THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon; SC Housing Corp.; and Twin Creeks Homeowners Association, Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity, is the Appellant.

SECOND AMENDED INITIAL BRIEF

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STATEMENT OF THE ISSUES

Does the Court of Appeals agree that the Circuit court abused its discretion by denying the motion for leave to amend pleadings? If so, did the Circuit court violate my due process rights by its denial, based on the fact that I did not have prior Notice of any prejudice?

Does the Court of Appeals agree that the Respondent is relying of the Promissory Note and as such, does the Non claim statute applies to this case?

Does the Court of Appeals agree that the Circuit court abused its discretion in granting Summary Judgment to Wells Fargo, when discovery was not complete?

Does the Court of Appeals agree that the Circuit Court violated my Due process rights to a fair process, by making a credibility determination of the evidence, with the Judge making himself a witness and accepting Wells Fargo's counsel's statements as evidence.

Did the Circuit err in granting summary judgment in favor of Wells Fargo?

RELEVANT PORCEDURAL HISTORY

The procedural history listed below is relevant to this appeal, as I must clarify my confusion in enumerating my answers and motions for leave, which is as follows:

Complaint filed 12/22/2017	Answer served 1/25/2017
Amended by right (First Amended Answer)	02/01/2018 - Wells Fargo reply -2/13/2018
Sought leave to amend (Second Amended Answer	02/26/2018 - Wells Fargo reply - None
Sought leave to amend (Third Amended Answer)	03/15/2018 - Wells Fargo reply - None
Leave granted by Judge Verdin on 3/28/2028	
Filing of Third Amended Answer (enlargement)	05/07/2018 - Wells Fargo reply -5/21/2018
Sought leave to amend (Fourth Amended Answer)	06/05/2018 - Wells Fargo reply - None
Leave granted by Judge Kinlaw on 07/19/2018	

Filing of Fourth Amended Answer	07/30/2018-Wells Fargo reply - 8/10/2018
Sought leave to amend (Fifth Amended Answer) (Note – incorrectly enumerated as Sixth and Seventh Amended Answer)	04/12/2019 - Wells Fargo Reply - None
Denial of leave to amend 5th Amended Answer	04/29/2019

STATEMENT OF THE CASE

This appeal is concerning a denial of a motion for leave to amend my fifth amended answer and concerning summary judgment that was granted in favor of Wells Fargo, by the Circuit Court, in an action for foreclosure. The Circuit Court issued its preliminary Order granting the MSJ, in

favor of Wells Fargo on 7/24/2017. I prematurely filed a motion to alter/amend on 8/5/2019 and when the final Order/Judgment was issued on 8/7/2019, on 8/16/2019 if filed a motion to alter/amend, combining the two and the Circuit court issued its denial of the motion/alter amend on 8/22/2019. And this was not done for purposes of any delay, as my Notice of Appeal was filed with the Circuit Court on 9/6/2019, received by the South Carolina Supreme Court on 9/16/201 and transferred to the South Carolina Court of appeals on 9/17/2019. I filed a motion for leave to amend my fifth amended answer and I incorrectly enumerated it my seventh amended answer. According to South Carolina Rules of Civil Procedures, Rule 15a the burden of proving prejudice is on the party opposing the motion. The Respondent did not file a response to the motion, but showed up at the hearing and it was decided between the judge and respondent's attorney to deny the motion solely based on the fact that it was my seventh amended answer. In the event, I did not receive any prior Notice of prejudice and in reviewing the evidence; it appears that I suffered a violation of my due process rights. The Respondent is not the original lender and stated in the complaint that it rights to foreclosure were acquired by an assignment of the mortgage and it is well settled that an assignment of a mortgage without any mention of a transfer of the Note is nugatory and it appears to put the Respondent in a position of lacking standing to pursue its mortgage and at the same time put the Respondent in a position of pursing the Note. And the South Carolina Probate code requires that a lender/servicer present a creditor's claim within the claims presentation period, which is within, 8 months of the death of the obligor, or the creditor's claim is to be forever barred. My mother whom is the obligor on the Note, executed in favor of NVR passed away on 7/5/2015 and Wells Fargo did not present a creditor claim within the claims presentation period. The Circuit court and Wells Fargo's counsel are in agreement that a creditor's claim does not have to be filed when the lender/servicer is pursing, its mortgage. However, their agreement does not comport with the rulings of the South Carolina Supreme court, whom has explained the 2 avenues for a creditor to pursue its claims which are the Note or Mortgage. Summary Judgment was granted in favor of Wells Fargo, and the evidence shows that the Circuit judge included the statements of Wells Fargo's counsel, as admissible evidence, after receiving evidence that was prejudicial and used to influence the Judge, it appears to have aroused an emotional bias in the judge, which resulted in a decision, in favor of Wells Fargo, in violation of my Due process rights. This Judges decision, appears to be wrongful and lead to the Judge making himself a witness and making a credibility decision based on the evidence at the summary judgment stage. It is well settled that at the summary judgment stage the concern is admissibility of the evidence.

CLARIFICATION OF 2 ISSUES ARE AS FOLLOWS

Bankruptcy court order/Personal representative I filed for Chapter 13 bankruptcy and Wells Fargo's counsel presented a copy of the order from the Bankruptcy court. The order is misleading, as it is not from an adversary proceeding and appears to be subject to Res Judicata, as according to the South Carolina Supreme court res judicata applies when. I still have an outstanding claim for fraud which I attempted to allege in my 5th amended answer, which presents a genuine issue of fact for a jury to decide, as it is legal and compulsory to Wells Fargo, foreclosure action. I only had 1 request for production, left for Wells Fargo, when it filed for summary judgment. which is a request for a loan history, which does not require a fishing exposition. Concerning whether or not I should include the Estate as an Appellant. The Estate of Ruth Ladson Witherspoon is not suing Wells Fargo and I have never signed any of my pleadings in a representative capacity.

