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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
Honorable Steven C. Kirven, Master-In-Equity

Court of Appeals Opinion No. 2019-UP-238 (issued July 3, 2019)
Supreme Court Case No. 2019-001561
Appellate Court Case No. 2017-000886
Circuit Court Case No. 2011-CP-37-1056

Federal National Mortgage Association .....RESPONDENT

v.

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

Of whom John D. Dalen and Julie A. Dalen are..... APPELLANTS

And

John D. Dalen and Julie A. Dalen..... APPELLANTS

v.

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

RESPONDENT BANK OF AMERICA, N.A.'S RETURN TO APPELLANTS' PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether Appellant preserved any issues for appellate review concerning the Trial Court's grant of summary judgment to Bank of America, N.A., successor by merger to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. ("BANA").

II. Whether the Court of Appeals properly concluded that the Master-In-Equity held subject matter jurisdiction to adjudicate the foreclosure action filed against Appellants.

III. Whether Fannie Mae had standing to prosecute the foreclosure action after BANA transferred Appellants' mortgage loan to Respondent Federal National Mortgage Association ("Fannie Mae" or "FNMA").

IV. Whether Appellants waived the ability to appeal the non-jury adjudication of the foreclosure action filed against them.

INTRODUCTION

This case concerns a contested foreclosure that Respondent BANA initially filed and served upon the Appellants. Appellants filed and served counterclaims against BANA in response to the foreclosure complaint. During the course of the foreclosure action, BANA transferred the mortgage loan that Appellants made to Respondent Fannie Mae, and the trial court substituted Fannie Mae for BANA as the foreclosing plaintiff in the foreclosure action. Despite the substitution of Fannie Mae as the foreclosing plaintiff, BANA remained a party to the foreclosure action as counterclaim-defendant. BANA secured a summary judgment award for all counterclaims alleged in the action, and Appellants never challenged the summary judgment award in their appeal. Ultimately, Fannie Mae secured a foreclosure judgment against Appellants after completing a non-jury trial before the Master-In-Equity for Oconee County, South Carolina. Appellants appealed the foreclosure judgment awarded to Fannie Mae, but they failed to seek any appellate review of their counterclaims or the trial court's summary judgment award.

Because Appellants have failed to preserve any issues concerning the trial court's award of summary judgement to BANA or mode of trial issues, Appellant's Petition for A Writ of

Certiorari should be denied to the extent that it attempts to appeal the summary judgment awarded to BANA for the counterclaims that Appellants alleged. Moreover, even if Appellants preserved any appellate review of the summary judgment awarded to BANA or mode of trial issues, the Petition should be denied because the Court of Appeals properly affirmed the trial court's award of a foreclosure judgment given the evidence presented at the foreclosure trial.

STATEMENT OF FACTS

BANA commenced the underlying equitable action for foreclosure on October 31, 2011 ("Foreclosure Action"), alleging that Appellant John D. Dalen defaulted on a promissory note ("Note") he executed and delivered to Quicken Loans Inc. ("Quicken Loans"), on December 20, 2007, in the amount of $118,750.00, plus interest. [R. pp. 71–76.] To secure the Note, John and Julie A. Dalen (collectively, "the Dalens" or "Appellant") executed a mortgage ("Mortgage") to Mortgage Electronic Registration Systems, Inc. ("MERS"), acting solely as nominee for Quicken Loans, its successors and assigns, covering real property located at 109 Wood Valley Dr., Westminster, South Carolina 29693 (the "Property"). [R. pp. 919–34.] The Mortgage was recorded on December 21, 2007 in the Oconee County land records. [R. pp. 919–34.]

By an assignment of Mortgage dated May 9, 2011, and recorded May 16, 2011, in the Oconee County land records, MERS assigned the Mortgage to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP (the "2011 Assignment"). [R. p. 935.] BANA is the successor to BAC Home Loans Servicing, LP pursuant to a corporate merger. [R. p. 73 ¶ 9.] BANA and its predecessors-in-interest held the Mortgage until it was assigned from BANA to Fannie Mae on or about April 13, 2015 ("2015 Assignment"). [R. p. 936.]

