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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

William O. Spencer Jr., Lawyer
(Unlawful Special Referee)

Case No.2018-000355

Unpublished Opinion No. 2021-UP-231
Submitted May 1, 2021 - Filed Jun 23, 2021

JPMorgan Chase Bank,
National Association — *Respondent,*

v.

Fritz Allen Timmons — *Appellant.*

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

The Appellant certifies that the petition for Rehearing was made and finally denied by the Court of Appeals on Aug 25, 20121

Fritz A. Timmons, Pro Se
P. O. Box 367
Hartsville, SC 29551

Sep. 24, 2021

STANDARD OF REVIEW

S.C. Const. art. I. SECTION 23. Provisions of Constitution mandatory. The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissory by its own terms.

S.C. Const. art. V. SECTION 5. ".... The Court shall have appellate jurisdiction only in cases of equity, and in such **appeals they shall review the findings of fact as well as the law,**.... The Supreme Court shall constitute a court for the correction of errors at law ...." SECTION 9. **"**The decisions of the Supreme Court shall bind the Court of Appeals as precedents."

S.C. Const. art. VI. SECTION 5. Form of oath. "..., and all members of the bar... shall take and subscribe the following oath: "I do solemnly swear ... to exercise the duties of the office to which I have been elected... **preserve, protect, and defend the Constitution of this State and of the United States**. So help me God."**"**

"In an appeal from an action in equity, this Court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *Pinckney v. Warren*, 344 S.C. 382, 387 (2001) (citation omitted). Questions of law are likewise subject to *de novo* review. *See, e.g., Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 564 (2008) (citation omitted).

STATEMENT OF THE CASE

On June 13th 2001 signed a mortgage contract with Hartsville Community Bank for the Property (land) at 1111 Tabernacle church Rd. Some time after that Chase become Servicer to that Loan.

In Feb 2015 the **Respondent threatened the Appellant with foreclosure**. The Respondent had Blocked Appellant from Making Payments via Website then Refused to accept payment via phone. Also in February of 2015 the Respondent notified the Appellant that if payment was not made by 02/25/2015 then they would Foreclose although they refused payments and was not the Holder and Owner of either the Note nor

Mortgage On April 20, 2015 the Respondent filed an assignment of the Mortgage. On Nov 25, 2015 Respondent filed complaint of claim and delivery and foreclosure Without stating Cause of Action as well as Notice of Rights to intervention, Certificate of Exemption (1ST). On Dec 30, 2015 Appellant Request for Foreclosure Intervention and Request for Discovery Respondent did not reply until August 1, 2017. After service of Payment on May 6, 2016 under intervention the Respondent Again Refused to accept and stamped check on May 18, 2016. On or about May 20, 2016, the Appellant learned of the Hearing to be held on May 25. Then on May 25, 2016 Hearing was held (**Clerk failed/Refused to Notify Appellant of Hearing**) in which Judge Henderson issued an Order to Continue FCI due to the **Respondent Failure to Appear**, Disclose Evidence or notify Appellant of Payment made (Refusal). **A Year later**, on May 17, 2017 Respondent served Cert of Exemption(2nd) from Administrative Order and Motion and Order of References of which was signed by Clerk of Court **without Consent** from the Appellant nor a Consent Order by Judge Henderson on May 22, 2017 (**Clerk failed/refused to Notify Appellant**). On June 13, 2017 Appellant Motion of Default, To Dismiss, to Quiet Title and Counterclaim and Respondent replied on July 12. 2017 along with Motion to Strike. Appellant's "Motion of Default". On July 7, 2017 Respondent served Motion for Summary Judgment on Standing and Real Party of Interest and Appellant Response on Aug 16, 2017. On July 12/13, 2017 Respondents filed Notice of Appearance of Counsel/Order for Substitution of Counsel On July 17. 2017 Respondent served Motion for Summery Judgment. On July 24, 2017 William O. Spencer Jr. issued Order for Substitution of Counsel. On Aug 15, 2017 Respondent (not Clerk of Court) served Notice of Hearing the Appellant responded on Aug 25, 2017 along with Demand for Jury Trial. On Sep. 5, 2017 Respondent Reply to motion to Strike Defendants demand for Jury Trial. Supposedly a hearing was held with Sarah B. Nielsen as Respondents counsel. Sep 6, 2017 and a Fictional Transcript was later produce to support its Order (Void). On Sep. 11, 2017 William O. Spencer Jr. unlawfully filed Order granting Respondents Motions for Judgment on Pleadings, summary judgment while dismissing and striking Appellants pleadings while **noting the demand Jury Trial** and reply for. On Oct 10, 2017 Appellant served Motion to Show Cause and to Strike and disregard Exemption, Order of