STANDARD OF REVIEW
AMENDMENT OF PLEADINGS

The South Carolina Appellate courts have held that "A motion to amend pleadings is within the sound discretion of the trial judge . . . ." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) (citing *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 22, 431 S.E.2d 587, 590 (1993). ".....and his actions will not be disturbed on appeal absent an abuse of discretion. (See Porter Bros., Inc. v. Specialty Welding Co., 286 S.C. 39, 331 S.E. (2d) 783 (Ct. App. 1985). The South Carolina Rules of Civil Procedure, Rule of law 15(a) states ..... leave shall be freely given when justice so requires and does not prejudice any other party. And the South Carolina Supreme Court has stated that Rule 15(a) strongly favors amendments and the court is encouraged to freely grant leave to amend. See "Parker v. Spartanburg Sanitary sewer Dist., 362 S.E. 276, 286, 607 S.E.2d 7111, 717 (Ct. App. 2005).

provides in relevant part that the Appellate court's jurisdiction in cases of equity requires that it review the findings of fact as well as the law. It is well settled that the court of appeals may reverse a finding of fact by the circuit court (in a case of equity) when the appellant satisfied the court that the preponderance of the evidence is against the finding of the circuit court. See Finley, 55 S. C. 202, 33 S. E. at 360-61. Therefore the standard of review is de novo based upon the preponderance of the evidence and there must be a showing of an abuse of discretion.

STATEMENT OF FACT AND ARGUMENT
DENIAL OF LEAVE TO AMEND SIXTH AMENDED ANSWER

I filed a motion for leave to amend my Fifth Amended Answer on 6/5/2018, under the South Carolina Rules of Civil Procedure, Rule 15. R_____pg 1, line 1, Motion for leave to amend Sixth Amended Answer.(note: I incorrectly denominated my motion as leave to amend my Seventh Amended Answer). I did not receive a pleading in response to this motion concerning any prejudice and the Public Index does not reflect a pleading in response to the Motion filed on 6/5/2018. The ruling of the Circuit Court is as stated "This matter comes before the Court pursuant to Plaintiff's Motion to Alter or Amend her Complaint for a seventh time. The Motion is respectfully denied." R_____Order dated 4/29/19.

I reviewed the South Carolina Rules of Civil Procedure, Rule 15a to see if I could find any restrictions concerning the number of times a motion for leave, can be filed. I couldn't find any restrictions and Rule 15(a) SCRCP provides that when a party asks to amend his pleading, "leave shall be freely given when justice so requires and does not prejudice any other party." "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citing *Jarrell v. Seaboard Sys. R.R., Inc.*, 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987)). The South Carolina Supreme court has held in BB&T v. Taylor, 369 S.E. 548, 551, 633 S.E. 2d 501, 502-3 (2006) "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support. Id. at 551, 633 S. E. 2d a 503. *In Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222, 226 (1962). The *Foman* Court continued:

> If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the

opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."

Since the Respondent did not plead prejudice and the Circuit Court's ruling was different from the above substantive reasons, I could not find any evidence that supports the court's ruling. Since I did not have notice or an opportunity to respond, as the motion was heard and denied the same day; I wanted to find out if I had suffered an unjust denial of my constitutional right to due process. In Stono River Entl. Protection Ass'n v. S C. Dep't of Health and Envtl. Control, 305 S.C. 90; 94, 406 S.E. 2d 340, 342 (1991), the South Carolina Supreme court held "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review. I further found that this court, the South Carolina Court of Appeals, considers an order or judgment void, if a court does not provide due process.

See McDaniel v. U.S. Fid. & Guar. Co., 324 S. E. 639, 644, 478 S. E. 2d 868, 871 (Ct. App. 1996). Due to the judge's tone and his action with the Respondent's attorney, as they were nodding their heads in agreement and prompting one another, as to what to say, I did not object to the judge's comments. State V. Pace, 316 S. C. 71, 447 S. E. 2d 186 (1994) (failure to make a contemporaneous objection to judge's comments excused where judge's tone and tenor made it clear that any objection would have been futile). The South Carolina Supreme Court stated "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or

where the order is based on factual conclusions that are without evidentiary support." Id. at 551, 633 S.E.2d at 503. (BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006). In order to find out if there is any evidentiary support concerning the Circuit Court's Order for denying the amendment; I reviewed the record and the record is void of any pleading of prejudice. Since I could not find any evidence of a pleading of prejudice, and in accordance with BB&T v. Taylor, it appears that the Circuit court's order is not supported by evidence. Since the Respondent was allowed to plead at the hearing, without a fair Notice or the Circuit Court made a Sua Sponte decision, using its own reason to the deny the motion and the motion was heard and denied the same day; I reviewed the South Carolina Constitution, to find out if I suffered a Due Process violation. Article 1 § 22, of the South Carolina Constitution provides in relevant part:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

Further the South Carolina Supreme Court stated "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review. see Stono River Entl. Protection Ass'n v. S C. Dep't of Health and Envtl. Control, 305 S.C. 90; 94, 406 S.E. 2d 340, 342 (1991).

The South Carolina Supreme Court has also held that a demonstration of substantial prejudice is required to establish a due process claim. See , See Tall Tower,Inc. v. S.C. Procurement Review Panel, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987). Since I did not have fair Notice of any

prejudice, or an opportunity to respond in a meaningful way, as the motion was decided and denied on the same day, it appears that my substantive right due process was violated.

It would be patently unfair if this court would now find a denial reason for the Respondent, as the Respondent, strategically did not want to end the case early on, as if it had done so; and a foreclosure sale had taken place prior to October of 2019, the Respondent would have been required to return the amount of $36,000.00 to SC Help, per the requirements of the program.

