; the source and deposits were examined and analyzed. There was no evidence of the source of the alleged loan, as it was deemed from a **NON-DISCLOSED** source.

THEREFORE there can be no **ORDER** involving sections **1** to **20** if the initial question has not been addressed. Once the source of the funds are disclosed all mortages will be found **VOID** and **ILLEGAL.**

The **Defendant-Respondent-Petitioners** are not questioning the decision made by the Judge, neither are we complaining of frivolous unsupported grounds to stall for time. Based on the evidence of both parties there are meritorious grounds for an appeal.

The **Defendant-Respondent-Petitioners** sees three major standards of review for appeals: **legal error, abuse of discretion,** and **substantial evidence.** This appeal involves all three instances. The judicial decision of the lower court involves a combination of these standards that must be taken into account.

ABUSE OF DESCRETION

The judge was never seated during the whole time of the session; indicating to us that there was not a court of record, or there was no hearing. In addition of not being seated, the judge kept compelling the **Defendant-Respondent-Petitioner** to provide oral testimony rather than reviewing the documents and return later with a decision based on the written testimony instead of the oral, again indicating that that was not as court or record.

As the **Defendant-Respondent-Petitioner** attempted to explain the bank gave nothing of value, and the process where there was an unauthorized use of his exemption and extension of his credit; the Judge stated that he did not know what a *"Qualified Written Request"* was; he continued to ask, "what was monetization, or hypothecation", illustrating that he was cross-examining the **Defendant-Respondent-Petitioner** on behalf of the **Plaintiff-Appellant-Respondent.** The Judge acted as he really did know any of those banking and financial terms. Being that the case, the judge should have recused himself form the case for not being qualified to serve in that proceeding, or he may been attempting to get the **Defendant-Respondent-Petitioner** in error. Even if the judge did not know the meaning of those

terms, he still could have requested or demanded the **Plaintiff-Appellant-Respondent** to respond with a "*Qualified Written Request*", and other point-by-point mentions in this proceeding.

The judge while cross-examining the **Defendant-Respondent-Petitioners,** he acted in favor of the **Plaintiff-Appellant-Respondent**, while not directing the attorney for the **Plaintiff-Appellant-Respondent** to cross-examine. In addition, the judge provided no means for the **Defendant-Respondent-Petitioners** to cross-examine the opposing side, for they never showed up, and neither were they the real party in interest. In addition all through out the proceedings the attorney acted as a witness for the bank as a violation of ***Trinsey v Pagliaro***, *D.C.Pa. 1964, 229 F.Supp. 647. "Statements of counsel in brief or in argument are not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment."*

11th Amendment Violation

It's a **VIOLATION** of the 11th Amendment for a **FOREIGN CITIZEN to INVOKE** the **JUDICIAL POWER** of the State.

Article XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

US citizens **(FEDERAL CITIZENS)** are **FOREIGN** to the several States and **SUBJECTS** of the **FEDERAL UNITED STATES/STATE of NEW COLUMBIA/DISTRICT OF COLUMBIA**.

Attorneys are considered **FOREIGN AGENTS** under the **FOREIGN AGENTS REGISTRATION ACT (FARA) and are SUBJECTS of the BAR ASSOCIATION.**

Government Is Foreclosed from Parity with Real People

– Supreme Court of the United States 1795

"Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them."

S.C.R. 1795, ***Penhallow v. Doane's Administraters*** *(3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54),*

Supreme Court of the United States 1795 ----- read the rest of the cites below)

And,

"An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness".

(Trinsey v. Pagliaro *D.C.Pa. 1964, 229 F. Supp. 647)*

Subject: ***Trinsey v. Pagliaro,*** *229 F.Supp. 647:* when you read it you will find that it is the case cited for FRCivP 12(b) (6).

Now, while what it says at 12(b) (6) is good, notice how the **Defendant-Respondent-Petitioners** has highlighted some items from the actual decision, it goes **MUCH** further than 12(b) (6) does and we should also. Keep in mind the two Maxims in Law that has opposite sides of the same coin: Truth is Expressed in Form of an Affidavit, & An Un-rebutted Affidavit stands as Truth in the Matter.

Now, while keeping these in mind, think about when someone like an attorney for the IRS comes forward and *"testifies"* about how you did such-

and-such. Are they a First-Hand-Witness, or simply a *"Statement of Counsel in Brief or Argument?"* The *"Judge"* should have taken to official Judicial Notice of it. If the *"Judge"* does not sustain **Defendant-Respondent-Petitioner's** objection, we should have immediately filed an oral *"Affidavit of Prejudice"* against the *"Judge"* as he has shown his prejudice and then file the same Affidavit in writing into the record with witnesses to the same.

The **Defendant-Respondent-Petitioners** Affidavits are filed. In the State of South Carolina, the Secretary of State denies the Certification of authenticated affidavits and other documents in an attempt to keep the creation of legally binding evidence from being recorded and maintained by the courts. This is a gross violation of due process rights and the suppression of evidence.

We need a record of what has been filed so that we can register the evidence into the public record. We have to show that we are the only one who has actually introduced **FACTS** into the case *and move for Summary Judgment upon the Facts... while reminding the "Judge"* that the **ONLY** thing he is to consider are the **FACTS** of the case **ON THE RECORD**, that the opposing *"counsel"* has only been *"enlightening"* to the Court, but not sufficient to rise to the level of **FACT.**

VIOLATION OF THE 5th AMENDMENT BY THE STATE OF SOUTH CAROLINA AT THE SECRETARY LEVEL

Suppression of evidence is a term used in the United States legal system to describe the lawful or unlawful act of preventing **evidence** from being shown in a trial. This could happen for several reasons. ... In the latter case, this would be a **violation** of the 5th amendment to the United States **Constitution**.

This applies both with Federal Rules of Evidence and State Rules of Evidence.... there must be a competent first hand witness (a body). There has to be a real person making the complaint and bringing evidence before the court. Corporations are paper and can't testify.

"Manifestly, [such statements] cannot be properly considered by us in the disposition of [a] case." ***United States v. Lovasco*** *(06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752,*

"Under no possible view, however, of the findings we are considering can they be held to constitute a compliance with the statute, since they merely embody conflicting statements of counsel concerning the facts as they suppose them to be and their appreciation of the law which they deem applicable, there being, therefore, no attempt whatever to state the ultimate facts by a consideration of which we would be able to conclude whether or not the judgment was warranted." ***Gonzales v. Buist****. (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463.*

There was no jury, so the judge decided what to consider or regard only the evidence admitted by the bank counsel, not statements of counsel*", see:* ***Holt v. United States****, (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2,*

"The prosecutor or legal council is not a witness; and he should not be permitted to add to the record either by subtle or gross improprieties. Those who have experienced the full thrust of the power of government when leveled against them know that the only protection the citizen has is in the requirement for a fair trial." ***Donnelly v. Dechristoforo****, 1974.SCT.41709 ¶ 56; 416 U.S. 637 (1974)* Mr. Justice Douglas, dissenting.

"Care has been taken, however, in summoning witnesses to testify, to call no man whose character or whose word could be successfully impeached by any methods known to the law. And it is remarkable, we submit, that in a case of this magnitude, with every means and resource at their command, the complainants, after years of effort and search in near and in the most remote paths, and in every collateral by-way, now rest the charges of conspiracy and of gullibility against these witnesses, only upon the bare statements of counsel. The lives of all the witnesses are clean, their characters for truth and veracity un-assailed, and the evidence of any attempt to influence the memory or the impressions of any man called, cannot be successfully pointed out in this record."

Telephone Cases. ***Dolbear v. American Bell Telephone Company, Molecular Telephone Company v. American Bell Telephone Company. American Bell Telephone Company v.. Molecular Telephone Company, Clay Commercial Telephone Company v. American Bell Telephone Company, People's Telephone Company v. American Bell Telephone Company, Overland Telephone Company v. American Bell Telephone Company,.*** *(PART TWO OF THREE) (03/19/88) 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778.*

"Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment," ***Trinsey v. Pagliaro****, D. C. Pa. 1964, 229 F. Supp. 647.*

"Factual statements or documents appearing only in briefs shall not be deemed to be a part of the record in the case, unless specifically permitted by the Court" – Oklahoma Court Rules and Procedure, Federal local rule 7.1(h).

Trinsey v Pagliaro*, D.C.Pa. 1964, 229 F.Supp. 647. "Statements of counsel in brief or in argument are not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment."* Pro Per and pro se litigants should therefore always remember that the majority of the

time, the motion to dismiss a case is only argued by the opposing attorney, who is not allowed to testify on the facts of the case, the motion to dismiss is never argued by the real party in interest.

