

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
South Carolina Circuit Court Judge

Appellate Case No. 2020-001204

TEMISAN ETIKERENTSE and IJOEMA ETIKERENTSEAppellants,

v.

SPECIALIZED LOAN SERVICING, LLC Respondent.

**APPELLANTS’ SUPPLEMENTAL RETURN TO RESPONDENT’S
MOTION TO STRIKE**

As a threshold matter, the United States Supreme Court requires the South Carolina Court of Appeals to first decide the question of whether the circuit court had jurisdiction, *i.e.*, the first two issues on appeal, before proceeding with Respondent’s Motion to Strike. *See Ake v. Oklahoma*, 470 U. S. 68, 75 (1985) (“[W]hen resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court’s holding is not independent of federal law.”).

In its Reply in Support of Motion to Strike, the Respondent, Specialized Loan Servicing, LLC (“SLS”), concedes that “South Carolina law flatly contradicts” the aforementioned federal law. (Reply Memo. FN # 2). Asserting because “Appellants alternatively characterize their [lack of subject matter jurisdiction] argument as raising ‘preemption,’” SLS cites *Herron v. Century*

BMW, 395 S.C. 461, 470, 719 S.E.2d. 640, 644-645 (2011), for the proposition that South Carolina procedural rules governing issue preclusion must apply.

In the final analysis, SLS' reliance *Herron* upon is misplaced and is specifically rejected by the United States Supreme Court:

Unlike *Herron*¹, “the [pre-emption] issue is a choice-of-forum rather than a choice-of-law question,” *International Longshoremen’s Association, AFL-CIO v. Davis*, 476 U.S. 380, 391 (1986), in the case at bar. “The point,” that SLS misses “is not whether *state* law gives the state courts jurisdiction over particular controversies but whether jurisdiction provided by state law is itself pre-empted by *federal* law vesting exclusive jurisdiction over that controversy in another body.” *Id.* at 388.

The Supreme Court’s decision in *Ake, supra*, is based on the fact that “[i]t is clearly within Congress’ powers to establish an exclusive federal forum to adjudicate issues of federal law in a particular area that Congress has the authority to regulate under the Constitution,” *Longshoremen* at 388², and the “States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land.” *Kalb v. Feuerstein*, 308 U.S. 433, 439, 60 S.Ct. 343 (1940).

Under the United States Constitution, “[t]he Supremacy Clause supplies a rule of priority.” *Virginia Uranium v. Warren*, 139 S.Ct. 1984, 1901 (2019). SLS’ concession that “South Carolina

¹ See *Herron*, 395 S.C. at 469, 719 S.E.2d at 644 (“whether the FAA preempted our state’s legislative policy as set forth in the Dealers Act, was raised neither to the trial court nor to our Court.”).

² A critical element of SLS’ defense is this Motion to Strike evidence, i.e., that SLS sought out and obtained the jurisdiction of the (1) bankruptcy court to proceed with a foreclosure action against Appellant; and the (2) Consumer Financial Production Bureau (“CFPB”) to adjudicate whether SLS had caused financial harm to Appellant under the Real Estate Settlement Protection Act (“RESPA”) by pointing directly to the preempting federal law.

flatly contradicts” federal law is fatal, and therefore its Motion to Strike must be denied. *See e.g.* U.S. Constitution, Art. VI, cl. 2. (“the Constitution, and the Laws of the United States” are “the supreme Law of the Land ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding”).

Respectfully submitted,

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March 22, 2021

Mt. Pleasant, South Carolina

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that their *Appellants' Supplemental Return to Respondent's Motion to Strike* in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this day to the following or via e-mail if so indicated:

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