ADDITIONAL ARGUMENT FOR LEAVE TO AMEND

If the Circuit court had properly exercised its discretion summary judgment would not have been granted, as I claimed to be a successor in interest and under South Carolina joint tenancy law, when one joint tenant passes away the whole of the property passes to the remaining joint tenants as a non probate asset and according the Probate non claim statute, Wells Fargo must have presented a creditor's claim within 8 months of the first publication of the newspaper notice to all creditors and Wells Fargo would have had to have received a notice of disallowance in order to acquire a right to take any action against the subject property.

SUMMARY JUDGMENT STANDARD OF REVIEW

When reviewing a grant of summary judgment, an appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Id.; Rule 56(c), SCRCP. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Id.

A foreclosure action is an equitable action. *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014). Thus, the Appellate Court's review is de novo. *Stoney*

v. Stoney, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017).; *see* S.C. Const. art. V, § 5 (stating in equity cases, the Appellate courts "shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside"). Under de novo Standard of review, South Carolina Supreme Court has long recognized, two principles "(1) a trial [court] is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial [court]." *Stoney*, 421 S.C. at 530, 809 S.E.2d at 59. De novo review allows us to take our own view of the evidence and make our own findings of fact. *Id.* In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775–76 (1976). However, "[w]hether a party is entitled to a jury trial is a question of law." Article V, § 5 of the South Carolina Constitution provides in relevant part that the Appellate court's jurisdiction in cases of equity requires that it review the findings of fact as well as the law. It is well settled that the court of appeals may reverse a finding of fact by the circuit court when the appellant satisfied the court that the preponderance of the evidence is against the finding of the circuit court. See Finley, 55 S. C. 202, 33 S. E. at 360-61. Therefore the standard of review is de novo based upon the preponderance of the evidence and there must be a showing of an abuse of discretion.

"Questions of statutory interpretation are questions of law, which the Appellate Courts are free to decide without any deference to the court below.' " *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d

457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

STATEMENT OF FACTS AND ARGUMENT
CONCERNING THE COMPLETION OF DISCOVERY

DISCOVERY

Motion to Compel Discovery filed	07/06/2018
Filed exhibits for motion to compel	07/11/2018
First set sent	08/24/2018
Second set sent	10/26/2018
Third set sent	12/26/2018
	01/17/2019(interrogatories only)

Lots of back and forth over the Third set of admissions containing mortgage statements, which plaintiff refused to admit to. However, I understand now they are deemed admitted.

Fourth set sent 04/12/2019

1. In this case while both the Respondent and myself filed motions to obtain a scheduling order, no
2. such order was ever obtained. I quoted the South Carolina Supreme court "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to

clarify the application of the law". Tupper v. Dorchester county, 326 S.C. 318, 487 S.E.2d 187 (1997). R_____Memo in opp. to MSJ pg. 3 under "Legal Standard" lines 10-12. I stated "The motion for summary judgment was premature as discovery was not complete and shows that the Plaintiff's escrow statement has proven to contribute to whether or not there is a material issue that can change the outcome of this case" I cited Baughman v. Am. Tel & Tel Co., 306 S.C. 202, 112, 410 S.E. 2d 537, 543 (1991). Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. R____Notice and Motion to Alter or Amend Summary Judgment dated 8/5/2019 and because this motion was premature, when the final order was issued, I incorporated the statements from the 8/5/2019 motion into my 8/16/2018 Motion to Alter or Amend.R_____ . The Circuit Court's order dated 7/24/2019, shows that the court was aware that discovery was not complete and the court ordered the Respondent to answer the discovery request within 10 days. Once I had the admission of the escrow statement, I filed the 8/16/2019 motion to alter or amend explaining that I still needed to complete discovery, by stating that the escrow statement admitted to, gives me an opportunity to present evidence as to a material fact that would change the outcome of this case. Yet the court issued an order on 8/22/2019, denying the motion on 8/22/2019. According to the Tupper and Baughman cases noted above, the court's order is an abuse of discretion, as ordering the Respondent to answer the discovery request did not allow me to complete discovery, as it only left me with an escrow statement that had a misrepresentation, as I should have been given the opportunity to complete my pursuit of the misrepresentation in the escrow statement.

3. Now that the Respondent has admitted to the escrow statement, I only have 2 requests for admissions of 2 mortgage statements and 1 production request and that is for the loan history from 9/1/2014 – 10/1/2016, which are relevant to the misrepresentation made in the Respondent's escrow statement, claiming there was an escrow shortage. Since my motion to alter or amend was premature, once the final order was issued on 8/7/2019, I filed a motion to alter or amend dated 8/16/2019, in which I inadvertently added the word except and I clarified that all my statements in my Memorandum/affidavit and motion to alter or amend dated 8/5/2018 are all based on firsthand knowledge, as I had previously mistakenly stated "based on my information and belief" in my Memorandum/Affidavit in opposition to the motion for summary judgment. R_____8/ 16/2019 Motion to Alter or Amend, page 3, line 1 -3 and
4. In Baughman, the South Carolina Supreme Court cited two factors to be considered in determining whether the party opposing summary judgment has had a "full and fair opportunity to complete discovery" First, the party must demonstrate "a likelihood that further discovery will uncover additional evidence relevant to the issue… and that they are not merely engaged in a fishing expedition." Id. At 112, 410 S.E. 2d at 544.
5. I have suffered through discovery abuse such that when I requested the basic interrogatories, such as "give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case." The Respondent's counsel provided me with the names of the defendants listed in the complaint. And when the Respondent's counsel stated that he had provided me with verified statements to my interrogatories; I found that the Respondent's counsel had provided me with pre signed sworn statements which predated the interrogatories, indicating that the Respondent had

not actually read or verified the interrogatories. And after I sent the third set of discovery requests the Respondent's counsel began to make excuses in order to delay the process. While gathering the documents for my Fifth set of Discovery requests, I received the Respondent's motion for Summary Judgment, dated June 11, 2019 which I also had to defend against and this caused me not to send out the remaining three documents, requiring admissions.