"Where there are no depositions, admissions, or affidavits the court has no facts to rely on for a summary determination." ***Trinsey v. Pagliaro,*** *D.C. Pa. 1964, 229 F. Supp. 647.*

Frunzar v. Allied Property and Casualty Ins. Co., (Iowa *1996)† 548 N.W.2d 880* Professional statements of litigants attorney are treated as affidavits, and attorney making statements may be cross-examined regarding substance of statement. [And, how many of those Ass-Holes have "first hand knowledge"? **NONE!!!**]

Porter v. Porter, *(N.D. 1979) 274 N.W.2d 235 ñ The practice of an attorney* filing an affidavit on behalf of his client asserting the status of that client is not approved, inasmuch as not only does the affidavit become hearsay, but it places the attorney in a position of witness thus compromising his role as *advocate.*

Deyo v. Detroit Creamery Co *(Mich 1932) 241 N.W.2d 244* Statutes forbidding administering of oath by attorney's in cases in which they may be engaged applies to affidavits as well

LEGAL ERROR

Violation of Truth and Lending *Case Law, and Regulation Z*

Truth in Lending Act was passed to prevent unsophisticated consumer from being misled as to total cost of financing. Truth in Lending Act, Section 102, 15 U.S.C. Section 1601. ***Griggs v. Provident Consumer Discount.*** 680 F.2d 927, certiorari granted, vacated 103 S.Ct. 400, 459 U.S. 56, 74 L.Ed.2d 225, on remand 699 F.2d 642.

Purpose of Truth in Lending Act is for customers to be able to make informed decisions. Truth in Lending Act Section 102, 15 U.S.C. Section 1601. ***Griggs v. Provident Consumer Discount Co.*** *680 F.2d 927*, certiorari granted, vacated 103 S.Ct. 400, 459 U.S. 56, 74 L. Ed, 2d 225, on remand 699 F, 2d 642,

Truth in Lending Act is strictly a liability statute liberally construed in favor of consumers. Truth in Lending Act Section 102 et seq., 15 U.S.C. Section 1601 et seq. ***Brophv v. Chase Manhattan Mortgage Co,*** *947 F.Supp. 879.*

Truth in Lending Act should be construed liberally to ensure achievement of goal of aiding unsophisticated consumers so that consumers are not easily misled as to total costs of financing. Truth in Lending Act, Sections 102 et seq, 102(a), 105 as amended, I5 U.S.C. Sections 1601 et seq., 1601(a), 1604; Truth in Lending Regulations, Regulation Z, Sections 226.1 et seq., 226.18,

15 U.S.C. Section 1700, ***Basile v. H&R Block.*** *Jlt(L. 897 F.Supp. 194.*

Truth in Lending Act must be strictly construed and liability imposed for any violation, no matter how technical. Truth in Lending Act Section 102 et seq., as amended, 15 U.S.C. Section 1601 et seq, ***Abele v. Mid-Penn Consumer Discount.*** *77 B.R. 460*, affirmed S45 F.2d 1009.

Truth in Lending Act must be liberally construed to effectuate remedial purposes of protecting consumer against inaccurate and unfair credit billing and credit card practices and of promoting intelligent comparison shopping by consumers contemplating the use of credit by full disclosure of terms and conditions of credit card charges, **Truth in Lending Act** Section 102 et seq, as amended, 15 U.S.C. Section 1601 et seq ***Lifschitz v. American Exp. Co.*** *560 F.Supp. 458.*

To qualify for protection of Truth in Lending Act [15 U.S.C. Section 1601 et seq.], **Defendant-Respondent-Petitioners,** must show that disputed transaction was a consumer credit transaction not a business transaction, Truth b Lending Act, Section 102 et seq., 15 U.S.C. Section 1601 et seq. ***Quino v. A-I CreditCom.*** *635 F.Supp. 151*

Requirements of Truth in Lending Act are highly technical, but full compliance is required; even minor violations of Act cannot be ignored, Truth in Lending Act, Section 102 et seq. as amended, 15 U.S.C. Section 1601 et seq.; Truth in Lending Act Regulations, Regulation Z Section 226.1 et seq., 15 U.S.C. foil. Section 1700. ***Griggs v. Providence Consumer Discount Co.*** *503 F.Supp. 246*, appeal dismissed 672 F2d 903, appeal after remand 680 F.2d 927, certiorari granted, vacated 103 S.Ct, 400, 459 U.S. 56, 74 L.Ed.2d 225, on remand 699 F,2d 642.

A valid rescission of a "*credit sale*" contract does not render inoperative the disclosure requirements of the Truth in Lending Act, as creditor's obligations to make specific disclosures arises prior to consummation of transaction. Truth in Lending Act Section 102 et seq., 15 U.S.C. Section 1601 et seq.; Truth in Lending Regulations, Regulation Z, Sections 226.2(c)

226.8(a), 15 U.S.C., following section 1700. O'Neil c^ 484 F.Supp. 18.

Under truth in lending regulation providing that disclosure of consumer credit loan shall not be *"stated, utilized or placed so as to mislead or confuse"* consumer, placement of disclosures is to be considered along with their statement and use. Truth in Lending Regulations, Regulation Z, Section 226.6(c), 15 U.S.C. following section 1700 . ***Geimuso v. Commercial Bank & Trust Co. 566 F.2d 437.***

Any violation of the Truth in Lending Act, regardless of technical nature, must result in finding of liability against lender. Truth in Lending Regulations, Regulation Z Section 226.1 et seq., 15 U.S.C. Section 1700; Truth in Lending Act Section 130 (a, e), IS U.S.C. Section 1640 (a, e). In Re Steinbrecher. 110 BR. 155, 116 A.L.R. Fed. 881.

Question of whether lender's Truth in Lending Act disclosures are inaccurate, misleading or confusing ordinarily will be for fact finder; however, where confusing, misleading and inaccurate character of disputed disclosure is so clear that it cannot reasonably be disputed, summary judgment for injured party is appropriate. Truth in Lending Act Section 102 et seq; Truth in Lending Regulations, Regulation Z, Section 226.1 et seq., 15 U.S.C. Section 1700. ***Griggs v. Provident Consumer Discount Co. 503 F, Supp 246,*** appeal dismissed 672 F.2d 903, appeal after remand 680 F.2d 927, certiorari granted, vacated 103 S.Ct, 400, 459 U.S. 56, 74 L.Ed.2d 225, on remand 699 E2d 642.

Pursuant to regulations promulgated under **Truth in Lending Act,** violator of disclosure requirements is held to standard of strict liability, and therefore, borrower need not show that creditor in fact deceived biro by making substandard disclosures. Truth in Lending Act, Sections 102-186, as amended, 15 U.S.C. Section 1601-1667(e); Truth in Lending Regulations, Regulation Z, Section 226,8(b-d), 15 U.S.C. Section ***1700 Soils v. Fidelity Consumer Discount Co., 58 B.R. 983,***

Once an alleged creditor violates the Truth in Lending Act, no matter how

technical violation appears, unless one of statutory defenses applies, Court has no discretion in imposing liability. Truth in Lending Act, Sections 102-186 as amended, 15 U.S.C. Section 1601-1667e. ***Solis v. Fidelity Consumer Discount Co.*** *58 BR, 983.*

Under the facts at hand the Bank has patently violated the Truth in Lending Act, At all relevant times the Bank misled and attempted to confuse Defendant. The Bank did not provide appropriate disclosure as required by the **Truth in Lending Act** in a substantive and technical manner.

"It is not necessary for recession of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." ***Whipp v. Iverson****, 43 Wis 2d 166.*

"If any part of the consideration for a promise be illegal, or if there are several considerations for an un-severable promise one of which is illegal, the promise, whether written or oral, is wholly ***VOID****, as it is impossible to say what part or which one of the considerations induced the promise."* ***Menominee River Co. v. Augustus Spies L & C Co.****, 147 Wis 559, 572; 132 NW 1122*

"*When an instrument [note] lacks an unconditional promise to pay a sum certain at a fixed and determined time, it is only an acknowledgement of the debt and statutory presumptions like* the presence of a valuable consideration, are not applicable."