In response to BANA's Complaint, the Dalens filed a Motion to Dismiss on November 22, 2011, alleging that BANA lacked standing to foreclose and was not the real party in interest to

enforce the Note and/or Mortgage, which was denied on March 7, 2012 ("Order Denying Motion to Dismiss"). [R. pp. 1–3, 77–80.] On February 21, 2012, the Dalens filed their Answer, Affirmative Defenses, Counterclaims, and Demand for Jury Trial ("Answer"). [R. pp. 87–104.]

On April 13, 2012, BANA filed an Affidavit certifying that it held both the Note and Mortgage. [R. pp. 1076–77.] The Dalens subsequently moved for reconsideration of the Order Denying Motion to Dismiss. This motion was denied on June 20, 2012. [R. pp. 4–5, 81–86.]

After a period of discovery, BANA filed a Motion for Summary Judgment ("Motion for Summary Judgment") regarding the Counterclaims, on December 4, 2013. BANA's Motion for Summary Judgment was denied on July 9, 2014. [R. pp. 6–8, 117–28.]

On November 17, 2014, BANA filed a Motion to Strike Jury Trial Demand and Refer to the Master-in-Equity ("Motion for Order of Reference"), and, on the same day, the Dalens filed a Motion for Summary Judgment arguing that the 2011 Assignment to BANA was void and BANA therefore lacked standing to foreclose. [R. pp. 185–86, 187–88.] Following a hearing on both motions, the Trial Court rendered its rulings in a Form 4 order, entered on January 28, 2015, denying the Dalen's Motion for Summary Judgment and granting BANA's Motion for Order of Reference; a formal order was entered on February 25, 2015 ("Order of Mandatory Reference"). [R. pp. 9–10, 11–14.] In the Order, the Trial Court denied the Dalen's Motion for Summary Judgment concluding, *inter alia*, that because BANA was the undisputed servicer of the loan when the Complaint was filed, BANA was a real party in interest with standing to foreclose. [*Id.*] The Dalens did not appeal the Order of Mandatory Reference.

On March 17, 2015, the Dalens filed a Motion to Compel Discovery and a Motion to Compel Mediation. [R. pp. 189–91.] And, on June 1, 2015, BANA filed a Motion to Substitute Plaintiff seeking to substitute Fannie Mae as the plaintiff in the Foreclosure Action based upon an

assignment of the Mortgage executed by BANA on April 13, 2015, in favor of FNMA ("Assignment of Mortgage"). [R. p. 191.] These motions were heard on August 26, 2016. In an order entered on September 23, 2015, the Trial Court granted BANA's Motion to Substitute Plaintiff, noting that BANA would remain a counterclaim defendant ("Order Substituting Plaintiff"), and denied the Dalens' Motion to Compel Discovery and Motion to Compel Mediation. [R. pp. 19–22.]

On February 16, 2016, BANA filed a motion to amend the Trial Court's December 9, 2014 scheduling order, in part, so that BANA could file a renewed motion for summary judgment. [R. pp. 192–194.] The Dalens' consented to BANA's motion, and the Trial Court entered a Consent Order Amending Scheduling Order on March 2, 2016. [R. pp. 796–98.]

On March 9, 2016, BANA filed a Renewed Motion for Summary Judgment as to the Counterclaims asserted in the Dalens' Answer ("Renewed Motion for Summary Judgment") [R. pp. 195–224], and the Dalens filed a Motion to Dismiss for lack of subject matter jurisdiction, on May 5, 2016, alleging BANA did not have standing to commence the Foreclosure Action ("Motion to Dismiss"). [R. pp. 225–32.] The Foreclosure Action was struck from the active docket due to Appellant's bankruptcy filing on May 10, 2016. [R. pp. 23–25.] The Action was restored to the active docket on July 28, 2016, after Appellant's bankruptcy case was dismissed. [R. pp. 26–28.] That same day, the Trial Court entered an order granting BANA's Renewed Motion for Summary Judgment and dismissing the Dalens' Counterclaims ("Summary Judgment"). [R. pp. 29–41.]