Reference, Order/Referred, Second Foreclosure Action and Order of 9/12/2017. Oct 23, 2017 Respondent filed Order for Substitution of Counsel and two was issued by William O. Spencer Jr. on Nov 1 and 7. Respondents Demand for Jury Trial was docketed for Jan 4th 2018 in front of Judge Burch (barred from case) and was cancelled due to bad weather then discarded and never heard. On Dec 28, 2017 Respondent filed Affidavit, Affidavit of Indebtedness, Memorandum in Support of Plaintiff's Motion for Summary Judgment, and Plaintiff's Notice of Motion and Motion for Summary Judgment. On Jan 18 2018 Respondent (not Clerk of Court) served Notice of Hearing on Jan 29 2018 filed on Jan 23 2018. On Jan 25 2018 Appellant served Response to Plaintiff's Notice of Motion and Motion for Summary Judgment. On Jan 29 2018 @11:19pm Hearing with Tasha B. Thompson as counsel for the Respondent in Front of William O. Spencer Jr. was unlawfully held and ended (exited) @12:04 pm, then after driving to the Court House William O. Spencer Jr. filed the Pre-Hearing made Order (Void) of the hearing containing 17 typed pages (not including evidence filed) and filed them @ 12:15pm. These Orders contained ruling of which no issues was raised and all issues that was raised was not written in the Orders (perjury and Violations of Due Process). The Respondent entered case with Dirty Hands, "Foreclosure" as Cause of Action and only Copies of the Mortgage and Note while the Respondent was in Possession of the Original Wet Ink Note.

On Feb 26, 2018 Appellant filed Notice to appeal and ordered Transcript. On March 19, 2018 Respondent file a Notice of Appearance and not a Substitution of Counsel.(Rule 212 SCACR). Initial Breif of Appellent was filed on Sep 7, 2018. Initial Breif of Respondent was file Oct 22, 2018. Record on Appeal filed on Feb 21. 2019. Respondents Motion to Supplement Record with supplement Record (Fictional Transcript included) filed on March 8, 2019. Order granting Supplemental Record file May 3, 2019.Final Breif filed on May 13, 2019. Final Brief of Respondent and Supplemental Record filed May 13, 2019. Order (Void) of the Court filed June 23, 2021. Petition for Rehearing filed July 8, 20121. Order (Void) Denying Rehearing filed Aug 8, 2021.

STATEMENT OF FACTS

With this current plandemic, the lower Courts and its corrupt judges, masters of equity, special referees, attorneys and clerk of courts has provided Mortgage companies, banks, servicers and debt collectors the unconscionable ability to Foreclose upon anyone at any time and without cause with disregard for any and all federal and state laws as well as Court rules. This is a total and completely Repugnant to the Constitution of the United States and the Constitution of South Carolina of which each Judge, Lawyer and clerk of court are sworn to uphold and defend.

ARGUMENTS

I.

Does this Court consider when a debt collector/servicer prevents and refuses payments prior to a default time limit clearly stated in a Mortgage contract to be a Breach of Contract and thereby maturing the Mortgage and prohibits and bars any Claims of Civil and/or Equity

The Appellant was late with payments of Jan and Feb of 2015 but prior to March payment date, the Appellant tried to make payments (to bring payments up to date) and was denied access to do so by the Respondent,. The Respondent also Refused to accept payment over the phone. The Respondents "AFFIDAVIT OF INDEBTEDNESS" states in part 7, " Borrower failed to make the payment that was due for 2/1/2015 under the Loan Documents and has failed to make subsequent payments to bring the loan current, and the entire loan balance is now due and owing to Plaintiff." Therefore, the Respondents sole Intentions was to Foreclose due to an unconscionable contract for being over 30 days late with one payment and demanded full payment of the entire loan although the Appellant is the Actual Note Holder with the Original Wet Ink Note in hand and displayed in open Court, ipso facto, prima facie evidence that Chase, Hartsville Community Bank nor Michael P Leddy was the owner nor holder of the Note. See Carpenter v Longen, 83 U.S. 271, 16 Wall. 271, 21 L. ed. 313 (1872).

Therefore the Respondent Created a Fraudulent Default for the sole purpose of Foreclosure of which is supported by the Fact that the Mortgage had supposedly been

assigned to the Respondent on March 2nd by MERS. This refusal to accept payments for a Fraudulent Default is a Direct Breach of Contract, (See U.C.C. - ARTICLE 3 PART 6 **§ 3-603.** "(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, ". also see 15 U.S. Code § 1692e "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section ...(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer"". In determining whether a debt collector has committed a violation, the debt collector's representations, notices, and communications to the consumer are viewed objectively, from the standpoint of the "least sophisticated" or an "unsophisticated consumer." *Taylor v. Perrin, Landry deLaunay & Durand*, 103 F.3d 1232, 1236 (5th Cir. 1997) (citations omitted); *accord Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009). While such a consumer is assumed to be "neither shrewd nor experienced in dealing with creditors," she "should not be considered as tied to the very last rung on the intelligence or sophistication ladder." *Goswami v. Am. Collections Enter., Inc.*, 377 F.3d 488, 495 (5th Cir. 2004). "This standard serves the dual purpose of protecting all consumers, including the inexperienced, the untrained, and the credulous, from deceptive debt collection practices and protecting debt collectors against liability for bizarre or idiosyncratic consumer interpretations of collection materials." *Gonzalez*, 577 F.3d at 603 (citing *Taylor*, 103 F.3d at 1236).