Bader vs. Williams*, 61 A 2d 637"Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes* ***'FRAUD,'*** *and entitles party deceived to avoid contract or recover damages."* ***Barnsdall Refining Corn. v. Birnam wood Oil Co.****, 92 F 2d 817.*

"In the federal courts, it is well established that a ***national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him."*** ***Farmers and Miners Bank v. Bluefield Nat 'l Bank,*** *11 F 2d 83, 271 U.S. 669.*

*"****A national bank has no power to lend its credit*** *to any person or corporation."* ***Bowen v. Needles Nat. Bank,*** *94 F 925, 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637.*

"Mr. Justice Marshall said: The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often. ***Zinc Carbonate Co. v. First National Bank,*** *103 Wis 125, 79 NW 229."* ***American Express Co. v. Citizens State Bank,*** *194 NW 430.*

"It has been settled beyond controversy that a national bank, under federal law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires" ***Howard & Foster Co. v. Citizens Nat'l Bank of Union,*** *133 SC 202, 130 SE 759(1926).*

"It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." ***Federal Intermediate Credit Bank v. L 'Herrison,*** *33 F 2d 841, 842 (1929).*

"A bank can lend its money, but not its credit." ***First Nat 'I Bank of Tallapoosa v. Monroe,*** *135 Ga 614, 69 SE 1124, 32 LRA (NS) 550.*

". . . the bank is allowed to lend money upon personal security; but it must be money that it loans, not its credit." ***Seligman v. Charlottesville Nat. Bank, 3 Hughes*** *647, Fed Case No.12, 642, 1039.*

"The contract is void if it is only in part connected with the illegal

transaction and the promise single or entire." ***Guardian Agency v. Guardian Mutual. Savings Bank****, 227 Wis 550, 279 NW 83.*

"Banking Associations from the very nature of their business are prohibited from lending credit." ***St. Louis Savings Bank vs. Parmalee*** *95 U. S. 557*

This appeal is not limited to substantial evidence, for this would be difficult to win. . Appellants appealing on this ground face "a *daunting burden."* (***Whitely v. Philip Morris, Inc.*** (2004) 117 Cal.App.4th 635, 678.)

The legal error here is the belief by the judge that does not conform to objective reality that banks cannot lend. In other words, it is a belief that what is false, *"which is that banks can lend"* **or** the statement is drawing a false inference from evidence presented at the trial that the bank gave the **Defendant-Respondent-Petitioners** something of value. While it is believed that in legal proceedings that legal errors may or may not constitute grounds for appeal, this type of error is the whole basis of the way banks do business, that is not only true that banks lend, but it is a course of business that is considered as money laundering by concealing the source or if the initial funds or credit and claiming it for themselves. There is enough case law to support this fact. If the judge was aware of that fact, that is treason. If he did or does not banking law, then he is not qualified to set on these kinds of cases, as it is an well established fact that judges are partial to the banking institutions as a whole. These point are brought in the **Defendant-Respondent-Petitioners legal documents that are on record.**

LACK OF SUBSTANTIAL EVIDENCE
On Part of the Plaintiff

The presentation of an **AFFIDAVIT OF VERIFIED STATEMENT OF ACCOUNT** submitted by a **Cynthia May** from **SELECT PORTFOLIO SEVERCING INC.**, is accepted as a statement of fact, but those facts do not support there presumption that there was value of substance given to the **Defendant -Appellant -Petitioner** to acquire the property.

Select Portfolio Servicing, Inc., was not mentioned in the initial proceeding, and it is not clear when they became involved. Acting as a third party debt collector, they are bound to the Fair Debt Collection Practices Act, having only third party status and possessing no first hand knowledge. **Cynthia May** has access to only one side of the accounting leger, and she can only function in the capacity of 50% of the knowledge required to present the full accounting according to GAAP accounting principles. They are required to conform to the demand for a *"Qualified Written Request"*.

Most institutional lenders, trusts and large financial institutions that loan money to borrowers or acquire distressed loans use loan servicers to service their loans after the loans are originated or otherwise assigned to them. Loan servicing is the process by which a lender uses a third party to, among other things, collect principal, interest and escrow payments from the borrower in connection with a loan.

Following a default on a loan, a lender will often rely upon its loan servicer to oversee the process of foreclosing on the mortgage securing the loan. In such instances, the foreclosure lawsuit will often be brought in the name of the lender holding the promissory note and the mortgage, but affidavits that need to be submitted to the court in order to prove the lender's standing or the borrower's default, among other issues, are submitted by a representative of the loan servicer that is involved in servicing the loan.

Until recently, this process by which the loan servicer oversees and manages the foreclosure litigation on behalf of a lender holding the defaulted note and mortgage that is the named plaintiff was not the subject of much controversy. Indeed, there are literally thousands of cases currently pending in New York State where a loan servicer, acting on behalf of the lender that is the named plaintiff that commenced the foreclosure action, submits affidavits and documents to the court in order to prove that the lender should be awarded a judgment of foreclosure and sale.

A number of recent decisions of the Appellate Division, Second Department, however, may cause lenders to re-think the arrangement by which a loan

servicer that is not a party to the foreclosure action acts on behalf of a lender in overseeing and managing mortgage foreclosure litigation. Indeed, the court has held that documents and information attached to an affidavit of a representative of a loan servicer are inadmissible unless the loan servicer's representative can attest to being familiar with the record-keeping practices and procedures of the lender (i.e., the plaintiff in the foreclosure action).

The statutory foundation for the recent Second Department decisions, of course, is the business records exception to the hearsay rule, which is embodied in CPLR 4518(a). CPLR 4518(a) states that *"[a]ny writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter."*

'Royal' and Other Cases

The Appellate Division, Second Department's most recent pronouncement concerning the business records exception to the hearsay rule in the context of mortgage foreclosure litigation can be found in ***HSBC Mortgage Services v. Royal,*** *— A.D.3d —, 37 N.Y.S.3d 321 (2d Dept. Sept. 14, 2016).* The facts of Royal are similar to the facts underlying literally thousands of foreclosure actions pending in New York State, thereby suggesting that the decision could have a wide-ranging impact on mortgage foreclosure litigation currently pending in New York State.

In Royal, the plaintiff-lender commenced a foreclosure action on the basis of an alleged default by the borrower under a promissory note and mortgage. In support of its motion for summary judgment, the lender submitted the affidavit of a representative of *"the loan servicer for the plaintiff's successor in interest."* The representative of the lender's loan servicer averred in his affidavit "that his knowledge of the relevant facts was based on his 'examination of the financial books and business records made in the

ordinary course of business maintained by or on behalf of the successor in interest to the **Plaintiff,**' and that he was 'familiar with the record keeping systems that [the] successor in interest to the **Plaintiff** and/or its loan servicer use[d] to record and create information related to the residential mortgage loans that it services.'" On the basis of the information and documents submitted through the loan servicer's affidavit, the Supreme Court granted the lender's motion for summary judgment.

REVERSED ON APPEAL

Third Party Witness Challenge

On appeal, the Second Department reversed. The court concluded in Royal that *"[t]he plaintiff failed to demonstrate the admissibility of the records relied upon by"* the representative of the loan servicer *"under the business records exception to the hearsay rule..., and, thus, failed to establish the appellant's default in payment under the note."* Specifically, the Second Department concluded that because the representative of the loan servicer "did not allege that he was personally familiar with the plaintiff's record keeping practices and procedures," he *"failed to lay a proper foundation for the admission of records concerning the appellant's payment history...and his assertions based on these records were inadmissible."*

The Second Department concluded in Royal, therefore, that "[i]nasmuch as the **plaintiff's** motion was based on evidence that was not in admissible form, the plaintiff failed to establish its prima facie entitlement to judgment as a matter of law" and held that the lender's motion *"should have been denied...regardless of the sufficiency of the appellant's opposition papers."*

Of course, Royal—standing alone—would be a significant decision for mortgage foreclosure practitioners. However, Royal is not a stand-alone decision, and the Second Department has articulated principles very similar to those underlying the Royal decision in a number of other recent mortgage foreclosure cases.

For instance, in ***Deutsche Bank National Trust Company v. Brewton, 142 A.D.3d 683, 37 N.Y.S.3d 25(2d Dept. 2016),*** the Second Department held

that the lender *"failed to demonstrate that the records relied upon by"* the representative of the lender's loan servicer *"were admissible under the business records exception to the hearsay rule (see CPLR 4518(a)) because"* the representative of the lender's loan servicer *"did not attest that she was personally familiar with the plaintiff's record-keeping practices and procedures."* Similarly, in ***U.S. Bank National Association v. Handler***, *140 A.D.3d 948, 34 N.Y.S.3d 463 (2d Dept. 2016),* the Appellate Division, Second Department held that an affidavit from the vice-president of the lender's servicing agent *"who did not attest that he was personally familiar with the* ***Plaintiff's*** *record keeping practices with respect to the note...failed to establish, prima facie, that the plaintiff had physical possession of the note prior to the commencement of the action."*

Finally, in Citibank v. Cabrera, *130 A.D.3d 861, 14 N.Y.S.3d 420 (2d Dept. 2015),* the Second Department expressly held that where the lender's affiant *"who was employed by the Plaintiff's loan servicer, did not allege that she was personally familiar with the Plaintiff's record keeping practices and procedures," the representative of the lender's loan servicer* "did not lay a proper foundation for the admission of the Defendant's payment history." As the Cabrera court stated: *"[a] proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures."*

Thus, decisions such as Royal, Brewton, Handler and Cabrera, stand for the proposition that where the lender is the named plaintiff in a mortgage foreclosure action, the lender can rely on the affidavit of its loan servicer to get documents admitted into evidence under the business records exception to the hearsay rule only if the loan servicer's representative can attest that it is familiar with the lender's (and not the loan servicer's) record-keeping practices and procedures. This would seem to be a somewhat difficult burden to satisfy for loan servicers, since loan servicers are often third-party entities that are separate and distinct from the lenders that are the named plaintiffs in mortgage foreclosure cases.

