APPELLANT'S FINAL BRIEF

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

Court Of Common Pleas

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SC Court of Appeals

The Honorable Judge Gordon Cooper

Master In Equity

Appellate Case No 2017-002200

Circuit Court Case No.2010-CP-42-0587

Wells Fargo Bank, N. A.; Trustees for Bear Stearns Asset Backed Securities I Trust 2004-B01, John B. Kelchner .... Respondents

V.

Betty L .Tangeman, Barry D. Mallek, Alice R. Mallek, Donald Coggins Jr., and Delbert R. **Tangeman ....Defendants**

of Whom Delbert R: Tangeman is the ... . Appellant

Appellant's Final Brief

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REPLY STATEMENT:

To: Mr. Griffin, Mr. Schulz, and possibly John Kelchner... That was quite a shotgun blast (both barrels) all to a closed Appellate case No. 2017-001799, which Tangeman initiated and shortly thereafter dismissed, dated October 16, 2017. See **Exhibit R-7.**

Tangeman erred in attempting to appeal Judge Cooper's order denying Tangeman's **MOTION TO RECONSIDER.** Instead, Tangeman responded to Mr. Kelchner's "**NOTICE OF HEARING**"... SCHEDULED FOR SEPTEMBER 28TH, 2017.

ISSUE OF STANDING:

Respondents made no believable response to negate "Standing." Mr. Kelchner: (Lines 9 and 11 page 3) regarding "**Standing.**" Plaintiff did not produce an **original note to Defendant** Tangeman (line 11 p.3 plaintiff stated "We had the original note at the hearing". **PLAINTIFF PERJURED HIMSELF!**) Plaintiff produced only this multiple copies. (ref. p.2, lines 17-20) When one starts copying multiple times, one can arrange a fake note any way one wishes. (nowhere in lines 4 thru 21 did the Plaintiff deny that statement.) The plaintiff did not produce the original note at the "Hearing" as he stated. The statement was untrue! Was that Perjury? fraud? or both? Rule F.-- 2 was that an intent to deceive? Therefore, without the original note, **the plaintiff has no standing.**

LEGAL REVIEW IN ORDER TO PROVE "STANDING BEFORE THE LAW"

1. "Injury: The plaintiff must have suffered or imminently will suffer injury. The injury must not be abstract and must be within the zone of interests meant to be regulated or protected under the statutory or constitutional guarantee in question."

> **A) The injury was self-inflicted. GMAC sent back to Appellant payments amounting to more than $6,800.00. Therefore Appellant just gave up and quit sending payments. (Exhibit R 4) P. 6**

**B) After several years the debt grew so large that it passed the real value of the property. Respondent sent to various Attorneys applications for "LOAN MODIFICATION". None responded... Those efforts went nowhere! **

2. Causation: The injury must be reasonably connected to the defendant's conduct."

A) There is no "reasonability factor" that could possibly be the fault of the Appellant. He made every reasonable effort to send GMAC payments due them, but GMAC returned them. GMAC's injury was self-inflicted!

B) The fault was in the law that President Bill Clinton passed that required lenders to approve mortgages to mortgagees even if they had little of no income. Hence the year 2008 financial collapse of many banks.

3. Redressability: A favorable court decision must be likely to redress the injury.

A) Now the larger, bigger, vulture Banks, like Wells Fargo, are unreasonably" And, unjustly seizing properties from Appellants like myself whose incomes were dependant upon tennants whom the subprime lenders took away.

B) Where is the justice and fairness in the law to favor "Redressability" when GMAC and even Bear Stearns committed legal suicide by filing for Bankruptcy!

Therefore the Appellant Prays the Court to find in his favor.

There are other requirements imposed by judge and made law:

1. A party may only assert his or her own rights and cannot raise the claims of a third party who is not before the court.

A) If the court deems that Wells Fargo has not past the "no Space" clause as legal holder of said "NOTE" then, does that mean that all other holders of the NOTE become third parties who are not before the court?

B) Properly endorsed allonges MUST MEET THE "NO SPACE" REQUIRED BY SOUTH CAROLINA LAW.