I did not know what my causes of action would be, so I did not have my documents set up in any particular order. The 3 remaining admissions will clearly and convincingly show that this is a fraudulent foreclosure and that Wells Fargo set a scheme in place to defraud me of my property. I stated discovery was not complete. R_____Memo in opp. to MSJ pg 17 last line and raised the issue at the hearing. The Circuit Court's preliminary Order dated 7/24/2019 shows that the court was aware that discovery was not complete. Again explained that discovery was not complete in the Motion to alter date 8/16/2019 and I reiterated this in my 8/5/2019 motion to alter or amend. I did not make the mortgage statements part of the record Discovery was not complete. I made a mistake in a fact, concerning whether or not the statements had to be deemed admitted by the court. I am not going on a fishing expedition, as I have 3 documents that I need admissions for which will allow me to plead clearly and concisely.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Tupper v. Dorchester County,* 326 S.C. 318, 487 S.E.2d 187 (1997). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. *Staubes v. City of Folly Beach,* 331 S.C. 192, 500 S.E.2d 160 (Ct.App.1998). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.*

However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Id.; Pye, supra.*

STATEMENT OF FACTS AND ARGUMENT
LACK OF STANDING

Wells Fargo's counsel stated "…..Wells Fargo is in possession of the original Promissory Note, and Defendant was informed of this." "See e.g., Schneider v. Deutsche Bank Nat; Trust Co. 572 Fed. Appx. 185, 190 (4th Cir. 2014) (holding, in applying South Carolina law, that whoever possesses an instrument endorsed in blank has the full power to enforce it:" R_____MSJ pg 4 under item e line 12-16.

Wells Fargo's counsel stated "because the subject Promissory Note is endorsed in blank, and Wells Fargo is in possession of the original Promissory Note. " "A copy of the Note is attached hereto as Exhibit B." "Wells Fargo, therefore has the full power to enforce the subject Promissory Note and the accompanying Mortgage." "See e.g., Schneider v. Deutsche Bank Nat. Trust Co., 572 Fed. Appx. 185, 190 (4th Cir. 2014) (holding, in applying South Carolina law, "whoever possesses an instrument endorsed in blank has the full power to enforce it")" R____MSJ pg. 5 under item 3a,lines 2-5.

I stated Wells Fargo's counsel (Mr. Laney) stated to me at 2 appointments (9/12/18 and 5/23/19, that he was in possession of the original Note and I found that Mr. Laney was not in possession of the original Note and first appointment, when he began insisting that he was showing me an original Note. (further not in my previous comments, I did explain to Mr. Laney that I respect his 25 years of legal experience, I am an ex-Wells Fargo employee and I based my review of the document on my 15 years of mortgage industry experience with direct endorsement authority from the federal government, which includes due diligence and quality control reviews of all mortgage documentation. I further explained that he was not in possession of the original, as the

document that I reviewed had a dry signature, such as a copied document rather than a wet signature as on an original document. This lead to a second appointment with the same results and at the Deposition, Mr. Laney still did not have the original.

s and that I based my review on my 15 years of mortgage experienceinsisted that he was showing me the in person and over the phone, when each appointment was made that he had the Original Note. R____Memo in opp. to MSJ page 7, under item 3A lines 5-6.

GENUINE ISSUE OF MATERIAL FACT THAT COULD CHANGE THE OUTCOME OF THIS CASE

WELLS FARGO'S ATTORNEY STATEMENTS CONCERNING POSSESSION OF THE ORIGINAL NOTE

Wells Fargo's counsel, Mr. Laney stated "... Wells Fargo is in possession of the original Promissory Note, and Defendant was informed of this. See, e.g., Scheider v. Deutsche Bank Nat. Trust Co., 572 Fed. Appx. 185, 190 (4th Cir.2014) (holding, in applying South Carolina law, that "[w]hoever possesses an instrument endorsed in blank has the full power to enforce it"); (Hodges Dep Tr. 42:1-22.)" R____MSJ pge 4, under item 4, lines 11-17. Wells Fargo's counsel, Mr. Laney stated" Defendant's affirmative defense, claiming lack of standing, fails as a matter of law because the subject Promissory Note is endorsed in blank, and Wells Fargo is in possession of the original Promissory Note. A copy of the Note is attached hereto as Exhibit B.R_____MSJ page 5 under item 3a, lines 1-4. Wells Fargo's counsel, Mr. Laney stated, "Defendant's affirmative defense, claiming lack of standing, fails as a matter of law because the subject Promissory Note is endorsed in blank and Wells Fargo is in possession of the original Promissory Note. (See Promissory Note attached hereto as Exhibit A). Under the South Carolina's version of Article 3 of the UCC, S.C. Code Ann. § 36-3-301, possession of the

original note endorsed in blank is prima facie evidence of ownership. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008) "(Possession of a bearer instrument is *prima facie* evidence of ownership"). *See also In re Neals*, 459 B.R. 612, 619 (holding where the original note has been presented and there is undisputed evidence the person trying to enforce the note was also the loan servicer responsible for collecting payments on and enforcing the terms of the note, then such entity has the right of a holder, including the right to enforce the note under South Carolina's version of Article 3 of the UCC).R____Reply in support of MSJ page 20, under item C, lines 1-11. Wells Fargo's counsel, Mr. Laney stated, "based on either Wells Fargo's possession of the original note or its status a loan servicer, there is no genuine issue of material fact as to Wells Fargo's standing to initiate this foreclosure action". R___Reply in support of MSJ page 21, last paragraph, lines 7-9.