On appeal, the Second Department reversed. The court concluded in Royal that *"[t]he plaintiff failed to demonstrate the admissibility of the records relied upon by" the representative of the loan servicer "under the business records exception to the hearsay rule..., and, thus,* ***failed to establish the Appellant's default*** *in payment under the note."* Specifically, the Second Department concluded that because the representative of the loan servicer *"did not allege that he was personally familiar with the* ***Plaintiff's*** *record keeping practices and procedures,"* he ***"failed to lay a proper foundation for the admission of records concerning the appellant's payment*** *history...and his assertions based on these records were inadmissible."*

The Second Department concluded in Royal, therefore, that *"[i]nasmuch as the plaintiff's motion was based on evidence that was not in admissible form, the plaintiff failed to establish its prima facie entitlement to judgment as a matter of law"* and held that the lender's motion *"should have been denied...regardless of the sufficiency of the appellant's opposition papers."*

Of course, Royal—standing alone—would be a significant decision for mortgage foreclosure practitioners. However, Royal is not a stand-alone decision, and the Second Department has articulated principles very similar to those underlying the Royal decision in a number of other recent mortgage foreclosure cases.

For instance, in ***Deutsche Bank National Trust Company v. Brewton****, 142 A.D.3d 683, 37 N.Y.S.3d 25(2d Dept. 2016),* the Second Department held that the lender *"failed to demonstrate that the records relied upon by"* the representative of the lender's loan servicer *"were admissible under the business records exception to the hearsay rule (see CPLR 4518(a)) because"* the representative of the lender's loan servicer *"did not attest that she was personally familiar with the plaintiff's record-keeping practices and procedures."* Similarly, in ***U.S. Bank National Association v. Handler****, 140 A.D.3d 948, 34 N.Y.S.3d 463 (2d Dept. 2016)*, the Appellate Division, Second Department held that an affidavit from the vice-president of the lender's servicing agent "who did not attest that he was personally familiar with the plaintiff's record keeping practices with respect to the note...failed

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Thus, decisions such as Royal, Brewton, Handler and Cabrera, stand for the proposition that where the lender is the named plaintiff in a mortgage foreclosure action, the lender can rely on the affidavit of its loan servicer to get documents admitted into evidence under the business records exception to the hearsay rule only if the loan servicer's representative can attest that it is familiar with the lender's (and not the loan servicer's) record-keeping practices and procedures. This would seem to be a somewhat difficult burden to satisfy for loan servicers, since loan servicers are often third-party entities that are separate and distinct from the lenders that are the named plaintiffs in mortgage foreclosure cases.

Meeting New Requirements

Lenders will need to find ways in which to meet the new requirements imposed in order to satisfy the business records exception to the hearsay rule announced in decisions such as Royal. For instance, lenders may seek to avoid altogether obtaining affidavits from third-party loan servicers, and instead use representatives of the lender, who can attest to their familiarity with the lender's record-keeping practices and procedures, in order to submit affidavits and documents to the court.

Alternatively, if lenders continue to insist, even after Royal and the other decisions of the Second Department discussed above, to use affidavits from

third-party loan servicers in mortgage foreclosure litigation, then the best practice will be to have loan servicers (as opposed to lenders) be the party to act as the plaintiff in the foreclosure litigation. So long as the loan servicer is authorized to do so by the lender, courts have found that loan servicers have standing to present claims for foreclosure and sale on behalf of the lender that owns and holds the note and mortgage at the time of the commencement of the action. See, e.g., ***Flushing Preferred Funding Corp. v. Patricola Realty Corp.***, *964 N.Y.S.2d 58 (Sup. Ct. Suffolk Co. 2012).*

Regardless of what steps lenders and loan servicers take going forward to respond to Royal and similar Appellate Division, Second Department, decisions discussed above, it is likely that Royal is going to be cited by borrowers in already pending foreclosure cases where the requirements imposed by Royal may not otherwise be satisfied. It remains to be seen whether Royal and other Second Department authority discussed above will cause further delay in processing the already substantial backlog of mortgage foreclosure cases pending in New York State.

SUBSTANTIAL EVIDENCE

There are mounds of substantial evidence to support the fact that this case should have dismissed long ago if the Judge followed sound judicial procedure and due process of law.

Definition: Substantial evidence means *"more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."* ***Richardson v. Perales****, 402 U.S. 389, 401 (1971).* [w]here there is such relevant evidence as reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence.

Landes v. Royal, *833 F.2d 1365, 1371 (9th Cir. 1987).'Substantial'* evidence is not synonymous with *'any'* evidence. To constitute sufficient substantiality to support the verdict, the evidence must be 'reasonable in nature, credible, and of solid value; it must actually be *"substantial"* proof of the essentials which the law requires in a particular case.' (Estate of Teed (1952) 112

Cal.App.2d 638, 644; [citations].)" ***(Kruse v. Bank of America** (1988) 202 Cal.App.3d 38, 51-52.)* *"It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "*

(***Edison Co. v. Labor Board** (1938) 305 U.S. 197, 229 [83 L.Ed. 126, 140, 59 S.Ct. 206].)* *"'Improbable conclusions drawn in favor of a party litigant through the sanction of a jury's verdict will not be sustained where testimony is at variance with physical facts and repugnance is material and self evident.'"* (Estate of Teed (1952) 112 Cal.App.2d 638, 644, quoting from an Arkansas case.)

*"While substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' ; inferences that are the result of mere speculation or conjecture cannot support a finding ." (**Kuhn v. Department of General Services** (1994) 22 Cal.App.4th 1627, 1633.)*

EXHIBIT A

In Exhibit **A** The **Defendant-Respondent-Petitioners filed "DEFENDANTS OBJECTION TO NOTICE OF MOTION HEARING FOR FAILURE OF SUMMARY JUDGMENT, FORFAILURE TO PROSECUTE PURSUANT TO RULE 41.02 AND INVOLUNTARY DISMISSAL FOR FAILURE TO PROSECUTE WITH PREJUDICE"** that included a **MEMORANDUM OF LAW nature and cause of a** dismissal for a failure to prosecute or award Summary Judgment to an opposing party who fails to provide substantial evidence to receive such award. The judge did not recognize any documents that were submitted at the hearing before he awarded the case to the bank, all the while knowing that banks do not lend and that the bank is not the proper party.

EXHIBIT B

In The **Defendant-Respondent-Petitioners** filed an, **AFFIDAVIT OF ORIGINAL ISSUER A ND ILLEGALITY,** to first exercise provide first hand knowledge of the fact that the Grantor as the right and authority to Revoke The power of Attorney of the Trustee if it is found that the **WAIVER OF BORROWER'S RIGHT** is not substantiated by the fact that the bank extended credit funds to secure the purchase transaction of the property. The power of the Trustee to foreclose is **NULL** and **VOID** if the fact is established that no such transaction took place. The offering bank witnessed a transaction, but were a party to it. The bank did gain an underserved beneficiary position in a trust that was established after the parties were approved for an alleged loan. The affidavit went on to explain and to provide in great detail the status of the parties and every aspect of the transaction proving the failure of the bank to provide any evidence that something of value was transferred from the bank to the buyer.

The failed to accept this document as evidence for review with the parties, nor did the court demand a point-by-point rebuttal of the facts found within this affidavit. From items 1 to 154, the bank was not required by the court to address these facts. It is for this reason this appeal exist. It includes United Stated Banking laws and regulations, and financial regulations governing securities and financial instruments under the Universal Commercial Code.

EXHIBIT C

In, The **Defendant-Respondent-Petitioners, MEMORANDUM OF LAW** providing legal gravity for revoking the deed of trust that is only good if it support the note. The note was not and is never available to show as evidence; therefore the Deed of Trust is **NULL** and **VOID.** Main points.

1. Plaintiffs are not the proper party pursuant to Title IV. Parties, Rule 19, Required Joiner of Parties.

2. There is a problem of a Deed of Trust foreclosure without entitlement to enforce the note that does not exist because it has been securitized.
3. Defendants exercised their power to revoke the deed of trust for failure to deliver and execute by the beneficiary.

4. Plaintiff's getting past Defendant's Defendants Affidavit of Original Issue and Illegality that requires addressing.

5. Corrected and Perfected Warranty Deed filed in the Richland County Recorder of Deeds.

EXHIBIT D

In Exhibit **D** The **Defendant-Respondent-Petitioners, RISK OF LENDER'S LIBILITY AND LOSS OF IMMUNITY** was submitted to the bank as an offer of the initial *'Waiver of Borrower's Right'* as conditional acceptance to gain the power to reveal the fraud and that document that provide the authority for the bank trustee to foreclose. Once it is established again, that a loan did not taker place that document is **NULL** and **VOID.**

GRANTOR'S RIGHT TO REVOKE SECURITY DEED
Why a Deed Of Trust Can Be Revoked At Any time

Under lawful powers of the Trustor (Grantor) of a modern statutory Deed of Trust, can revoke it on the grounds due to lack of execution and delivery acknowledging by the beneficiary or his agent. The beneficiary shall acknowledge delivery of deed of trust and until then the TRUSTOR has the power to revoke. It can be revoked at anytime.