The Dalens' filed a Motion for Reconsideration of the Summary Judgment, on August 8, 2016. [R. pp. 233–46.] Following a hearing on September 8, 2016, the Dalens' Motion for Reconsideration and Motion to Dismiss were denied in separate orders on October 13, 2016. In the order denying the Motion for Reconsideration of the Summary Judgment, the trial court noted

that the motion improperly attempted to supplement the record developed during the summary judgment hearing by including materials that were not presented at the hearing. [R. pp. 44–50.] Appellant filed a notice of appeal from the order denying the Motion to Dismiss, and this Court dismissed the appeal as interlocutory on November 18, 2016. [R. pp. 51–52.]

The Foreclosure Action was tried on March 2, 2017, before the Honorable Steven C. Kirven, Master-in-Equity ("Trial"). [R. p. 378.] At Trial, FNMA presented the testimony of William Rankin ("Rankin"), a litigating officer with Seterus, Inc. ("Seterus"), the servicer of the Loan. [R. pp. 387:1–388:5.] Rankin testified that he had personal knowledge of the business records maintained by Seterus in connection with the Loan. [R. pp. 388:1–16.] Rankin identified the Note, executed by Appellant John Dalen, and the Mortgage, executed jointly by the Dalens, and he testified that the Mortgage constituted a first mortgage lien on the Dalens' property. [R. pp. 388:17–390:12.] Rankin testified that Seterus was in possession of the Note through FNMA's counsel and that the Note was endorsed in blank and present in the courtroom during Trial. [R. p. 389:14–21.] The Note and Mortgage were admitted into evidence over Appellant's non-specific objection "to the whole proceeding" and his contention that there was "no competent fact witness" for him to cross-examine; Appellant provided no specific basis related to the admissibility of the exhibits. [R. pp. 390:13–391:7.]

Rankin identified the 2011 Assignment and the 2015 Assignment. [R. p. 391:12–21.] Appellant objected to the admission of both assignments into evidence by merely stating, "I object." [R. pp. 391:25–392:1.] The objection was overruled, and both assignments were admitted into evidence. [R. p. 392:1–6.]

Rankin next identified Seterus's records of Appellant's payments made on the Loan, which included the records of payments on the Loan from BANA, the prior servicer, and testified that

the records reflected Appellant had defaulted on the Loan in December 2010 ("Payment History"). [R. pp. 392:8–394:2.] When FNMA offered the Payment History into evidence, Appellant's only objection was that the Trial Court did not have subject matter jurisdiction over the Foreclosure Action. [R. p. 394:8–17] Appellant's objection was overruled, and the Payment History was admitted into evidence. [*Id.*] Rankin also testified that BANA, as the servicer of the Loan at the time of Appellant's default, sent an acceleration letter to Appellant on December 17, 2010 ("Acceleration Letter"). [R. pp. 394:21–395:4.] When FNMA offered the Acceleration Letter into evidence, the Trial Court overruled Appellant's objection that the Trial was "an unlawful foreclosure," and the letter was admitted into evidence. [R. p. 395:5–16.]

Rankin then provided a breakdown of the total amount that was due to FNMA, by Appellant, under the Loan ("Summary of Amount Due") [R. pp. 395:20–396:9], as well as the related costs and attorney's fees that FNMA sought to collect from Appellant ("Affidavit of Costs and Fees") [R. pp. 397:10–398:12]. Both the Summary of Amount Due and Affidavit of Costs and Fees were admitted into evidence over Appellant's objection that the Trial was "an unlawful foreclosure, and violation of [his] constitutional rights." [R. pp. 397:19–398:13.] At the close of FNMA's case, Appellant did not call any witness, and he provided no testimony or evidence; Appellant merely objected to the Trial as a violation of his constitutional rights and "fraud upon the court." [R. pp. 411:13–412:12.]

On March 6, 2017, the Trial Court entered a Final Judgment of Foreclosure in favor of FNMA ("Final Judgment"). [R. pp. 55–70.] On March 14, 2017, Appellant filed an Objection and Motion for New Trial and/or Amendment of Judgment on Grounds of Fraud and Denial of Due Process of Law ("Motion for New Trial"), in which Appellant alleged, inter alia: that the Trial Court's "decision" invaded "the province of the jury"; that the Trial Court had no subject matter

jurisdiction due to fraudulent documents; that neither FNMA nor BANA had possession of the promissory note; and that FNMA and BANA failed to support their "claims" with business records that survived the business record hearsay exception. [R. pp. 283–97.]