ISSUE OF "DUE PROCESS" IN LAWS

The Respondents deprived the Appellant of "Due Process" when they seized his property just a few days after the lower court's "ORDER" was issued/published. This "ORDER FOR WRIT OF ASSISTANCE FOR DEFENDANTS ONLY." This order was dated "the 17th day of November, 2017", even though the Respondents Attorney had been informed before the judge that the defendant was taking this to the Court of Appeals. (attached exhibit R- 8) The residence was rented to two (2) tenants who were evicted instead of the Defendants. The residence was stripped of appliances, some glass windows were broken, and most likely all the wiring and copper pipes torn out. **(Note: The succeeding was copied were from a N.Y. Law Journal verbatim)** ***A fundamental, constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property. Also, a constitutional guarantee that a law shall not be unreasonable, Arbitrary, or capricious.*** **The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property. The due process clause of the Fifth Amendment, ratified in 1791, asserts that no person shall "be deprived of life, liberty, or property, without due process of law." This amendment restricts the powers of the federal government and applies only to actions by it. The Due Process Clause of the Fourteenth Amendment, ratified in 1868, declares, "[Nor shall any State deprive any person of life, liberty, or property, without due process of law" ($ 1). This clause limits the powers of the states, rather than those of the federal government. The Due Process Clause of the Fourteenth Amendment has also been interpreted by theU.S. Supreme Court in the twentieth century to incorporate protections of the Bill of Rights so that those protections**

apply to the states as well as to the federal government. Thus, the Due Process Clause serves as the whereby the Bill of Rights has become binding on state governments as well as on the federal government. The concept of due process originated in English Common Law. The rule that individuals shall not be deprived of life, liberty, or property without notice and an opportunity to defend themselves predates written constitutions and was widely accepted in England. The Magna Charta, an agreement signed in 1215 that defined the rights of English subjects against the king, is an early example of a constitutional guarantee of due process. That document includes a clause that declares, "No free man shall be seized, or imprisoned ... except by the lawful judgment of his peers, or by the law of the land" (ch. 39). This concept of the law of the land was later transformed into the phrase "due process of law." By the seventeenth century, England's North American colonies were using the phrase "due process of law" in their statutes. The application of constitutional due process is traditionally divided into the two categories of Substantive Due Process and procedural due process. These categories are derived from a distinction that is made between two types of law. Substantive Law creates defines, and regulates rights, whereas procedural law enforces those rights or seeks redress for their violation. Thus, in the United States, substantive due process is concerned with such issues as Freedom of Speech and privacy, whereas procedural due process is concerned with provisions such as the right to adequate notice of a lawsuit, the right to be present during testimony, and the right to an attorney.

ISSUE OF ASSIGNMENTS ATTACHED TO THE NOTE

Bra Regarding the issue of assignments of the "Note:" The court wrote (lines R-2-5 on page 5) said,

"There were proper assignments of these documents to the present Plaintiff.". BUT, WAS THE NOTE *A* **FAKE? There were no staple marks on the note. The S.C. law States that "the note must have the allonges attached to it by staples, tape or by some common means"**. There was no evidence of any "common means" on the Note.

(The succeeding Involves S.C. and is copied from the "N.Y.Law Review":

Though prevalent, these practices do not meet the technical requirements of the New York Uniform Commercial Code to make the transferee of a promissory note its "holder." The potential result: unnecessary and totally avoidable legal issues if the purchaser or pledg**ee ever needs to est**ablish it holds the note. For example, in a foreclosure, these imperfections might let the borrower defeat a motion for summary judgment by claiming the plaintiff does not validly hold the loan. The problem arises from a careful reading of the technical requirements of the UCC as in effect in New York (New York UCC).2 New York is one of only two states that still use the antiquated 1951 version of UCC Article 3.3 The 'No-Space Test' Under any UCC, if a transferee (whether buyer or secured party) wants to become a "holder'4 of a negotiable instrument 5-or, better, a "holder in due course"6-the transferor must first duly "negotiate" the instrument to the new holder. Negotiation of a negotiable instrument requires delivery of the instrument to the holder with any necessary indorsement.8 Being a holder (even "in due course") of an instrument is not necessarily the same as owning it, though some courts do not grasp the distinction.9 An indorsement on the front or back of an instrument will unquestionably meet the test for "negotiation." *A* separate piece of paper today's industry standard, the "allonge"-raises legal issues that impair its effectiveness as a valid indorsement. First, ancient principles of commercial law, possibly still good law in New *Y*ork, prohibit use of any additional piece of paper for an indorsement as long as enough space remains to write the indorsement somewhere on the instrument itself (the "No-Space Test"). Second, even when the law allows a separate indorsement, the New York UCC literally requires