Thereby bars any claims by the Respondent under The South Carolina Unfair Trade Practices Act and Fair Debt Collection Practices Act", 15 U.S.C. 1692. Thus closing the doors of the Court upon the Respondent and their criminal actions and thereby conspiring with the clerk of court and Respondent selected William O. Spencer as a special referee with an unlawful Order of Reference fabricated by the Respondent and signed by the clerk of court without any consent by the Appellant nor a Court Order by Judge Henderson (presiding Judge). Ipso Facto, Violating the Appellants Rights of Due Process. The clerk of Court does not have any Authority or jurisdiction to Decide (judge) if there are any standings in Law or Equity especially when the Respondent Abandoned its

Case when it Failed to Show, plead and argue its claim. It therefore invoked the doctrine of unclean hands.See Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) ("He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitablenessor bad faith relative to the matter in which he seeks relief." (quoting Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945)); see also Symons, Pomeroy's Equity Jurisprudence § 397, at 91–92 (5thed. 1941) (stating the unclean hands maxim"says that whenever a party, who . . . seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy"); Anenson, Limiting Legal Remedies: An Analysis of Unclean Hands, 99 Ky. L.J. 63 (2011)

The South Carolina Unfair Trade Practices Act provides: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. Code Ann. §39-5-20(a) (1985). An unfair trade practice has been defined as a practice that is "offensive to public policy or which is immoral, unethical, or oppressive." Wogan v. Kunze, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct. App. 2005) (citing deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000)).

MERS has never been licensed to conduct business in SC nor is MERS a licensed Mortgagee or has any agents of said in SC as Required in S.C. Code Ann. §37-22-120 stating "Licensing requirements. (A) Without first obtaining a license pursuant to this chapter it is unlawful for a person, other than an exempt person, doing business in this State to: (1) act as a mortgage lender or, directly or indirectly, engage in the business of a mortgage lender under any name or title;" although in Part 23 of the Mortgage states MERS as the Mortgagee. Ipso Facto, MERS did not have any Lawful authority to assign the Mortgage to Chase, therefore, Chase is not nor has ever been Lawfully the owner nor holder of the Mortgage nor has Chase established any evidence that it held any dept that was attached to the Note. Ipso Facto, no Equity has been established as well as in direct

conflict to Carpenter v Longen, 83 U.S. 271, 16 Wall. 271, 21 L. ed. 313 (1872).

Under the "FAIR DEBT COLLECTION PRACTICES ACT", 15 U.S.C. 1692, the Plaintiff cannot show it has right to collect the note debt and to request foreclosure, allege: At all times material, Plaintiff is a "debt collector" as the term is defined under 15 U.S.C. §1692a(6); And at all material times, the Note debt is a "debt" as defined under 15 U.S.C. §1692a(5); Plaintiff violated the Fair Debt Collection Practices Act when it filed a Complaint in Foreclosure against the Defendant because it is threatening to take a legal action that it cannot legally take and used a false misrepresentation or deception to collect a debt. 15 U.S.C. §1692(e)(5), (e)(10). See: *Glazer v. Chase Home Finance, LLC*, No. 10-3416 (6th Cir. 2013)(held that mortgage foreclosure is debt collection under the Act).

Ipso Facto, the Mortgage was Unlawfully assigned and has no Legal or Equity Standing. Secondly, the Respondent had only shown Copies (in motions only) of the Note (with a Forged and Fraudulent signature) and Mortgage of which Neither has Standing in Law nor Equity. Thirdly, the Appellant has the Original Note (prima facie evidence) endorsed in blank in hand and in open Court, therefore the Appellant Demands this Court to specifically explain how the Fuck the Appeal Court considered that the Respondent held the Note. See Bank of Am., N.A. v. Draper, 405 S.C. 214, 223, 746 S.E.2d 478, 482 (Ct. App. 2013) ("A holder is a person in possession of [an] instrument drawn, issued, transferred, or indorsed to him."); S.C. Code Ann. §36-3-301 (Supp. 2015) (stating the holder of an instrument is entitled to enforce the instrument). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note." Hahn v. Smith, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also Ballou v. Young, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note."). Therefore, from both ends of the legal spectrum, what occurred is unlawful because the decision of judge must be based on evidence and arguments produced in open court. Since the Respondents arguments nor was either the Original Note and/or Original Mortgage was not presented by the Respondent as evidence in open court, and since the Appellant had no opportunity to respond and present the Appellants defense, there was no evidence before the judge that justified the order

unlawfully signed and filed by William O. Spencer nor the Orders of the Appeals Court.

II.

Does this Court consider the Respondents Failure to show, plead or ague its claim in Circuit Court as an abandonment of its Claims, arguments and Issues.

The Respondent Failed to show at the Hearing in front of Judge Henderson, then Failed to show during the supposedly hearing in front of William O. Spencer in which the Respondent made a Fraudulent Transcript for in order (in which denied the appellant demand for Jury Trial, see Rule 53, SCRCP (b) states "Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, **upon the filing of a jury demand**, the matter **shall be returned to the circuit court**" to support the Order in which was also fabricated by the Respondent. And lastly, the Respondent only made the claim that "Foreclosure" was the Cause of Action for Foreclosure. Ipso Facto, had no Cause of Action.