ARGUMENT CONCERNING WELLS FARGO'S POSSESSION OF THE ORIGINAL NOTE

All of the above statements are from Wells Fargo's motion for Summary Judgment and Reply in support of its motion for summary judgment, as shown and where Mr. Laney (counsel for Wells Fargo) states that Wells Fargo is in possession of the original Note; it appears that all of these statements are conclusory, as the statements are not supported by facts as to how Wells Fargo, supposedly came into possession of the original Promissory Note. Further, according to the South Carolina Rules of Civil Procedure, Rule 11, Mr. Laney's signature on the motion for Summary Judgment and Reply in support of motion for summary judgment, merely constitute, statements that he has read the motion and to the best of his knowledge, information and belief, there is good ground to support it. The South Carolina Rules of Civil Procedure, Rule 11, which provides in relevant part: "The written or electronic signature of an attorney or party constitutes

a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it…".

In Ex parte Morris, 367 S.C. 56, 64, 624 S.E.2d 649,653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence. Mr. Laney attached his claimed copy of the promissory note to the MSJ and provided the same copy at the hearing. I objected to the copy, in the context of authenticity, as I stated it is not an original. When I ordered the transcript, I was informed that the transcript could not be separated as I wanted, due to how the hearing was conducted, which put me in a position of not being able to afford the transcript. However, the Circuit's ruling is on the face of the Order/Judgement dated 8/7/2019. It appears whether or not Wells Fargo is in possession of the original promissory Note is both a genuine issue of material fact and a determining factor, as to whether or not Wells Fargo should be granted summary judgment. In the cases cited to by Wells Fargo in its motion for summary judgment, the cases show that whether or not a lender is in possession of the original note requires testimony from a document custodian, which is in line with the South Carolina Rules of evidence 803(6), which is lacking in this case. Mr. Laney provided several cases above, in which he claims the courts have held that when a lender/servicer is in possession of the original promissory note, that lender/servicer has the right to enforce the promissory note. The cases are as follows: Scheider v. Deutsche Bank Nat. Trust Co., 572 Fed. Appx. 185, 190 (4th Cir.2014), and *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008). These cases show that when the courts ruled that the lender/servicer had standing, there is testimony from a document custodian, which is lacking in this case. The Circuit court ruled that Wells Fargo has standing, as it stated "because the subject Promissory Note is endorsed in blank and Wells Fargo in in possession of the original promissory Note". R____Order/Judgment dated

8/7/2019, pg 8, under item c, lines 2-3. It appears that the judge has accepted statements from Wells Fargo's attorney, as he used the same wording as the attorney, as shown above and the judge has made himself a witness by claiming that wells fargo was in possession of the original, which is against Rule 605, which provides in relevant part: the judge presiding at the trial may not testify in that trial as a witness. Note this rule is identical to the first sentence of the federal rule and is consistent with South Carolina law providing that a judge may not testify as a witness in a case being tried before that judge. State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244(1942). Nor does the judge make credibility determinations based on the evidence, as at the summary judgment stage there is only a concern as to whether or not there is admissible evidence. See Cunningham v. Anderson County refilled 2/27/2013 Case No 2011-194209 (S. C. Ct. app.) referring to S. C. Prop. & Cas. Guar. Ass'n, Inc., 292 S.C. 65, 70, 710 S. E. 2d 90, 93 (Ct. App. 2011) (citing George v. Fabri, 345 S. C. 440, 452, 548 S.E. 2d 868.874 (2001)). However, in this case the Judge made him self a witness and made a credibility determination of the evidence, as he stated "because the subject Promissory Note in endorsed in blank and Wells Fargo is in possession of the original promissory Note' R____Order/Judgment dated 8/7/2019, pg 8 under item c, lines 2-3. In this case it appears that the attorney statements are hearsay, according to South Carolina Rules of Evidence, Rule 803(6) as there is no evidence as to when the endorsement was made, nor any testimony by a document custodian, so this evidence appears to be erroeneous and the copy of the Note appears to be prejudicial, as it not presented to prove the fact of possession, but to prove that an endorsement was on the document and use to influence the judge and this appears to have arouse an emotional bias in the Circuit Court, when caused a decision on a wrongful basiss, such as the judge becoming a witness. Iit is well settled that in determining whether any triable issues of fact exist, the evidence and all inferences which can be

reasonably be drawn from the evidence must be viewed in light most favorable to the nonmoving party. Hancock v. Mid-South Mgmt, Co., Inc., 381 S.C. 326, 329-30, 673 S. C. 2d 801 802 (2009).

The evidence of attorney statements and claimed copy of Note appear to be against the court's finding and my right to Due process before an impartial court. SeeBlanton, 351 S. C. at 542, 570 S. E. 2d at 569

GENUINE ISSUE OF MATERIAL FACT CONCERING THE NOTE AND MORTGAGE AS SECURITY INSTRUMENTS AND THE NON CLAIM STATUTE

The plaintiff stated in item 9 of the complaint that the mortgage was assigned to it and did not mention an assignment of the Note. It is well settled that an assignment of the Mortgage without an assignment of the Note is a nullity. See (S. C.Nat'l Bank v. Halter, 293 S. C. 121, 128, 359 S. E. 2d 74, 77 (Ct. App. 1987) The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights on the transferee absent some indication that the parties also intended to transfer the debt.) In this case we do not have an assignment of the Note, or testimony from a document custodian testifying to the possession of the Note, so the Respondent lacks standing to pursue the mortgage and appears to put the Respondent in the position of relying on the promissory Note. I stated "Section 62-3-803 provides in relevant: (a) All claims against a decedent's estate which arose before the death of the decedent including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following: (1) one year after the decedent's death;…."R____Memo in opp. of MSJ pg 9 under the second B, lines 1-7. I stated "Attached is a copy of the creditor's claim from the Greenville County Probate Court's website showing tht is stamped and received by the Court and

it is void of any claims by the Plaintiff. Copy of Warranty Deed, ….copy of my Mother's Death Certificate…."R____Affidavit in Opp to MSJ pg. 2 lines 6-9 and line 12.