The Trial Court denied the Motion for New Trial in an order entered on March 17, 2017 ("Order Denying Motion for New Trial."). [R. pp. 53–54.] Appellant filed a notice of appeal from the Final Judgment and the Order Denying Motion for New Trial on March 31, 2017 ("Notice of Appeal").[1] The Court of Appeals affirmed the Trial Court's award of a foreclosure judgment to Fannie Mae and denied Appellants' Petition for Rehearing. Now Appellants seek review of the Court of Appeals decision in their Petition for A Writ of Certiorari to the Supreme Court.

ARGUMENT

I. BECAUSE APPELLANTS' FAILED TO ARTICULATE ANY GROUNDS TO APPEAL THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT TO BANA FOR ANY COUNTERCLAIMS ALLEGED, APPELLANTS ARE NOT ENTITLED TO APPEAL SUCH ISSUES NOW.

As stated previously in BANA's Final Respondent's Brief to the Court of Appeals, Appellants have abandoned the issue of whether the Trial Court erred in Granting BANA's Renewed Motion for Summary Judgment ("Motion") as they have failed to provide *any* argument in their Final Brief filed with the Court of Appeals as to *how* the Trial Court erred in granting the Motion.

Beyond the conclusory assertions in their Final Appellant's Brief "that [BANA] rehashed previous arguments, presented no new issues or evidence," and that the Dalens' "brought up Judge Macaulay's denial of [BANA's] first motion for summary judgment" as the reason the Renewed

[1] Appellant filed an amended notice of appeal on April 21, 2017, in which he appears to have merely crossed through the Trial Court case number and added the case number of this appeal. [R. p. 1078.]

Motion for Summary Judgment should have been denied, Appellants provide no argument as to *how* the Trial Court erred in granting BANA's Motion. (Appellant's In. Br. p. 7.) Appellants have also failed to cite to *any* legal authority to demonstrate how the granting of BANA's Motion was error. (*Id.*) As such, Appellants have failed to preserve the issue for review. *See Jinks v. Richland Cty.*, 355 S.C. 341, 344 n.3, 585 S.E.2d 281, 283 n.3 (2003) (concluding that an issue raised in appellant's brief was abandoned when appellant provided no argument on the issue); *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993) ("[A]n issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority."); *Jones v. SC Dep't of Health & Envtl. Control*, 384 S.C. 295, 317, 682 S.E.2d 282, 294 (Ct. App. 2009) (argument abandoned where appellant failed to explain *how* the trial court erred); *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 304 n.2, 433 S.E.2d 871, 873 n.2 (Ct. App. 1993) (concluding that appellant's one-sentence argument was too conclusory to preserve an issue for appellate review).[2]

Accordingly, Appellants' Petition should be denied to the extent that it attempts to appeal waived arguments concerning the Trial Court's grant of summary judgment in favor of BANA for the counterclaims alleged in the foreclosure action.

II. THE COURT OF APPEALS PROPERLY AFFIRMED REFERRAL OF THE FORECLOSURE ACTION TO THE MASTER-IN-EQUITY.

[2] Because Appellants failed to make any argument in their Brief as to *how* the Trial Court erred in granting BANA's Renewed Motion for Summary Judgment, they improperly articulate such an argument in their *Reply Brief* submitted to the Court of Appeals. The Court should not consider these improperly raised arguments. *See Fields v. Melrose Ltd. P'ship,* , 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993) ("[A]n appellant may not use the reply brief to argue issues not argued in his brief in chief[.]"); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (holding that even if an argument is raised in an initial brief, if the argument is conclusory and unsupported by authority, the argument is not preserved for review and the appellant is precluded from more fully addressing the issue in a reply brief).

The Court of Appeals properly concluded that the Master-In-Equity had subject matter jurisdiction over the Foreclosure Action pursuant to an order of reference that Appellants never timely appealed.