See Biales v. Young , 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal."). The hearing under presiding Judge Henderson, the Respondent failed to show, Ipso Facto, failed to argue, plead, present or defend its cases of Foreclosure and Foreclosure Intervention and with Both being filed together (Ipso Facto, Dual tracking) the court could not determine which was at issue. Therefore, the Respondent abandoned its Cases and Judge Henderson Erred by continuing the Intervention of which the Respondents refused to abide by Administrative Order (Order No. 2009-05-22-01). The Respondents then went on to filing an Order of Reference and authorized by the Clerk of Court in direct violation of S.C. Code Ann. §14-17-250 and S.C. Code Ann. §14-11-60 as well as Rule 53(b), SCRCP in which ALL Require that All Parties **CONSENT**, Ipso Facto, the Clerk of Court of Court Directly violated these Laws and Court Rules, Thereby Violating the Appellants Right to Due Process. The Respondent does not have any Right under Law or Equity to Appoint (and conspire with) their own special referee (William O. Spencer) nor does the clerk of court have any rights or authority to pull a case out of Circuit Court or out from under a Presiding Judge to give it to a Lawyer specially selected and

comprising with the Respondent. The state Codes clearly states the Authority and its limits of the clerk of court and that of master-in-equity and special referees. This Court does not have the Authority nor Jurisdiction to increase their authorities beyond that which is limited by the Legislative Branch and by Law.

The Judges of the Appeals Court has made the claim that these Laws does not Apply, This is a direct Violations Appellants Rights to Due Process, their Oath of Office Court Rules, Public Policy and Color of Law in which they are supposedly to be Faithful to the Law and uphold and defend the Constitution See CANON 3, Rule 501, SCACR . These Judges has committed a direct Violation of the Color of law again due to the fact that these Judges was Prohibited from this Case due to their Previous Criminal Actions as stated in the Appellants Brief. Ipso Facto, Voids and Nulls the Court Orders of the Appeals Court.

It is also apparent that the Respondent did not appear at the supposed Party of Interest hearing of which itself had fabricated the order of and rubber stamped by William O. Spencer. If the hearing was actually held, the Respondent would had ordered a transcript of said hearing in according to Court Rule 207, SCACR. The Clerk of Court and the Appellant both would have receive copies of the Transcript instead of the Respondent Fabricating the Transcript (which was supposedly transcribed on the same day as the hearing by a fictional court reporter and unlawfully signed as a Notary Public with a counterfeit Notary Public Seal. This Fictional transcript first appeared after the start of the arguments and in the Respondents Supplement Record (of which all material was waived, abandoned and not preserved for Review for the Appeals Court) that Violates every associated Court Rules (Rule 212, SCACR) and without the Consent of the Appellant and without any designated material of the Appellant due to the fact that the Supplement Record was pre-made (thereby denying any and all possible designated material by the Appellant of which would have included the Transcript of the Hearing presided over by Judge Henderson) and was included with the Respondents Motion. Ipso Facto, Falsifies the Record and includes that of which was not raised in open Court thus abandoned any and all of their claims again. Therefore, the unjust Orders of the Appeals Court is also based upon a Fraudulent Record supplied by the Respondent and manipulated by and

conspiring with Judge Lockemy of the Appeals Court in order to create a Fraudulent Record in Direct Violations of Rule 212. SCACR. See Dunaway v. Allstate Ins. Co., 813 N.E.2d 376, 387 (Ind. Ct. App. 2004) ("Issues not raised before the trial court on summary judgment cannot be argued for the first time on appeal and are waived."); See Biales v. Young , 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal."); A party waives appellate review of an argument or objection if the party does not raise it with the trial court. See Hicks v. Midwest Transit, Inc., 500 F.3d 647, 652 (7th Cir. 2007) ("[A]rguments not raised before the district court are waived on appeal."). See Rule 212 "**(b) By a Party.** With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion." and Rule 81 "These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable.".

III.

Does this Court consider Consent is Required by all parties under SC Codes 14-17-250 and 14-11-60 as well as 53(b), SCRCP.

As stated in the Order of the Appeals Court, See S.C. Code Ann. §14-17-250 ("The clerk of any county in which the office of master does not exist may, ***by consent of parties***, sign orders of reference in vacation and may also, upon proper proceedings filed, grant orders for the partition of real or personal estate and for the admeasurement of dower in cases where the right of partition or dower is not contested or the same has been ascertained by a decree of the court."); S.C. Code Ann. §14-11-60 ("In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be ***shown the***

presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of master-in-equity."). See Rule 53 SCACR stating "(a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. §14-11-60." along with Note to 1994 Amendment: stating "This Rule 53(b) amendment clarifies the authority of the clerk of court to issue orders of reference **in default cases and where all the parties consent**." These Codes and Rules clearly establishes that consent by all parties is a direct requirement for a Clerk of Court to pull a case out from a Law Court and place it with a Mortgagee specified lawyer and claiming him as a special referee for the purpose of an equity court. There is No Equity in a Case unless the Equity has been establish in a Court of Law or it is a Direct Violation of the Fourth Amendment for the Unlawful Seizer of a citizens property. "The Fourth Amendment provides in relevant part that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated.'" *United States v. Jones*, 132 S. Ct. 945, 949 (2012). S.C. Const. art. V. In reviewing a challenge under the Fourth Amendment, the Court must affirm if there is any evidence to support the ruling. *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). A Foreclosure is the Seizer of property by a government entity. Therefore the Courts must apply the Fourth Amendment Standards to any Foreclosure Case. Ipso Facto, any claims of equity must have a Legal Standing from a Court of Law and an Equity Court is not a Court of Law. Equity Court is a subdivision a the Civil Court, in laymen's terms, nothing more then gofer for the Civil Court. A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time." 261 Kan. at 862. By signing an Order of Reference, the Clerk of Court is unlawfully acting as a Judge, see S.C. Code Ann. §30-9-30 "Filing of written instruments concerning real or personal property; false or fraudulent documents. (4) (a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.", this also

applies to the Fictional Transcript as stated above.