The Respondent stated "Defendant is incorrect." "Under the South Carolina Probate Code, a secured creditor is not required to file a claim against the probate estate if it is solely seeking to foreclose the mortgage and is not attempting to hold the estate liable for the deficiency following the foreclosure sale." "S.C. Code Ann. §62-3-104…, S.C. Code Ann. §62-3-803(d)(1)……..S.C. Code Ann §62-3-804(7)(b) ("Pursuant to Section 62-3-104, this subsection does not apply to a proceeding by a secured creditor of a decedent to enforce the secured creditor's right to its security.") *See also Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014) (discussing intersection of probate law and mortgage foreclosure actions and holding that, "the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate.").R____Reply in support of MSJ. The Circuit court ruled the same as the statements of the attorney above. I wanted to the Rules of Professional conduct 3.7 which in relevant part shows, that an Attorney cannot serve as both an advocate and witness.

FACTS AND ARGUMENT
GRANTING SUMMARY JUDMENT

Defendant is incorrect. Under the South Carolina Probate Code, a secured creditor is not required to file a claim against the probate estate if it is solely seeking to foreclose the mortgage and is not attempting to hold the estate liable for the deficiency following the foreclosure sale. S.C. Code Ann. §62-3-104. ("This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein."). *See also Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014) (discussing intersection of probate law and mortgage

foreclosure actions and holding that, "the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate."). R___Judgment dated 8/7/2019. So I looked at Gurnham Op. No. 27360, Filed February 26, 2014, for statutory interpretation by the South Carolina Supreme court and the South Carolina Supreme court went on to explain the statutes listed above by the Circuit Court: S.C. Code Ann. §62-3-104, S.C. Code Ann. §62-3-803(d)(1) and §62-3-804(7)(b) (refers to 63-3-104) and 62-3-803(c)(1) and 62-3-812 mentioned by the South Carolina Supreme Court are exemptions and that the exemptions are not without limitations. "...the General Assembly has created two avenues by which a secured creditor may seek recovery following the opening of an estate and the appointment of a personal representative. Under the first avenue, the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate and, thus, may do so outside the time limits of the nonclaim statute. Per the South Carolina Rules of Civil Procedure, Rule 56, summary judgment can be granted on liability alone and I wanted to find out, what would make me liable on the Note and I found according to S. C. Code Ann . §36-3-401, if I had signed the Note I would be liable and I cannot confess to any negotiable instrument that I have not signed. The S. C. Code Ann. . §36-3-401 provides in relevant part (a) A person is not liable on the instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument an the signature is binding on the represented person under Section 36-3-402. Wells Fargo's counsel claimed that I admitted that the payments were due. However, if Appellate court reviews all ambiguities and inferences in favor of the non moving party, the court would be able to ascertain that Mr. Laney was attempting to solicit a due date from me, when he in fact provided the due date and I stated the month in which the last payment was made, see transcript. payments.

OBJECTION TO AUTHENTICITY

Per the South Carolina Rules of Civil Procedure, Rule 56, summary judgment can be granted on liability alone and I wanted to find out, what would make me liable on the Note and I found according to S. C. Code Ann . §36-3-401, if I had signed the Note I would be liable and I cannot confess to any negotiable instrument that I have not signed. The S. C. Code Ann. . §36-3-401 provides in relevant part (a) A person is not liable on the instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument an the signature is binding on the represented person under Section 36-3-402. Wells Fargo's counsel claimed that I admitted that the payments were due. However, if Appellate court reviews all ambiguities and inferences in favor of the non moving party, the court would be able to ascertain that Mr. Laney was attempting to solicit a due date from me, when he in fact provided the due date and I stated the month in which the last payment was made, see transcript. payments. In the complaint Wells Fargo claimed that its rights to foreclosure were in the assignment of the mortgage. In my authorized sixth amended answer and Memorandum in Opposition to Wells Fargo's motion for summary judgment. I stated that Wells Fargo lacked standing, as a transfer of the mortgage without a transfer of the Note is a nullity, see S. C. Nat'l Bank v. Halter, 293 S. C. 121, 128, 359 S. E. 2d 74, 77 (Ct. App. 1987) (The assignment of a mortgage as distinct from the debt it secures is nugatory ad confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt." After this defense Wells Fargo's counsel, began to claim that he was in possession of the original and he wanted me to admit that he had the original, which I could do, as the document presented, had a dry

signature, such as copy as opposed to a wet signature or an original document. Since Wells Fargo must pursue the Note, in order to foreclose, Wells Fargo appears to be subject to the Probate non claim statute, barring its claim, as I stated an uncontroverted fact that Wells Fargo did not file a creditor's claim within the presentation of claims period, in order to acquire a right of action. Yet we have Summary Judgment in favor of Wells Fargo and the court's order states that Wells Fargo has standing as Wells Fargo is in possession of the original Note or is the servicer. Wells Fargo has claimed that it is the holder of the Note and mortgage and in possession of the same. Wells Fargo further stated that it is servicing its own loan, so it appears that the alternative ruling, concerning Wells Fargo being the servicer, is being taken out of context, due to Wells Fargo's claim that it is servicing its own loan, so Wells Fargo would not have a pecuniary interest in collecting payments under a contract for another party and in the cases cited to by Wells Fargo the servicers were deemed to have standing, due to testimony from a document custodian. Wells Fargo has standing\hasin the face of my claim for a deceptive business practice, where I am not required to come forward with facts to prove a genuine of fact for trial, until Wells Fargo meets its burden, according to South Carolina Rules of Civil Procedure, Rule 56.