Therefore, all rents, issues, profits, and right and title that are the beneficial interest of this deed of trust can to be immediately reverted absolutely to the **Defendant-Respondent-Petitioners** in the name of their landed estate. They can further declare the Trustee(s) of said deed free and discharged from any further responsibility of the administration and management of said trust and the principal thereof.

It can be their wish to revoke said deed of trust is now a matter of public record as their freewill act and deed, witnessed under their hand and seal and lawfully acknowledged and attested too with full faith and credit guaranteed by Article IV section 1 of the united states of America Constitution, but not in the State of South Carolina, and that is a problem.

Defendant-Respondent-Petitioners have the right to revoke their Deed of Trust and appoint new trustees at time after closing. It is the writing that evidences the agreement to allow the lender a security interest in your property.

This is insurance for the lender, in a sense; **Defendant-Respondent-Petitioners** have already signed a promissory note stating that will pay X amount to the lender. All of the other things they pledge in the deed of Trust are icing on the cake. Revoking the promise to perform all of those things mentioned in the deed of trust results in NO actual loss; it simply makes it less likely that the lender will have to shell out any cash or that the value of the property will decrease. You agreed to pay them X amount, and you are paying X amount in installments plus interest. That is the fair value– not X amount plus interest plus all the value included in paying the insurance, maintaining the house and property, etc. That added value should belong to you as the owner.

Even after **Defendant-Respondent-Petitioners** sign the deed of trust, they **STILL** hold legal title to the property. The Deed of Trust really only vests the power of sale in the *"trustee"*; any Trustee, and only upon **Defendant-Respondent-Petitioners** default. Thus, it is a *"contingent interest"*. It is not certain to ever vest in the beneficiary, but the **Defendant-Respondent-Petitioners** freedom of ownership is limited by that Deed of Trust. As long as it is in effect, **Defendant-Respondent-Petitioners** have agreed that the trustee will have power of sale if they fall behind on their payments and that the Power of Sale, once vested in the trustee, is irrevocable.

However... it is not yet vested. That power is merely a future possibility. Until that time, the Deed of Trust has not truly taken effect; the Power of Sale still remains with the **Defendant-Respondent-Petitioners** so that contingent interest, to be given to whom ever is the trustee at the time, has not yet become real.

See:

"Chapter 39; Conveyances.

Article 1.

Construction and Sufficiency.

§ 39-6. Revocation of deeds of future interests made to persons not in esse.

The grantor in any voluntary conveyance in which some future interest in real estate is conveyed or limited to a person not in esse may, at any time before he comes into being, revoke by deed such interest so conveyed or limited. This deed of revocation shall be registered as other deeds; and the grantor of like interest for a valuable consideration may, with the joinder of the person from whom the consideration moved, revoke said interest in like manner. The grantor, maker or trustor who has heretofore created or may hereafter create a voluntary trust estate in real or personal property for the use and benefit of himself or of any other person or persons in esse with a future contingent interest to some person or persons not in esse or not determined until the happening of a future event may at any time, prior to the happening of the contingency vesting the future estates, revoke the grant of the interest to such person or persons not in esse or not determined by a proper instrument to that effect; and the grantor of like interest for a valuable consideration may, with the joinder of the person from whom the consideration moved, revoke said interest in like manner: Provided, that in the event the instrument creating such estate has been recorded, then the deed of revocation of such estate shall be likewise recorded before it becomes effective: Provided, further, that this section shall not apply to any

instrument hereafter executed creating such a future contingent interest when said instrument shall expressly state in effect that the grantor, maker, or trustor may not revoke such interest: Provided, further, that this section shall not apply to any instrument heretofore executed whether or not such instrument contains express provisions that it is irrevocable unless the grantor, maker, or trustor shall within six months after the effective date of this proviso either revoke such future interest, or file with the trustee an instrument stating or declaring that it is his intention to retain the power to revoke under this section: Provided, further, that in the event the instrument creating such estate has been recorded, then the revocation or declaration shall likewise be recorded before it becomes effective." "§ 39-6.1. Validation of deeds of revocation of conveyances of future interests to persons not in esse.

All deeds or instruments heretofore executed, revoking any conveyance of future interest made to persons not in esse, are hereby validated insofar as any such deed of revocation may be in conflict with the provisions of G.S. 39-6.

All such deeds of revocation heretofore executed are hereby validated and no such deed of revocation shall be held to be invalid by reason of not having been executed within the six-month period prescribed in the third proviso of G.S. 39-6. (1947, c. 62.)"

That term *"not in esse"* really threw me at first. It sounds very much like it refers to someone not yet born. Perhaps it simply means that a legal fiction does not really exist. However, they clarify in due course when they say "...to some person or persons not in esse or not determined until the happening of a future event may at any time, prior to the happening of the contingency vesting the future estates, revoke the grant of the interest to such person or persons not in esse or not determined by a proper instrument to that effect;...". The trustee is undoubtedly that person... and upon the issuance of the original deed of trust, you had no idea who might be the trustee in place if you defaulted years later. "Prior to the happening of the contingency vesting the future estates" means before default. As long as the deed of trust is not in full effect, at can be revoked.

Now, they hit us with a slew of mumbo-jumbo. This section deals with whether the deed is irrevocable.

"All such deeds of revocation heretofore executed are hereby validated and no such deed of revocation shall be held to be invalid by reason of not having been executed within the six-month period prescribed in the third proviso of G.S. 39-6."

Defendant-Respondent-Petitioners deed of revocation is valid regardless of when you issued it.

Essentially, the last part of § 39-6 says

"This right of revocation does not apply if the deed states that it is irrevocable; unless the Grantor says he wants to retain the right of revocation; either way, it has to be done within 6 months of this law being passed. Okay, scratch that...

"§ 39-6.1. Validation of deeds of revocation of conveyances of future interests to persons not in esse.

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So, there is no time limit on revoking the deed of trust. If you have a right, it doesn't disappear after 6 months. So that's great– we can sign our rights away, but it is just as easy to get them back. But why do they recognize the deed of trust with power of sale as harming our rights?

A deed of trust that could not be avoided would be a *perpetuity*.

"PERPETUITY "

A future limitation, whether executory or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of or will not necessarily vest within the period fixed and prescribed by law for the creation of future estates and interests, and which **is not destructible by the persons for the time being entitled to the property subject to the future limitation**, except with the concur- rence of the individual interested under that limitation. Lewis, Perp. 104; 52 Law Lib. 139. Any limitation tending to take the subject of it out of commerce for a longer period than a life or lives in being, and twenty-one years beyond, and, in case of a posthumous child, a few months more, allowing for the term of gestation. Rand. Perp. 48. *"Such a limitation of property as renders it unalienable beyond the period allowed by law."*
...And?

"NORTH CAROLINA STATE CONSTITUTION
ARTICLE I

DECLARATION OF RIGHTS

Sec. 34. Perpetuities and monopolies.

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

EVIDENCE OF SECURITIZATION

Historical Facts and More Substantial Evidence

When you sign a mortgage note it comes under UCC Article 3. After securitization, it comes under Article 8. Under US law securitization is illegal because it is fraudulent. Instruments such as loans, credit cards and receivables, are securitized. Enron was involved in securitization and

someone brought charges against them. But almost all large corporations are doing it as usual business. However, the banking system and the government are also doing it.

It is all accounting, whether it is banking, civil or criminal court. I submitted the FASB regulations –FAS125 securitization accounting, FAS140 Offsetting of financial assets and liabilities, FAS133 derivatives on hedge

accounts, FAS5, FAS95. These are the resource materials for understanding this process. The note is not under a negotiable instrument any more, it is a security. All the banks follow these standards. They set up GAAP, generally accepted accounting principles. The banks are mandated by Title 12 USC to follow GAAP and GAAS. They have a local FASB and an international IFASB. They also cover derivatives. FAS 140 relates to UCC 3-305, 306. If you want to instruct them on how to do offsets, you have to refer them to FAS 133. If you don't know the accounting regulations, you can't give them the proper instructions for settling and closing. What you really want is recoupment.

Recoupment – (1) The recovery or regaining of expenses Applying the setoff so you can get back what you gave and what you are entitled to. (2) The withholding for the equitable part or all of something that is due. This is Under the constitution, the government was not given authority to create money. It is a power reserved by the people. Article I, section 10 restricted the states from making gold coins. So the corporate government has to rely on the deception of people to create money. So the way money is created is to have people sign an IOU, or promissory note. It is not a debt instrument to the one who created it; it is actually an asset. The creator can pass it on for someone else to use. It is negotiable unless it includes terms and conditions as part of a contract. The property belongs to the creator, and the holder is merely using it and any proceeds that come from it should be restored to the creator in all equitable action in admiralty style instruments.