Pursuant to Rule 53, SCRCP, a master has no power or authority except that which is given to him by an order of reference. Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 381, 433 S.E.2d 909, 910 (Ct. App. 1993). An opposing party may not file an order of reference without the Consent of all parties involved as well as a Clerk of Court may not sign or issue an order of reference without the Consent of all parties involved to do so is a Direct Violation of the Rights of Due Process. As far Rule 53, SCRCP giving the power of a Circuit Judge, this is a Direct Violation of the Constitution. The Legislative Branch through Laws grants and limit's the Authority that of master-in-equity and special referees and not the Judicial Branch of which only has administrative authority over said. See S.C. Code Ann. §14-3-640 stating "The Court may establish and promulgate such rules and regulations as may be necessary to carry into effect the provisions of this article and to facilitate the work of the court". Ipso Facto, this does not permit the court to increase the authority of the clerk of court, master-in-equity, special referee or that of a lawyer beyond that of which is stated in law nor does it give the authority to deny the Rights of Due Process or denial of the Right to Jury Trial.

Therefore, This court must justify how the Clerk of Court could determined that there was no Legal conflicts and that the Respondent had legal rights to equity especially when the CoC failed/refused to notify the Appellant of the First Hearing (Violating the Appellants Rights to Due Process, although the Appellant did showed) while the Respondent Failed to show and plead its Case, Ipso Facto, abandoned any and all claims and arguments while the CoC sat in Court during the hearing.

IV.

What Cause of Action does a Mortgagee need for a Claim against a Mortgagor

The Respondent Clearly stated in open Court that "Foreclosure" was the cause of action for "Foreclosure" of which there is no Defense for and can not be a Cause of Action in a Court of Law and has no Equity attached. Without any other cause of action, issues or arguments raised in open Court, the Respondent waived and abandoned these

arguments and issues and may not raise them for the first time upon appeal. Ipso Facto, the Respondents Supplemental Record may not be used due to being waived issues as well as containing a Fraudulent and Fictional Transcript that contains Perjury, Forgery and Counterfeit Seal (Fraud upon the Court). A defendant has the Right to Defend themselves under the Rights of Due Process, If an issue or claim is not raised then it is an impossibility of a Defense. With the Respondent having raised no claims, issues, or arguments in open Court, the Respondent waived any and all said, Thereby Denying the Appellants a Defense, The Order of William O. Spencer is nothing other then Perjury for addressing issues that had not been raise to. Ipso Facto, if claims, issues or arguments are not raised in open Court then it is impossible to Rule upon them. With the Respondent Fabricating the Order Prior to the Hearing, The Respondent and William O. Spencer conspired together and Denied the Appellant the Rights to Due Process especially with the Appellant having the Original Note in hand, ipso facto, the owner and holder of the note in which the Respondent is trying to foreclose upon. Without the Original Note or Original Mortgage, the Respondent has no Legal claim and no equity has been set. "A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time." 261 Kan. at 862. Also see United States Supreme Court case of Carpenter v Longen, 83 U.S. 271, 16 Wall. 271, 21 L. ed. 313 (1872).

V.

Does this Court consider the Respondents fabrication of a transcript with a fictional Court reporters signature and unlawfully signed as a Notary Public with a Counterfeit Notary Public seal as Fraud upon the Court

See Rule 60(b)(3), SCRCP (providing that a party may be relieved of a final order or judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party"). S.C. Code Ann. §30-9-30 states "Filing of written instruments concerning real or personal property; false or fraudulent documents. (4) (a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or

privileges of a person or property."

The Respondent produced a Transcript for a party of interest hearing supposedly held on 9-6-17. This transcript was supposedly transcribed on the same day as the hearing with out being ordered and was first supplied by the Respondent and not by the fictional court reporter of which violates the entire Court Rule 212, SCACR.

VI.

Does this Court consider a pre-hearing made Order by an opposing Party to be a violation of the Constitution Guarantied Rights to Due Process and/or Extrinsic fraud.

Within 14 minutes of the hearing on 1-29-18, William O. Spencer had left his office, drove to the Court house and filed the 18 page order of which was pre-made, ipso facto, Direct Violation of Due Process due to the fact that no issues was raised by the Respondent during the hearing and gave "Foreclosure" as the Cause of action for Foreclosing. "'An abuse of discretion arises from an error of law or a factual conclusion that is **without evidentiary support**.'" *Id.* (quoting *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)).)). Bias or prejudice either inherent in the structure of the trial system or as imposed by external events will deny one's right to a fair trial. Thus, in Tumey v. Ohio 48 .Bias or prejudice of an appellate judge can also deprive a litigant of due process Dugan v. Ohio, 277 U.S. 61 (1928). A private prior agreement to rule in favor of a party is a violation of section 1983 of the Civil Rights Act, which prohibits "the deprivation of any rights, privileges, or immunities secured by the Constitution," and holds liable any person in violation thereof. 17. 42 U.S.C. § 1983 (1982) protects every citizen from any violation of all rights, privileges, and immunities secured by the Constitution. *See id.* A judge's secret agreement to rule against a party, prior to any judicial proceeding, violates the right to a fair and impartial tribunal guaranteed by the due process clause of the Fourteenth Amendment. *See* U.S. Const. amend. XIV. *see Stump,* 435 U.S. at 362. **A** private prior agreement, no matter how broadly interpreted, is still an illegal act that takes place before the judicial process ever begins. The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", Levine v.