DECEPTIVE BUSINESS PRACTICE

I have a cause of action for a Deceptive Business Practice, due to Wells Fargo's claim that there was an escrow shortage. In order to establish repetition, I raised the issue that Wells Fargo had claimed that it was the owner of the Note in April 2012 and Wells Fargo is still in the same line of work. I also stated the date in which my Mother passed away and as a fact of life, death will continue. This gives Wells Fargo the opportunity to continue to make deceptive claims that a person has an escrow shortage, that will increase their payments and then due to the death of the

original owner, claim that an Heir is not the owner of the property, for purposes of instituting fraudulent foreclosures and commit fraud upon the court in order to avoid the South Carolina Supreme Court's order 2011-05-02-02, concerning Foreclosure Intervention. See York v. Conway Ford, Inc. filed January 27, 1997 Op. No. 24564 (SC Supreme Court) (alleged acts or practices have the potential for repetition, where defendant remains in the same business and faced with opportunities to repeat the conduct.)

DISCOVERY

I stated Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester county, 326 S.C. 318, 487 S.E.2d 187 (1997). R_____(Notarized) Memo in opp. to MSJ pg. 3 under "Legal Standard" lines 10-12

I stated "Attached is a copy of the creditor's claim from the Greenville County Probate Court's website showing tht is was stamped and received by the Court and it is void of any claims by the Plaintiff." Copy of Warranty Deed …, copy of my Mother's Death Certificate.

R_____Notarized Affidavit attached to the Memo in opp. to MSJ

FOR THE FIRST TIME ON APPEAL
PLEADING THE NON CLAIM STATUTE 62-3-803(a)
(OUT OF AN ABUNDANCE OF CAUTION)

Per Gurham, the nonclaim statute can be plead at anytime in the proceeding and even for the first time on appeal. Wells Fargo is stated – "It is in possession of the Note and can enforce the Note: I stated – "62-3-803(a) Therefore, out of an abundance of caution, I plead the non claim statute. My Mother Ruth Ladson Witherspoon, was the only obligor on the Note and Mortgage and she passed away on 7/5/2015. At the time of my Mother's passing the subject property was owned in Joint Tenancy, via a "Special Warranty" Deed, showing the four unities: time, title, possession and interest. Due to joint tenancy, the property passed to my Brother and I as the

remaining joint tenants in accordance with Title 27. . Further, I am an Heir, as my Mother passed away, intestate and under the property passes to closing living relative. I wanted to find out if the non claim statute applied to this case so I reviewed the statute and found that the Heirs and non probate assets are on the same footing as the Estate. Per the Non-claim statute Tollison case and non claim and shows since the Non Claim statute restriction on exemptions, puts, Heirs and non probate assets on the same footing as an Estate; I plead the non claim statute as an Heir and I plead the non claim statute as the property is a non probate asset.

as the Probate non claim stature provides in relevant part:

I plead the fact that the first Notice to all creditors was Published on 8/7/2015 and the record is void of any response from Wells Fargo. and it is apparent that Wells Fargo is awjoint tenants, under S. C. Ann. .recorded which h the mortgage and granted by the previous owners, NVR.Shortly thereafter, probate was opened and the first Publication Notice to all creditors, went out on 8/7/2015. Who Wells Fargo did not file a creditor's claim within one year of the date of the passing of my Mother, Ruth Ladson Witherspoon and the first publication notice in the Greenville News was on 8/7/2015.

BANKRUPTCY ORDER SUBJECT TO RES JUDICATA

The Respondent provided a copy of the Bankruptcy Order and I am not sure why and I am not requesting judicial notice. However, out of an abundance of caution; I am addressing the order. The Bankruptcy order is misleading, as it not a final consented to order, from an adversary proceeding. The Bankruptcy Court Order, appears to be subject to Res Judicata. per the South Carolina Supreme Court, res judicata applies if the following elements are met: (1) the identities of the parties are the same as in the prior litigation; (2) the subject matter or cause of action is the same as in the prior litigation; and (3) there was a prior adjudication of the issue by a court of

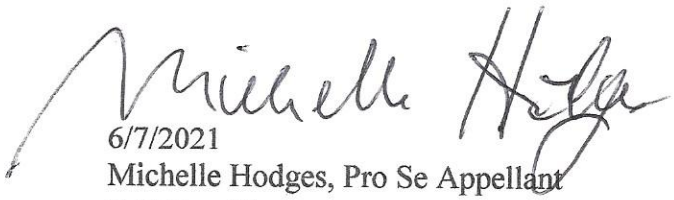
competent jurisdiction. See, Johnson v. Greenwood Mills Inc., 317 S.C. 248, 250-251, 452 S.E.2d 832, 833 (1994) and Griggs v. Griggs, 214 S.C. 177, 51 S.E.2d 622, 627 (1949). In the case in the circuit court the parties are the same Wells Fargo and Michelle Hodges. The cause of action is the same, which is a debt claimed by Wells Fargo and there has been a final decision of summary judgment in favor of Wells Fargo, in case no. 2017CP2308016, which is the subject of this Appeal. The Summary Judgment Order is dated August 7, 2019 and the Bankruptcy Order is dated May 5, 2020.

CONCLUSION

Summary Judgment, should have been granted in my favor, because the Court's order dated 8/7/2019, does not appear to be not supported by evidence that would be admissible at trial. The evidence appears to be erroneous and prejudicial, in order to prove possession without the testimony of a document custodian and long with Attorney statements and the Judges has made himself a witness.. The copy of the Note appears to have been prejudicial to my rights by arousing a bias in favor of Wells Fargo, such that the ruling does not appear to be impartial and based on the record. Concerning the amendment it is well settled that an amendment should be freely given an here again, it does not appear that the ruling was impartial, as I did not have a fair notice and a meaningful opportunity to respond. When due process has been violated this court has ruled that the order are void. (Lawyer as Witness) 3.7. Attorney for Wells Fargo has acted at advocate at the hearing for the Motion for Summary Judgment and acts as a witness in the Motion for summary judgment, speaking in the first person and with personal knowledge. And for the reasons stated above this Court should reverse the Circuit Court's Order, denying the amendment of pleading and reverse the summary judgment and please apply an sanctions the court deems necessary.