Under South Carolina law, "[s]ubject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong." *Watson v. Watson,* 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995) (internal quotations omitted). The Master–in–Equity is considered a division of the circuit court and obtains jurisdiction through an order of reference from the circuit court. *See* S.C.Code Ann. § 14–11–15 (2006); S.C. R. Civ. P. 53. A master would then have subject matter jurisdiction over a properly referred foreclosure action. *See, e.g., Wachovia Bank of South Carolina, N.A. v. Player,* 341 S.C. 424, 427, 535 S.E.2d 128, 129 (2000) (holding that master in equity had subject matter jurisdiction to address post-judgment motions pursuant to order of reference).

On November 17, 2014, BANA filed a Motion to Strike Jury Trial Demand and Refer to the Master-in-Equity ("Motion to Strike Jury Trial Demand"), and, on the same day, the Dalens filed a Motion for Summary Judgment arguing that the 2011 Assignment to BANA was void and BANA therefore lacked standing to foreclose. [R. pp. 185–86, 187–88.] Following a hearing on both motions, the Trial Court rendered its rulings in a Form 4 order, entered on January 28, 2015, denying the Dalen's Motion for Summary Judgment and granting BANA's Motion for Order of Reference; a formal order was entered on February 25, 2015 ("Order of Mandatory Reference"). [R. pp. 9–10, 11–14.] In the Order, the Trial Court denied the Dalen's Motion for Summary Judgment concluding, *inter alia*, that because BANA was the undisputed servicer of the loan when the Complaint was filed, BANA was a real party in interest with standing to foreclose. [*Id.*] The Dalens did not appeal the Order of Mandatory Reference, which was entered by a Circuit Court

Judge and authorized the Master-In-Equity "to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP." [*Id.* at 13-14.]

Because the Trial Court properly entered the Order of Mandatory Reference after conducting a merits hearing for BANA's Motion to Strike Jury Trial Demand [*Id.* at 11], the Court of Appeals properly concluded that the Master-In-Equity had subject matter jurisdiction to adjudicate all claims and issues arising from the Foreclosure Action.

III. FANNIE MAE PROVED THAT IT WAS THE HOLDER OF THE NOTE FOR APPELLANTS' MORTGAGE LOAN AND HAD STANDING TO FORECLOSE.

The Court of Appeals properly concluded that the transfer of the Appellants' Loan to Fannie Mae was not fraudulent and that Fannie Mae had standing to prosecute the Foreclosure Action.

South Carolina law recognizes that standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013). Mortgage loan servicers, such as BANA, have standing to foreclose a mortgage loan because of their pecuniary interests in collecting payments made under a mortgage loan or the servicer's contractual duty to collect payments and foreclose mortgages in the event of default. *Id.* at 222, 405 S.E.2d at 482 (quoting *In re Woodberry*, 383 B.R. 373, 379 (Bankr. D.S.C. 2008) and *In re Neals*, 459 B.R. 612, 617 (D.S.C. 2011)). Further, the holder of a mortgage note, such as Fannie Mae, can have standing to foreclose upon proof that it is in physical possession of a properly indorsed note. *See id.* at 223-24, 405 S.E.2d at 482-83 (citing S.C. Code Ann. §§ 36-1-201(20) & 36-3-602(a)).

The record for the Foreclosure Action reflects that in the Order of Mandatory Reference, the Trial Court properly concluded that BANA had standing to file the Foreclosure Action as the servicer of the Appellants' Loan. [R. pp. 12.] Next, in the Trial Court's Order Substituting

Plaintiff, the Trial Court concluded that Appellants' Loan was transferred to Fannie Mae after conducting a hearing for BANA's Motion to Substitute Plaintiff and considering the record developed at the hearing. [R. pp. 19.] At the trial for the Foreclosure Action, Fannie Mae presented the testimony of William Rankin ("Rankin"), a litigating officer with Seterus, Inc. ("Seterus"), the servicer of the Loan. [R. pp. 387:1–388:5.] Rankin testified that he had personal knowledge of the business records maintained by Seterus in connection with the Loan. [R. pp. 388:1–16.] Rankin identified the Note, executed by Appellant John D. Dalen, and the Mortgage, executed jointly by the Dalens, and he testified that the Mortgage constituted a first mortgage lien on the Dalen's property. [R. pp. 388:17–390:12.] Rankin testified that Seterus was in possession of the Note through FNMA's counsel and that the Note was endorsed in blank and present in the courtroom during Trial. [R. p. 389:14–21.]