United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). (*State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) "Unfair prejudice means an undue tendency to suggest a decision on an improper basis.", Lisenba v. California., 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941) that fundamental fairness essential to the very concept of justice, *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011) trial court failed to make specific findings of fact to support its ruling,

With no arguments raise during the hearing of 1-29-18, all issues in which the order contained the rulings of are thereby Perjury and direct Violations of Due Process (a party has a right to defend themselves against any claim against them and if a claim or argument is not raised at trial then the opposing party is denied the opportunity to be heard and defend themselves). A pre-made Court Order and rubberstamped (as in this case) is a Direct Violation of the Color of Law and Due Process as well as creating a Fraudulent Court Order that does not correlate with the Actual arguments raised and therefore voids the Order due to lack of evidential support. A party waives appellate review of an argument or objection if the party does not raise it with the trial court. See Hicks v. Midwest Transit, Inc., 500 F.3d 647, 652 (7th Cir. 2007) ("[A]rguments not raised before the district court are waived on appeal."); See Biales v. Young , 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal."); Dunaway v. Allstate Ins. Co., 813 N.E.2d 376, 387 (Ind. Ct. App. 2004) ("Issues not raised before the trial court on summary judgment cannot be argued for the first time on appeal and are waived."). See Duran v. Town of Cicero, 653 F.3d 632, 646 (7th Cir. 2011) ("We have held that where the district court makes a tentative or conditional evidentiary ruling before trial, the adversely affected party must renew its objection at trial in order to preserve the issue for appeal.").

Without the Respondent raising any arguments and failed to preserve any previous arguments, Ipso Facto, waived any and all previous arguments, the court has no issues to Rule upon. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("At a minimum, issue ***preservation requires that an issue be raised*** to and ruled upon by the trial [court]."). Therefore, the Order of the so called Court is thereby deemed Perjury

and Extrinsic fraud, Thus Voids and Nullifies the Order. This is also apparent with the Prior Order of 9-6-17 in which the Respondent Fabricated a transcript for (and inserted into the Respondents Supplemental Record that violates all associated Court Rules and Fraudulently Alters the Record on behalf of the Respondent and aided by directly violating Court Rules by Judge Lockemy) as well as William O. Spencer had not met Sarah B. Nielsen in person thereby causing William O. Spencer had to ask Tasha B. Thompson if they was Sarah B. Nielsen. Therefore Voids and Nullifies that Order as well due to Perjury and Extrinsic fraud. "Extrinsic fraud is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" Id. at 81, 579 S.E.2d at 610 (citation omitted). Therefore, the Respondents conspired with William O. Spencer to fabricate a pre-hearing Order and rubberstamp by William O. Spencer of which had no jurisdiction that absolutely disregards all Laws (Constitutional, Federal and State) and Court rules.

VII.

Does this Court consider a Mortgagee to be a party of interest that has only a copy of a Note with a Forged signature or a party that has the original unsigned wet ink Note physically in their possession.

As stated by the Appeals Court itself "See Bank of Am., N.A. v. Draper, 405 S.C. 214, 223, 746 S.E.2d 478, 482 (Ct. App. 2013) ("A holder is a person in possession of [an] instrument drawn, issued, transferred, or indorsed to him.");" and " S.C. Code Ann. § 36-3-205(b) (2003) ("When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed."); Ballou v. Young, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note.").". With the Appellant having the Original Wet Ink Note (a typed in fill in the blank Legal size form causing a multi tone) in Hand (Prima facie evidence) and the Respondent only having a reduced (letter size) mono tone copy of the note with an in color forged signature (of which is not an attorney-in-fact nor was an employee of Hartsville Community Bank (HCB)), This Court must justify the Fraudulent statement of the Appeals Court that it found that the Respondents held the

Note. With this Michael P Leddy supposedly signature on the copy of the note this court must explain who was the Debt holder between the time of the signing of the Mortgage and the supposedly transfer of the note to Chase, was HCB the owner of a unsecured debt while Michael P Leddy owner/holder of the note (a worthless piece of paper that no longer secures any debt) or did Michael P Leddy unlawfully assign the Note without being an attorney-at-fact. Ipso Facto, a Breach of Contract and causing the mortgage to be null and void or was Michael P Leddy the holder of both the debt and note, thereby Chase has no standing for foreclosure due to no debt is owed to HBC. The courts have held that a copy of the original note is insufficient to establish the existence of the debt. One reason for this policy is that it is too easy for someone to electronically cut and paste a signature onto a document. Without the original promissory note, the lender may not be able to collect the debt.

VIII.