Based on the information contained in this brief, it appears that I have suffered discovery abuse, had my due process rights violated by 2 judges and this is a foreclosure action where I would be made homeless from these rulings, which appears to be manifest injustice and I am praying for justice in this matter.

Respectfully submitted,



6/7/2021
Michelle Hodges, Pro Se Appellant
P O Box 95
Mauldin, SC 29662
864-714-5263

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon; SC Housing Corp.; and Twin Creeks Homeowners Association, Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity, is the Appellant.

AFFIDAIT IN SUPPORT OF SECOND AMENDED INITIAL BRIEF

Michelle Hodges, Pro Se Appellant
6 Young Harris DR
Simpsonville, SC 29681
864-714-5263
Certified mail to: PO Box 95
Mauldin, SC 29662

Pursuant to the South Carolina Appellate Court Rules, Rule 240 and with leave of the South Carolina Court of Appeals, I am filing the attached motion and this affidavit, in pursuit of justice, as I have been a victim of fraud, subject to discovery abuse and have had my due process rights violated in the lower court and a pray seek justice in this matter. This appeal is concerning a denial of a motion for leave to amend my fifth amended answer and concerning summary judgment that was granted in favor of Wells Fargo, by the Circuit Court, in an action for foreclosure. The Circuit Court issued its preliminary Order granting the MSJ, in favor of Wells Fargo on 7/24/2017. I prematurely filed a motion to alter/amend on 8/5/2019 and when the final Order/Judgment was issued on 8/7/2019, on 8/16/2019 if filed a motion to alter/amend, combining the two and the Circuit court issued its denial of the motion/alter amend on 8/22/2019. And this was not done for purposes of any delay, as my Notice of Appeal was filed with the Circuit Court on 9/6/2019, received by the South Carolina Supreme Court on 9/16/201 and transferred to the South Carolina Court of appeals on 9/17/2019. I filed a motion for leave to amend my fifth amended answer and I incorrectly enumerated it my seventh amended answer. According to South Carolina Rules of Civil Procedures, Rule 15a the burden of proving prejudice is on the party opposing the motion. The Respondent did not file a response to the motion, but showed up at the hearing and it was decided between the judge and respondent's attorney to deny the motion solely based on the fact that it was my seventh amended answer. In the event, I did not receive any prior Notice of prejudice and in reviewing the evidence; it appears that I suffered a violation of my due process rights. The Respondent is not the original lender and stated in the complaint that it rights to foreclosure were acquired by an assignment of the mortgage and it is well settled that an assignment of a mortgage without any mention of a transfer of the Note is nugatory and it appears to put the Respondent in a position of lacking standing to pursue its mortgage and at the same time put the Respondent in a position of pursing the Note. And the South Carolina Probate code requires that a lender/servicer present a creditor's claim within the claims presentation period, which is within, 8 months of the death of the obligor, or the creditor's claim is to be forever barred. My mother whom is the obligor on the Note, executed in favor of NVR passed away on 7/5/2015 and Wells Fargo did not present a creditor claim within the claims presentation period. The Circuit court and Wells Fargo's

counsel are in agreement that a creditor's claim does not have to be filed when the lender/servicer is pursing, its mortgage. However, their agreement does not comport with the rulings of the South Carolina Supreme court, whom has explained the 2 avenues for a creditor to pursue its claims which are the Note or Mortgage. Summary Judgment was granted in favor of

Wells Fargo, and the evidence shows that the Circuit judge included the statements of Wells Fargo's counsel, as admissible evidence, after receiving evidence that was prejudicial and used to influence the Judge, it appears to have aroused an emotional bias in the judge, which resulted in a decision, in favor of Wells Fargo, in violation of my Due process rights. This Judges decision, appears to be wrongful and lead to the Judge making himself a witness and making a credibility decision based on the evidence at the summary judgment stage. It is well settled that at the summary judgment stage the concern is admissibility of the evidence.

I Michelle Hodges, hereby certify that the above statements are true and correct, under the penalty of perjury.

Respectfully submitted,

Michelle Hodges, Pro Se Appellant 6/7/2021
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JOE ZELLER NOTARY PUBLIC SOUTH CAROLINA

State of South Carolina
County of Greenville

Subscribed and sworn (or affirmed) before me
this 7 day of June, 2021.

South Carolina Notary Public

My Commission Expires
September 13, 2026
Commission Expiration

RECEIVED
Jun 07 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon; SC Housing Corp.; and Twin Creeks Homeowners Association, Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity, is the Appellant.

PROOF OF SERVICE OF SECOND AMENDED INITIAL BRIEF BASED ON THE COURT'S EXTENSION TILE 6/7/2021

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APPELLATE CASE NUMBER 2019-001565

Second Initial Amended Brief and supporting affidavit

I hereby certify that a copy of the above mention documents were sent via certified mail, per the attached receipt with proper postage and served on the following parties:

S. Sterling Laney, III, Esquire
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Greenville, SC 29601

Bryant S. Caldwell, Associate
For Wells Fargo Bank, N. A.
1221 Main ST
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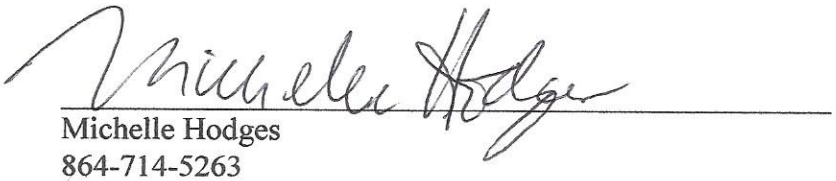

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