We are looking for recoupment. Once we, the creator of the promissory note have signed it and others are using it, recoupment means we want our property back or have the account set off. Recoupment in practice is a

counterclaim in a civil procedure. That is how one does a recoupment. We did a counterclaim on the grounds that; with the county, you can do a setoff. You can use the financial liability of the accounting ledger to offset the financial asset if you have the right to do that. But you have the right to do that if you are the creditor on the liability side and the bank or lending institution is the debtor on the liability side.

There is a duality here. The bank is the creditor on the receivable side or their asset side that is the receivable. You are the creditor on the liability side or the accounts payable. You can use your accounts payable as an offset or counterclaim to the financial asset side that is the receivable. The bank or the court is using the receivable side of the accounting ledger. That is what they are charging you with. On the receivable side, you have to pay the debt, because that is where the charge is coming from since they are claiming to be the creditor like a bank collecting the mortgage. The mortgage side of the bank ledger is the banks asset and their receivable. But on the liability side, because they sold our gold…

A HELOC is different than warehouse lending. I got this from their mortgage department. They take the proceeds from the promissory note and pay off the warehouse lender. So the debt on the real estate is extinguished from the books (is that why they call it closing). They are required to file an FR 2046. This is a balance sheet. Under 12 USC 248 and 347 they are required to file a balance sheet. They are required on a quarterly or weekly basis. They file these balance sheets with the Federal Reserve Board. I talked to the head of the FRB. They file a balance sheet with the board. The balance sheet shows the assets and liabilities that they use in the accounting. The liabilities would be your promissory note. It is a liability because it is an asset to **Defendant-Respondent-Petitioners.**

Securitization is the process of transferring all the liabilities off the balance sheet. Banks can do this because we never or do not know to ask for them. The banks has everybody conned into believing we are debtors instead of creditors and do not know to ask for our assets. We did ask for recoupment.,

but it was ignored. So why carry the payables on the books if they have been abandoned. Why not write them off and sell them for more cash?

The government has such complicated books it is impossible to figure out what is going on.

Under Title 12 USC 1813(L)(1) when you deposit a promissory note, it becomes a cash item. It becomes the equivalent of cash because I have a cash receipt. Walker Todd, who is a former Chief of the Cleveland Federal Reserve Bank has been a government witness in court cases regarding BOE. He said that it is correct that we are the creditor on the payables side of the ledger. The bank owes us the money. No one is bringing up recoupment as a defense because they are not privy to this kind of information.

Under civil rule 13, the **Defendant-Respondent-Petitioners** failed to bring a mandatory counterclaim, which is based on the same transaction. Under the rules we have waived it because we were ignorant of the rules of procedure.

The balance sheet, a 2046, 2049, and 2099, have OMB numbers on them that are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). The bank has to give it to you if you ask for it. At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The debt is actually extinguished

NO LEGAL ENFORCEABILITY

From Mortgage Application; to Mortgage Note, to Security

Count II
The Attempt to Enforce the Mortgage Separately from the Note is Legally Unenforceable

1. **Defendant-Respondent-Petitioners** incorporates by reference all matters alleged in Count 1.
2. The securitization separates the mortgage from the note. Such a separation makes it impossible for the holder of the note to foreclose,

unless the holder of the mortgage is the agent of the holder of the note. **Defendant-Respondent-Petitioners** does not own or hold the Note and has not claimed or demonstrated Defendant represents the actual owner of the Note. The securitization improperly attempts to divide the Note from the Trust and to make the Trust a separately enforceable interest. A Trust cannot be enforced as a separate interest in the property to be foreclosed apart from and independent of the Note.

Count III
Improper Restrictions

3. **Defendant-Respondent-Petitioners** incorporates by reference all matters alleged in Count 1.
4. The Trust is a security agreement between the creditor and debtor to secure repayment of the loan by encumbering collateral for the benefit of the creditor. The security agreement may not be modified or amended by one party without the prior written consent of the other.
5. The Pooling Agreement (**Pooling Agreement**) which is the organic document creating Trust backed securities changes the terms and conditions of the Trust. The changes are made unilaterally by a transferee holder of the Trust as a successor in interest to the original mortgagee named in the Trust. This transferee holder creates the Pooling Agreement, organizes the securitization and appoints the parties to manage the securitization and control the Trust. The Pooling Agreement imposes additional rules and restrictions upon the Trust and Note. These changes as well as others are made without the consent and usually without the knowledge of the mortgagor.
6. When the parties executed the Trust, the mortgagor was neither obligated to agree to an alternate dispute resolution in the event of a default nor restricted from entering an alternate dispute resolution. When signing the Trust, the mortgagor neither knew nor had reason to know that a successor in interest to the mortgagee would subsequently impair transferability of the Trust Note or impose new rules and restrictions upon modification of the Trust. Failure to abide by the

rules and restrictions imposes liability upon the parties who organized, manage and control the securitization.

7. The Pooling Agreement creates restrictions upon modification of the promissory Note by:
   (a) Imposing the restriction needed on Trust modification to avoid double taxation and make collection of the payments by the trust and payment to the investors a single pass through taxable event instead under REMIC instead of double taxation where the trust sand the investors are each taxed for interest income earned.
   (b) Imposing restrictions upon the number of Trusts in the pool which may be modified.
   (c) Providing a procedure for foreclosure but no procedure to modify the loan as an alternate dispute resolution.
   (d) Creating securities with classes of ownership ("tranches") with adverse and opposing financial interests resulting in so called *"tranche warfare"* so that a modification which favors one tranche may work a detriment upon another thereby creating liability for the managing parties.
   (e) Restricting the ability to lower interest payments on the Note.
   (f) Restricting the ability to increase the number of payments to be made.
   (g) Restricting the ability to defer payments.
   (h) Restricting the ability to extend the term of the Trust.
   (i) Restricting the ability to impose a temporary moratorium on payments.
   (j) Restricting the ability to accept "short sales" or reduce the principal amount of the debt.
8. The imposition of these restrictions by outside parties to the original transaction between mortgagor and mortgagee substantially harms the defendant. It causes the Defendant to use foreclosure as the initial and exclusive remedy instead of the last resort in the event of a default.

Count III
Wrongful Conversion of the Trust

9. **Defendant / Respondent / Petitioners** incorporates by reference all matters alleged in Count 1 and 17-21.
10. The securitization of the Trust constitutes a conversion of the Trust rendering it null, void and unenforceable. The Trust Note when executed could be sold or otherwise transferred, in whole or in part. The consent given by the mortgagor and the legal authority as holder to enable the holder to sell or otherwise transfer the Trust does not entail the right to convert the Trust into a security. The failure to adhere to this distinction has resulted in conversion of an enforceable note and mortgage into unenforceable securitized note and mortgage. When the Trust was securitized, the Note was converted and could no longer be sold or transferred, in whole or in part.
11. The parties who manage the securitization such as the trustee or servicing agent of a pass through trust have no legal or equitable interest in the securitized Trust.
12. The securitization divides those who are at a financial risk of loss from a default upon the Trust (the investors or certificate holders) from those who control and have decision-making authority over the Trust. When the managers decide to foreclose, it is the certificate holders who bear the loss. However, the certificate holders have nothing to say about if, when and how the managers decide to foreclose.
13. The certificate holders, guarantors and Trust insurers bear the losses. By separating the incidence of loss from the authority to foreclose, the original Note has been altered resulting in a change to the Trust without the consent of the mortgagor. The conversion of the Trust to Trust backed securities renders the Trust unenforceable.
14. The parties who manage and control the Trust and mortgage in this case do not represent and are not the appointees of or successors in interest to the note holder. The third parties who manage and control the mortgage are interlopers and intermeddlers which have wrongfully and without legal authority inserted themselves into the relationship between mortgagor and mortgagee established by the note and mortgage.

15. The interests of the Defendants as mortgagor are adversely and materially affected by these changes.

Count IV
Lack of Standing

16. A trust may only be enforced by a person legally entitled to foreclose on the debt or such person's representative such as a nominee or trustee. By transferring ownership and holding of the Note to a fictitious, non-existent owner and holder renders the Trust unenforceable. A Trust cannot be foreclosed on behalf of the putative owner and holder of a Note who does not actually own or hold the Note. Defendant is not the real party in interest and is not shown to be authorized to bring this action.
17. Standing requires that the party prosecuting the action have sufficient stake in the outcome and that the party bringing the claim be recognized in the law as being a real party in interest entitled to bring the claim. As a result, although Defendant names itself in the complaint as the owner of the promissory Note and Trust, the copies of Trust and Note attached to the complaint conflict with this allegation. Neither the trustee nor the servicing agent for the trust have a legal or equitable interest in the securitized Trusts. Often, the servicing agent for the loan will appear to enforce the Note.