an allonge to be "firmly affixed" to the instrument, a requirement that today's practice generally flunks. Historically, the law disfavored use of an allonge to indorse an instrument. The majority view under all of the law merchant,"10 the Uniform Negotiable Instruments Law (NIL), 11 and the common law applied the No-Space Test. 12 An overwhelming majority of courts in other states that have expressly considered this issue have repeatedly interpreted the 1951 version of UCC 83-202 to carry forward the No-Space Test. 13. **On the other hand, quite a few cases have allowed a separate allonge under these circumstances. 14 Only a few of these cases expressly considered whether a particular instrument still had room for an indorsement. 15 These cases generally upheld an allonge without discussing the No-Space Test. No** New York case expressly decides whether the New York UCC includes a No-Space Test. A few New York **cases** on allonges, 16 and a few from P.8 out of state applying the 1951 UCC, do not consider whether the instrument still had enough space for an indorsement. The Official Text of Revised Article 3 does not directly address a No-Space Test. But Official Comment 1 to Revised Section 3-204 says: "An indorsement on an allonge is valid even though there is sufficient space on the instrument for an indorsement." If New York enacted the Revised UCC, any concern about a No-Space Test would diminish to the vanishing point. **But New York, along with only South Carolina, hasn't done that.** Accordingly, the No-Space Test remains at least a lingering concern in New York. And if lenders want to identify and mitigate every possible legal risk in their documents as they do they should assume, conservatively, that New York has a NoSpace Test. 17 If New York law does not have a No-Space Test, or if a particular transaction has satisfied the test, counsel must then ask two more questions before using an allonge.

Must the parties physically attach the allonge on the instrument being endorsed? If so, what does "physical attachment" require? Physical Attachment New York UCC 83-202(2) states: **"An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof."** This requirement tightened the NIL's previous requirement that the indorsement "be written on the instrument itself or upon a paper attached thereto." **The change was deliberate, apparently designed to assure the indorsement would travel with the instrument**. This, it was thought, would "protect **subs**equent purchasers from the risk that the present holder or a previous holder has negotiated the instrument to someone outside the apparent chain of title through a separate document."18 Lawrence

THE ISSUE OF THE DEFAULT DATE

GMAC STARTED THE DEFAULT NOT THE TANGEMANS (See Exhibit No. (R-4) Wherein GMAC began returning all of Tangemans checks as listed on Exhibit (R-4). Also see the bottom of Exhibit No. (R-5) where the first check returned to the Tangemans was dated 01/07/2008. Does the three (3) year statute of limitation which began to run from the date of default which was Jan. 7, 2008. **Does that three (3) statute stop the clock by which a legal complaint by the court can no longer file said complaint**??? See check at the bottom of exhibit R- 5.(See Plaintiff words, page 4, lines 4-13 and lines 16-21 exhibit # 2 attached). The original Summons was filed November 3, 2010, when the current docket No. ending in 05847 was first issued (See Exhibit R- 3). The Plaintiff is simply using

undocumented dates out of thin air and certainly much more than six (6) months. More like (9) years.

Not six (6) months as implied. Also see (Exhibit No. five (5) which confirms the Jan. 7th, 2008 as beginning the date of default. **HOWEVER, WELLS FARGO BANK AND ATTORNEY KELCHNER WITH THE HUTCHENS LAW FIRM DID NOT START ACTION UNTIL MAY 5, 2017 (SEE EXHIBIT (6)... THAT'S NINE (9 YEARS AND FIVE MONTH SINCE THE DATE OF DEFAULT!** Roger Townsend & Thomas Law Firm reconstituted the case No, as 10-CP-42-5847 which began January 19, 2011. (see Exhibit No. three (3). That created two cases active at the same time...with the Bradley & Arant law firm from Charlotte, N.C. which case was heard by Judge Mark Hayes at about the same time.

ISSUE OF REGARDING REDACTIONS

The account number on the fraudulent note was blacked out, see attached "Note" as (**Exhibit R- 1).** THE LAST 3 OR 4 DIGITS of an account number should remain in order to show proof or originality of the note. Too much redaction leads me to to be suspicious of the note's originality. The defendant is the one who must physically see the note. The last four digits of my Social Security number is out there for every loan, bank account and credit accounts.

ISSUE OF INSURANCE

From the beginning of the default which actually was January of 2008, (Exhibit R-5), GMAC began including fire and Hazard Insurance as did all the succeeding buyers of said note. Multiply$500 to $700 per year for bank added insurance, it probably was more than $10,000.00. So where is that hidden in those figures Well Fargo Bank gave attorney Kelchner? (See Lines R 9-11 page 3).