Does this Court consider a defense for a claim against a party to be admission to the claim

The Appeals Court has made the Fraudulent claim that the Appellant admitted to the appellants mobile home located upon the mortgaged property by defending the Respondents claim stating that the mobile home was part of the equity in which they are seeking. The contract of the Mortgage clearly states the property of which the mobile home is not part of and is separate and readily moveable. This is also supported by the fact that there are separate taxes for the land and mobile home, therefore the County/state recognizes the land and mobile home as separate properties with separate titles/deeds as well as separate taxes. Additionally, we find the mobile home was not a fixture to the real estate and thus not subject to the equitable mortgage. A mobile home is generally classified as personal property, such that a security interest may be perfected by listing the interest on the certificate of title. Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). In Risher, the South Carolina Court of Appeals upheld the trial court's denial of a claimed equitable lien, specifically endorsing the standard set forth by the lower court as follows: "[i]n order for an equitable lien to arise as to specific

property, there must be a debt, a duty or obligation owing from one person to another, a res to which the obligation attaches, which can be described with reasonable certainty, and an intent, expressed or implied, that the property is to serve as security for the payment or obligation." Id. (citing First Federal Savings and Loan Ass'n of Charleston v. Bailey, 316 S.C. 350, 356, 450 S.E.2d 77, 80–81 (Ct.App.1994), and Carolina Attractions, Inc. v. Courtney, 287 S.C. 140, 145, 337 S.E.2d 244, 247 (Ct.App.1985). Importantly, the Risher court proclaimed that "[i]f a party seeking an equitable lien cannot satisfy any one of these requirements, this remedy is not available." Id. (emphasis added). This Court finds that Plaintiffs have remained unable to demonstrate the existence of facts to support the required element of intent.

IX.

Does this Court consider the separation of the debt, mortgage contract and/or note to be a Breach of Contract and/or an unconscionable contract and thereby voiding said contract.

A mortgagor has the Right to know who is the lender, owner/holder of the Note as well as the owner/holder of the Mortgage as well as the assignees of said at all times. With Chase being a Debt Collector for a mortgage that originated with Hartsville Community Bank (HBC), then who is the current Debt holder and who owns and holds the Original Mortgage due to the Fact that the Respondent only has copies there of. The Owner/Holder of the Original Note and endorsed in blank is the Appellant of which was presented in open court. The Respondent only provided a copy of said Note with a Fraudulent Signature of that of Michael P Leddy. With the Appeals Court giving Legal standing to these Copies, the Appeals Court has Aided and abeded in the manufacturing and use of Counterfeit Mortgages.

If a mortgagee may file a claim against a mortgagor at anytime then the opposite must also comply or be considers as a unconscionable contract. Therefore this court must consider that a mortgagor may file a claim against a holder/owner of Mortgage and have legal remedy for even if that party is not the owner and/or owner of the Debt and/or Note. Or does this Court considers that All parties involve (as in this case being HCB, Chase, M.

P. Leddy and MERS) may be liable for another parties actions. Example, can a claim of Breach of Contract be filed again Leddy while HBC is the debt holder and MERS is the Mortgagee and/or with the Appellant in possession of the Original Note. The mortgagor must be able to file a claim with a legal remedy against either the Debt holder, the Note owner/holder or the Mortgage owner/holder for it not to be considered as an unconscionable contract. Therefore, when the debt, Note, and/or Mortgage are separated between different parties they are deemed breached and permanently considered Null and Void. With the Original Note signed in bland being held by the Appellant, HCB or Chase has nothing more then a possible unsecured Debt. If Chase Actually had the Note and HBC held a Debt then the Note would be Null and Void due to it not securing any Debt held by Chase and HCB would be holding nothing more then an unsecured Debt. If Leddy (due to the Fraudulent signature of Leddy) held any possible Debt then Chase Could not Possibly make a claim due to Neither HCB nor Chase held the Debt for a Mortgage to attach and secure. Therefore, this Court must Justify the Appeals Court Order stating that the Respondent held the Note while the Original Note was in the hands of the Appellant (Prima Facie evidence) in open Court as well as specifying as to who is the possible debt owner and also the Original Mortgage owner/holder. With the separation of the Note from the debt holder, the Note becomes a worthless piece of paper and debt becomes a unsecured debt with no eligibility of Foreclosure and no equity applies.

X.

Does this Court consider Nicholas Andrew Charles be properly in front of the Appeals Court or not properly and must strike and disregard all filings submitted

Rule 264, SCACR clearly states "(a) Continued Representation. The attorneys ... of the respective parties in the court below shall be deemed the attorneys ... of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule. (b) Withdrawal. An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party"

therefore, with Tasha B. Thompson as Attorney on Record for the summary hearing in front of William O. Spencer that produced the Final Order, Tasha B. Thompson is Deemed the attorney for the Appeals Court and not Nicholas Andrew Charles. Therefore, Nicholas Andrew Charles should be removed for directly violating Rule 264, SCACR (as well as Rule 212, SCACR) and all filed documents to be stricken from the Record and disregarded due to the fact that the Respondents abandoned and failed to preserve for Review its arguments at trial that produced the final Order that is on Appeal as well as including a fabricated Court Transcript (previously stated above). Judge Lockemy permitted the continuation of these violations along with the violations of Rule 212, SCACR. Ipso Facto, Judge Lockemy disregarded and ignore all court Rules on behalf of the Respondent in order to create a Fraudulent Record to produce an Fraudulent Order upon.

XI.

Can this Court Justify the Strict application of Court Rules against a Pro Se while at the same time Totally Disregard them for a well trained and experienced Lawyer

The Appeals Court has held Rule 53(b), SCRCP against the Appellant stating the the clerk of court has authority to assign a case to a lawyer without the consent of all parties although the rule clearly states " In an action where the parties consent" and clarified by notes there of. The court also held Rule 53(c), SCRCP and Rule 38(d), SCRCP claming that a lawyer has all the authority of that of a circuit judge as well as the authority to deny the Appellant the Rights to a Jury Trial. These are in direct violations of State Laws and Repugnant to the Constitution as previously stated above.