Count V
Securitization removes the status of Note Holder

18. **Defendant / Respondent / Petitioners** incorporates by reference all matters alleged in Count 1.
19. Securitization of a Trust makes the note holder disappear. The securitization leaves no party with standing to enforce the note. No party to the securitization is vested with a legal or equitable interest in the note so that no party to the securitization can enforce the note.
20. The following actions deconstruct the holder of the note:

(a) Segmentation of cash flows into tranches;
(b) the avoidance of double taxation through REMIC;
(c) the disconnection of moral hazard (financial loss) from control and management of the note
(d) the insertion of service providing, fee collecting third party managers between the debtor and the creditor and creditor's successors in interest; and
(e) the subordination of the terms and conditions of the note and mortgage to the provisions of the master pooling and servicing agreement converting the bilateral structure of the note into a multilateral contractual arrangement.

Count VI
Alleged Defaulted Payments have been Paid.

21. The payments alleged to have been in default although not paid by the Defendants have nonetheless been paid by a third party to the trust for pass through payment to the certificate holders. Upon information and belief, Defendants assert that the Pooling Agreement or agreements made between the trustee and third party managers call for such payments and such payments have been paid for this mortgage.

Count VII
The Note And Mortgage Are Unenforceable Because The Mortgagor Never Consented To The Securitization.

22. **Defendant / Respondent / Petitioners** incorporates by reference all matters alleged in Count 1.
23. Securitization separates control over the mortgage and the decision to foreclose from the note holder and wrongfully delegates these responsibilities to a group of third party managers.
24. The mortgagor was neither informed of nor asked to consent to securitization of the mortgage. Such consent is required. Control of

the mortgage is conveyed to a group of managers who adopt a new set of rules to the terms and conditions of the mortgage. The group of managers does not control the mortgage on behalf of an extant note holder.

Count VII

The Restrictions Imposed upon the Modification of the Mortgage are a Clog upon the Equity of Redemption.

25. **Defendant / Respondent / Petitioners** incorporates by reference all matters alleged in Count 1.
26. The equity of redemption creates a right in every mortgagor to redeem the property, i.e., to pay off the debt and remove the lien encumbrance from the property.
27. By restricting the ability to modify the mortgage, securitization interferes with Defendant's rights to redeem the subject property. For example, if the debtor could only afford to pay off 99% of the amount owed, the creditor is barred from accepting the one percent reduction in the payoff. This is a clog on the equity of redemption.

Count VIII

There is No Showing that a Case or Controversy Exists between the Plaintiff and Defendant.

28. **Defendant-Respondent-Petitioners** incorporates by reference all matters alleged in Count 1.
29. Under the terms of the note, prescribed payments are due to the note holder. The note holder is either the original mortgagee or a successor in interest. Plaintiff is neither. Plaintiff has presented no evidence that it is the holder of the note or the representative of the holder of the note.

Count IX
The unenforceability of the Note and Mortgage Requires the Court to declare a Constructive Trust or Mortgage Trust

30. **Defendant-Respondent-Petitioners** incorporates by reference all matters alleged in Count 1.
31. The Defendant has argued that the mortgage and mortgage note have been rendered unenforceable. Defendant has never claimed the underlying debt does not exist. Having to rule on this motion, a court may incorrectly conclude that granting the motion will release the debtor from the repayment of the debt and create an unearned, invidious windfall for the debtor at the expense from the creditor. This is not the case. Nothing in this motion denies the validity of the underlying debt. Instead, this motion argues that there has been an unauthorized interference between the traditional debtor and creditor relationship by a group of intermeddlers and interlopers.
32. These additional parties have securitized the mortgage debt. In so doing, they have trampled the rights of the debtor, extinguished the status of note holder and severed the traditional connection between the party who is owed the money and the part who is obligated to pay. Securitization has precipitated a breach of contract resulting from a unilateral, unauthorized modification of the original contract between debtor and creditor. It has imposed restrictions upon modification of the loan in the event of a default without the consent of the mortgagor. The securitization has clogged the equity of redemption. It has made the note that was once transferable inalienable.
33. "The doctrine of constructive trusts is a recognized tool of equity designed in certain situations to right a wrong committed and to prevent unjust enrichment of one person at the expense of another either as a result of fraud, undue influence, abuse of confidence or mistake in the transaction. In re Financial Federated Title and Trust, Inc., 347 F.3d 880 (11th Cir. 2003). See also October 03, 2003 In re Powe, 75 B.R. 387, 393 (Bankr.M.D.Fla.1987). See: In re First Fidelity Fin. Serv., Inc., 36 B.R. 508 (Bankr.S.D.Fla.1983), the Bankruptcy Court held that:

34. Even if the note and mortgage are legally unenforceable, the court may declare a constructive trust. The court can declare a constructive trust and assure payment the trust and certificate holders. As a constructive trust, the court may impose conditions. For example:
    (a) Review foreclosure fees and charges.
    (b) Consider compliance with consumer protection laws and avoidance of consumer fraud. Where damages are suffered by the debtor, the court may allow a set-off.
    (c) The Court may order mandatory mediation or arbitration.
    (d) The court may consider a wide range of modifications to the note to allow an alternate dispute resolution. This would go a long way to mitigating financial loss to the creditor and moving foreclosure from a first resort to a last recourse.

MORTGAGE SECURITIZATION ARE ALL ILLEGAL TRANSACTIONS

1. There is indeed gray, and there is *"color of law"*, *"absent substance"*, and *"fraud upon fraud"*. The alleged lenders have dishonored their contracts in these matters with the me the alleged borrower in such a manner as to be open to claim for remission of debt and actual damages for fraud, and the **Defendant-Respondent-Petitioners** has chosen to Understand the game which impoverishes the **Defendant-Respondent-Petitioners** who rely mostly upon its appearance of integrity of the mortgage industry. **The Defendant - Respondent -Petitioners** as a member of the hard working backbone of America, we are willing to try to grasp a bit more technical view of the matter. These are snippets, now, of a much larger body of evidence, and we as the alleged borrower have every reason to feel there must be recourse for the wrong that we have suffered.

2. Securitization: The process of homogenizing financial

instruments into fungible securities, so that they are sellable on the securities market. When you sign a mortgage note it comes under UCC Article 3. After securitization, it comes under Article 8. Under US law securitization is illegal because it is fraudulent. Instruments such as loans, credit cards and receivables, are securitized. Enron was involved in securitization and someone brought charges against them. But almost all large corporations are doing it as usual business. However, the banking system and the government are also doing it.

3. FASB regulations – FAS125 securitization accounting, FAS140 Offsetting of financial assets and liabilities, FAS133 derivatives on hedge accounts, FAS5, FAS95. These are the resource materials for understanding this process. The note is not under a negotiable instrument any more, it is a security. All the banks follow these standards. They set up GAAP, generally accepted accounting principles. The banks are mandated by Title 12 USC to follow GAAP and GAAS. They have a local FASB and an international IFASB. They also cover derivatives. FAS 140 relates to UCC 3-305, 306.

4. What you really want as a borrower who has been subjected to bank fraud is recoupment.

5. Recoupment – (1) The recovery or regaining of expenses Applying the setoff so you can get back what you gave and what you are entitled to. (2) The withholding for the equitable part or all of something that is due.

6. Once we, the creator of the promissory note have signed it and others are using it, recoupment means we want our property back or have the account set off. Recoupment in practice is a

counterclaim in a civil procedure. That is how one does a recoupment.

7. The bank sells the note. They do a HELOC, home equity line of credit, and sell it to warehouse lending institution. This is the same as a credit card, even on a mortgage loan. A HELOC is different than warehouse lending. They take the proceeds from the promissory note and pay off the warehouse lender. So the debt on the real estate is extinguished from the books (is that why they call it closing). They are required to file an FR 2046. This is a balance sheet. Under 12 USC 248 and 347 they are required to file a balance sheet. They are required on a quarterly or weekly basis. They file these balance sheets with the Federal Reserve Board. I talked to the head of the FRB. They file a balance sheet with the board. The balance sheet shows the assets and liabilities that they use in the accounting. The liabilities would be your promissory note. It is a liability because it is an asset to you.

8. Securitization is the process of transferring all the liabilities off the balance sheet. UCC 3-306, there cannot be a holder in due course on a promissory note after they deposit it. The bank do an off balance sheet entry. This means they take our note after they sell it, instead of showing it on their balance sheet, they move over to some other entities balance sheet. It is no longer on the banks books. This is called off balance sheet bookkeeping. The head of the FASB said that we were correct. The bank is not showing the liability side of the ledger or the accounts payable because it has been moved over to someone else's balance sheet. Under Title 12 USC 1813(L)(1) when you deposit a promissory note, it becomes a cash item.