Here, the record shows that the evidence that Fannie Mae presented at trial, proved that Fannie Mae had standing to foreclose the Loan because Fannie Mae was in possession of the Note that was signed by Appellant John D. Dalen and was also indorsed in blank. Accordingly, upon proof of possession of the Note with a blank indorsement, the Trial Court properly recognized that Fannie Mae—as the holder of the Note—had standing to prosecute the Foreclosure Action.

IV. APPELLANTS' FAILURE TO APPEAL TIMELY THE ORDER THAT STRUCK THEIR JURY TRIAL DEMAND PRECLUDES APPEAL OF MODE OF TRIAL ISSUES.

After the entry of the Order of Mandatory Reference on February 15, 2015, Appellants did not appeal from the order. As this Court has explained, "[i]ssues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable. The failure to timely appeal the interlocutory order of the trial court effects a waiver of appeal rights." *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993)

(internal citations omitted) (dismissing the appellant's argument regarding mode of trial because the issue was not preserved for appellate review); *see also First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 377–78 (Ct. App. 1998) (holding that the appellant's failure to appeal the denial of a motion for a jury trial precluded the Court of Appeals from addressing the issue).[3]

While Appellants contend that the Order of Mandatory Reference denied their right to a trial by jury, they did not appeal from the order. That failure to appeal is fatal to Appellants' Petition for A Writ of Certiorari. Even assuming *arguendo* that Appellants had any right to a jury trial for the Foreclosure Action, Appellants' failure to appeal from the Order of Mandatory Reference established the order as the law of the case and precluded their present challenge to the non-jury trial completed by the Master-In-Equity.

This Court has left no doubt of this result. In *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985), the Court recognized that the appellant was correct that he had a right to a jury trial instead of having the case decided by a master. But the appellant "failed to appeal" the order of reference. *Id.* at 542–43, 331 S.E.2d at 352. That order, the Court explained, "should have been appealed immediately because it affected the mode of trial, a substantial right." *Id.* at 543, 331 S.E.2d at 352. Because the appellant did not appeal, that order "became the law of the case." *Id.*; *see also Soden*, 333 S.C. at 566, 511 S.E.2d at 378 ("Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. The unchallenged ruling, *right or wrong*, is the law of the case and requires affirmance." (emphasis added)). Here, the result is

[3] The Court of Appeals ruling in *South Carolina Community Bank v. Salon Proz, LLC,* 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017) is inapposite. Unlike *Salon Proz*, a Circuit Court Judge entered the Order of Mandatory Reference in the Foreclosure Action after conducting a merits hearing for BANA's Motion for Order of Reference [R. pp. 9–10, 11–14] rather and a clerk of court without any merits hearing.

the same. Regardless of whether Appellants had a right to a jury trial, when they failed to appeal the Order of Mandatory Reference, that order became the law of the case. Accordingly, Appellants did not preserve mode of trial issues for this appeal.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for A Writ of Certiorari.

This the 15th day of October, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney for the Respondent Bank of America, N.A., successor by merger to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. certifies that its *Return to Appellant's Petition for A Writ of Certiorari* was served on the parties to this action by depositing a copy thereof in the United States Mail, first class, postage prepaid, on October 15, 2019, to the following:

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October 15, 2019

VIA FEDEX

Supreme Court of South Carolina
Attn: Clerk of Court
1231 Gervais Street
Columbia, SC 29201

Re: John D. Dalen and Julie A. Dalen, Appellants, v. Bank of America, N.A., Respondent
On Appeal from Oconee County, SC
Supreme Court Case No. 2019-001561
Our Matter: 2068280-9350

Dear Sir/Madam:

Enclosed please find one original and six (6) copies of Respondent Bank of America, N.A.'s Return to Appellants' Petition for a Writ of Certiorari for filing in the above-referenced matter. Also included is an extra copy for returning a file-stamped copy to me in the enclosed self-addressed stamped envelope.

If you have any questions regarding the enclosed, or require anything further in this regard, please do not hesitate to contact me.

Very truly yours,

Elizabeth Holtey

Elizabeth Holtey
Senior Paralegal

Enclosures
cc: All parties of record.

Page 1 of

Express

Place a
inside th
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