The Appeals Court has held Rule 59(e) SCRCP against the Appellant claiming issues are not preserved for appellant review and at the same time REFUSES to hold the Respondents Counsel to the same Standard. This is Direct bias and prejudice against a Pro Se, Therefore this Court must in Detail Describe what argument was preserve accordingly to these Rules from the hearing of 1-29-18 of which was not Raise to or objected to at the Trial and with out a Rule 59(e) SCACR by the Respondent.

The Appeals Court has held Rule 7(a), SCRCP and Rule 12(a), SCRCP against the

Appellant claiming that the Appellant did not challenge the Respondents allegation that the Mobile home was attached to the Mortgage, this is another Fraudulent Statement by the Appeals Court, This allegation was challenged with contractual evidence and Case Laws. As for the Violation of the Fourth Amendment, It is unlawful for a government to seize property without legal cause and equity is not a legal cause. It is not the Burden of a Citizen to Prove how a Law applies, The burden is within the Court to Prove that it has the Authority to Seize ones Property and that the Seizer Complies to the Law.

The Appeals Court has held Rule 208(b)(1)(B), SCACR and Totally Disregarding the Fact that the Appellant is a Pro Se and claiming "arguments are not properly before the court." while at the same time Totally Disregarding the Fact that Nicholas Andrew Charles and all Filings of are not properly before the court especially the Supplemental Record of the Respondent which contains a Fictional Transcript (Fraud upon the Court).

The Appeals Court has held Rule 8(c), SCRCP against the Appellant claiming unclean hand was not properly before the court and did not plead the doctrine "as an affirmative defense and The failure to plead an affirmative defense is deemed a waiver of the right to assert it. Although, During the hearing of 1-29-18, the Respondent Failed to plead, raise arguments or claims in open Court thereby Denying the Appellant the opportunity of Defense (a Direct Violation of the Rights to Due Process) and Therefore, all previous claims and arguments of the Respondent was Abandoned, waived and unpreserved for Review, Ipso Facto, the Respondents claims and arguments are not properly before the court.

With the above said and at the same time, the Appeals Court had let Nicholas Andrew Charles and Tasha B. Thompson to Directly Violate and Continue to Violate Rule 264, SCACR of which Thompson deemed the attorney and not Charles. The Respondents did not have justifiable cause to be removed, did not petition the Court, nor had an written order of the appellate court and also failed to notify the Appellant.

The Appeals Court also totally ignored Rule 212, SCACR on behalf of the Respondent for permitting the Respondent to supplement the Record with issues and arguments that was not raise (abandoned) to in the trial hearing that issued the Final Order of which is on Appeal. The Supplemental Record also contains a fictional Transcript

produced by the Respondent. The Supplemental was filed with its motion thereby denying the Appellant the opportunity of designating any material. The Supplemental was also permitted without the consent of the Appellant and after the argument had begun and failing to move the appellate court for leave.

With the above said, the Appeals Court has shown extreme bias against a Pro Se by holding the Pro Se strictly to the Court Rules while totally disregarding the Rules on behalf of well trained, learned and experienced Lawyers.

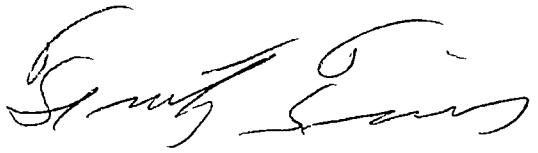
NOTE OF DISQUALIFICATION

Under the mandatory language used in CANON 3 E, CJC, Rule 501, SCACR "E. (1) A judge **shall disqualify himself or herself** in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:", the following judge (sitting or retired) for aiding and abiding criminal actions of the Lower Courts and State that directly Violates Federal, State and Constitutional Laws are considered unfit, prohibited and barred from this Case. Supreme Court - Kaye G. Hearn, John W. Kittredge, Donald W. Beatty, Costa M. Pleicones, Jean H. Toal, John Cannon Few. Appeal Court - James E. Lockemy. Thomas E Huff, Bruce Williams, John D.Geathers, Stephanie P. McDonald, Aphrodite K. Konduros, Paul E. Short. Circuit Court - Micheal J. Baxley, Paul M. Burch. With 2 of the 3 judges that decided the Orders of the Appeals Court Refusal to disqualify themselves, therefore the Orders of the Appeals Court are they by Deemed Void and Null. *Tatum v. S. Pac. Co.*, 58 Cal. Rptr. 238, 240 (Ct. App. 1967) ("[I]t is no answer to say that the judgment was correct because the statute does not say that the judge is disqualified to decide erroneously but that he shall not decide at all.... [T]he judgment is void...." (citations omitted)). Where a judge should have recused himself but did not, the judge's actions must be set aside regardless as to whether they were or were not correct on the merits.1 *See Ledford v. Dep't of Pub. Safety*, 428 S.C. 387, 392 (2019) (finding recusal required and not engaging in harmless-error analysis). Therefore, This Court under S.C. Code Ann. §14-3-60, shall notify the Govenor of South Carolina so he/she may appoint Acting South Carolina Supreme Court

Judges for this Appeal/ Certiorari.

CONCLUSION

With this being said this Court Should grand Certiorari.



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