9. Under Title 12 USC 1813(L)(1) when we deposit a promissory

note, it becomes a cash item. How many times has ours was sold and re-deposited as collateral or leverage on other securitization? Why is this *"legal"*, and who is really profiting?

9. Most banks do warehouse lending. As soon as they get the note, they borrow the money from a warehouse lender. The bank does not give you the money or credit. They get it from a warehouse lender. Then they pay off the warehouse lender with the note that they sell to them. Then they make derivatives out of this note by a bookkeeping entry.

10. The balance sheet, a 2046, 2049, and 2099, have OMB numbers on them that are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). They have to give it to us if you ask for it. At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The debt is actually extinguished.

11. The Truth-in-lending act (TILA), section 226.23, which is regulation Z, gives one the right to rescind any commercial debt contract or agreement entered into. All commercial contracts for credit or loan provides for 72 hours to do a rescission. That can be extended for three years from the date that one discovers that one did not have full disclosure. In Appendix H, it says that this regulation Z does not apply to residential mortgage transactions. However, once foreclosure has been initiated on a mortgage, one can rescind it if;

12. (a) they did not disclose the right to rescind at closing under Appendix H. They never give the proper notice at closing. So one could rescind every mortgage contract at foreclosure. They give this option because one could have registered the note on a UCC,

one would be the creditor anyway, and so they can't foreclose. Rescission completely discharges the security agreement (the mortgage deed and the mortgage contract)

13. Whenever there is a lack of full disclosure, one has an offset available. This is dangerous to the entire mortgage industry, however.

14. Banks securitize mortgages by selling them to a SPV (a special purpose vehicle, a trust). Then they create bonds of trust assets to sell to DTC. The bank cannot foreclose on the note, because they are not a holder and lack standing. However, the mortgage contract requires payments. This makes the note non-negotiable. They are foreclosing on the contract under common law, not the note. The bank claims to be holder in due course, but that is not possible for there to be a holder in due course of a non negotiable instrument. Non-negotiable instruments are governed by common law, not the UCC.

15. SPV- A special purpose vehicle, an organization constructed for a limited purpose and life. Frequently these SPV's serve as conduits or pass through organizations or corporation in relation to securitization. The entity that holds the legal rights over the asset transferred by the originator.

16. The originator of a mortgage is the living man. If he is the originator, the SPV becomes the legal holder when the deed is signed. The bank is acting in the capacity as a servicer. The real party in interest is the SPV. Before closing the note goes into an SPV which now has legal title to these issues and it creates a new instrument in the place of the note. They create securities and bonds, which are registered.

17. The statute says you have a right to restitution and rescission if they sell an unregistered security. Is the note an unregistered security? It is a non-negotiable instrument. When they convert it into a security, it takes it out of UCC Article 3. It could be under UCC article 4 because it is deposited in a bank. But eventually, after it has gone into the SPV, and been securitized, it is moved to UCC Article 8 and Article 9 is applicable to the remedy. They have to give you the right to rescission because it is unregistered. We have a right to rescind and restitution, which is also part of recoupment. We can go to the NASD, the national association of security dealers, they have an arbitration and resolution board located in NYC. They have tribunals in each state for hearings. You can go to arbitration and have the contract rescinded and get restitution because they are selling unregistered securities, which is money laundering or RICO.

18. Bank One uses KPMG to audit their books; others use Price Waterhouse. They are international auditing services. They are expert at auditing off balance sheet accounts. There is off balance sheet financing, payables and receivables. These auditors are the only ones that are aware of these issues. Scott Taub is the chief accountant for the SEC. The SEC is also the enforcement agent for this practice, because it involves securities.

19. The claim that the originator and maker can make is setoff because they sold an unregistered note. They cannot be a holder in due course because they are taking it subject to administrative and commercial claims, every time there is a clause in the instrument. They create a mortgage purchase loan (16 CFR 433.1). This whole process is

not about mortgages at all, because they sold the note and received

the funds and closed the account by assuming they have repaid the originator on the loan.

20. We are paying rent for the asset we failed to collect. The SPV is taking all the payments as profit. If you stop making payments, no one has been damaged. We are responsible for agreeing to this contract. We don't have a claim for fraud.

21. We did the first funds transfer that they transferred to the receivables as an asset to the bank. When they didn't give the note back, the bank sold it or deposited it as a cash item. UCC 1-204 says we are considered as merchants at law, who know what we are doing. We act as though we are experts at negotiable instruments. That is how they get around the defense of fraud in the inducement.

22. To prove fraud in the inducement, one has to prove he didn't know what they were doing, and didn't have sufficient time to find out. But in order to prove that, you have to learn how to do it right first.

23. They call their process de-recognition. But most of the time that is not true. If they pass the reward and the risk, a complete sale of the asset, it is de-recognition. De-recognition is defined in accounting as not recognizing it on their books any more, or removed it off the balance sheet. This means they extinguished the loan from the books. The balance sheet will show that the loan has been extinguished. They are trying to collect on a note that they have no right title or interest in.

It is used to securitize the commodities and securities exchange. They are not using mortgages to attach property, because it only

appears that they got an interest to attach the property. We have the priority. Their real intent is to create derivatives to create a security and bond market to finance all commercial and corporate activity. Tying up the land is a profitable by product, because nobody understands that they don't have a claim for it. They are called beneficial interest holders (BIHS). Those are the organizations with an account with the DTC to buy the mortgage-backed bonds, which are the pooled assets from the HELOC or trust.

24. We have to verify everything for yourself, but it sure is interesting in light of what we already know to be true, and explains a few hidden aspects of the fail-outs and coming implosion.

SUMMARY

The only evidence that the **Plaintiff-Appellant-Respondent'** can recite or provide is an affidavit of all of the evidence in their favor, quickly dismissing or ignoring **Plaintiff-Appellant-Respondent's** evidence. This Appeal is not a retrial; the Court of Appeal is looking for judicial error and it is provided.

The appellate court is bound by the trial court's resolution of disputed factual issues and must affirm the judgment so long as the judgment is supported by *"substantial evidence."* (***Winograd v. American Broadcasting Co.*** (1998) 68 Cal.App.4th 624, 632.) The appellate court shall not reweigh the evidence or re-examine disputed facts. It also does not concern itself with credibility determinations, leaving that to the lower courts.

The term *"substantial"* evidence is really a misnomer. The court is looking for some reasonable evidence. *"Substantial evidence"* must be *"'of ponderable legal significance . . . reasonable in nature, credible, and of solid value . . . 'Obviously, the word cannot be deemed synonymous with 'any evidence.'"* ***(Bowers v. Bernards** (1984) 150 Cal.App.3d 870, 873.)* In

considering this type of appeal, the appellate court will look at the entire record, not just the facts that favor the appellant. More often than not, those facts are in the record.

JURAT

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RICHLAND COUNTY)
) *Affirmed*
SOUTH CAROLINA)

A notary public or other officer completing this certificate verities only the identity of the individual who signed this document to which this certificate is attached, and not to the truthfulness, accuracy, or validity of the document.

Document Entitled, "NOTICE OF APPEAL"

I, Christine D. Bendezu **as a SOUTH CAROLINA State** Notary Public, in the **County of RICHLAND** was received by the person who autographed this document and who showed evidence that they are the person whom they are said to be via evidence of valid identification.

This Acknowledgement Acceptance was autographed before me on

This 9th Day of September of **2019**.

By: _____
Lyvonne Able, Sovereign Principal

_____
Notary, All Rights Reserved Without Recourse
Notary Public

My Commission Expires On: 3-31-2025

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph Strickland Master-In-Equity Judge

Case No. 2017-CP-40-1649

Lyvonne Able, as Petitioner
Representative of the Estate of LYVONNE and
MARY LINDA SMALLS ABLE

Defendant/Appellant/Petitioner

v.

U.S. Bank NA, successor to Bank of America,
N.A. successor in interest to LaSalle Bank
National Association, on behalf of the registered
Holders of Bear Sterns Asset-Backed Securities
Trust 2005-HE2, Asset-Backed Certificates,
Series 2005-HE2

Plaintiff/ Appellant/Respondent

PROOF OF SERVICE

I, **Lyvonne Able,** the undersigned Defendant do hereby certify that I served the **NOTICE OF APPEAL** to:

U.S. Bank NA, successor to Bank of America,
N.A. successor in interest to LaSalle Bank
National Association, on behalf of the Registered
Holders of Bear Sterns Asset-Backed Securities
Trust 2005-HE2, Asset-Backed Certificates,
Series 2005-HE2

By depositing a copy of it in the United States Mail, postage pre-paid, on September 19th 2019, addressed to their attorney of record:

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By personally delivering a copy of it to their attorney of record, at their office at: 1221 Main Street 14th Floor, Columbia, South Carolina 29201, on September 19th 2019

Document Served:

NOTICE OF APPEAL

Parties Served:

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