THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

William O. Spencer Jr., Lawyer

Case No.2018-000355

JPMorgan Chase Bank,
National Association — *Respondent,*

v.

Fritz Allen Timmons — *Appellant.*

BRIEF OF APPELLANT

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The Following South Carolina Appeals Court Judges are Prohibited and Barred from this case under SC Rule 501 SCACR Canon 3 and U. S. Code 28 U.S. Code §455 for in part or in full but not limited to violations of Color of Law, violations of Rights to Due Process, Accessories after the Fact, violations of Fourth Amendment, Maintenance and Barratry.

(1) Paul E. Short
(2) John D geathers
(3) Stephanie P. McDonald
(4) Thomas E. Huff
(5) H. Bruce Williams

ERRORS OF TRANSCRIPT

(1) On Page 3 Line 4 the words "Your Honor, " was added to transcript and should be disregarded. The Appellant never considered nor called the Criminal William O. Spencer Jr. that willfully acts in direct violations of statues as honorable (honor).

(2) The end of the statement on Page 10 Line 17, the wording "Wet Ink Note" was omitted and should be noted.

These Errors does not effect the overall of the Transcript and the Appellant will use Transcript as it stands.

I. STATEMENT OF CASE

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. 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. 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 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 Orders 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. 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. The Appellant served the Notice of Appeal on Feb 26,2018,

II. THE RESPONDENT ENTERED CASE WITH DIRTY HANDS

The Respondent engaged in a deliberately planned and carefully executed scheme to defraud with the Conspiracy of its Counsels, the Clerk of Court and William O. Spencer Jr. Without being the Holder and Owner of the Note nor Mortgage. Nor has the Respondent had any legal standing on its claim to a debt.

The Record of Mortgage clearly shows that Hartsville Community Bank the originator of the Debt, Note and Mortgage as of 6/13/2001. In Feb 2015 the Respondent threatened the Appellant with foreclosure (R. p. 57, sec 4) Prior to the supposedly assignment on 04/02/2015 (R. p. 58, p. 45 L21-22, p. 32 L24 - p.33 L3) in direct violation of 18 U.S. Code §1951, 18 U.S. Code §1952 and thereby violating 18 U.S. Code §1956. Therefore, the Plaintiff actions of that of a debt collector violating 15 U.S. Code §1692e (P34, L7-11, p. 61, p. 64) of which states "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.. " "[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.").

This is a Form of Insurance Fraud. The Respondent threatened the Appellant with foreclosure (R. p. 57, sec 4) for a supposedly Default in which they themselves prohibited the payments on a "Possible only Debt". The Respondent then had the Security assigned (insurance) (R. p. 58) to them without Notice after the supposedly Default (damage). This is the same Notion as to a party acquiring insurance to cover the damage on a vehicle after the damage was done. Secondly, weather nor not the Mortgage follows the Note or Note follows the mortgage, The Respondent, would have Breached the Contract by Refusing to accept Payment within two weeks of the supposedly assignment of the Mortgage.

18 U.S. Code §1951 states " (a) Whoever in any way or degree obstructs, delays, or affects commerce ... or commodity in commerce, by robbery or extortion or attempts or conspires so to do, . (b) As used in this section— (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened ... fear of injury, immediate or future, to his person or property, or property in his custody or possession, (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual ... fear, "

18 U.S. Code § 1952 states "(a) Whoever ... uses the mail ... with intent to— (1) distribute the proceeds of any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform— (B) (b) As used in this section (i) "unlawful activity" means ... (2) extortion, ..."

18 U.S. Code § 1956 states "(a) (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity— (A) (i) with the intent to promote the carrying on of specified unlawful activity; or … (B) knowing that the transaction is designed in whole or in part— (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity;

The Respondent's Cause of Action in this foreclosure claim is "Foreclosure" (R. p. 35 L11-13, p. 36 L7-9, p. 42 L14 - 16), Ipso Facto, had no Cause of Action. The Respondent did not have the original Note nor Mortgage. The Respondent had only reduced sized copy of the mortgage copied from the Record of the Mortgage and a reduced sized mono-tone copy of the Note with an in color endorsement of a "attorney-in-fact" (R. p. 52 - 53) of which no attorney-in-fact certification exist on the Record of the Mortgage , Ipso Facto, Fraudulent and most likely Forged endorsement (copy & past) (R. p. 52 - 53). The Respondent did not and COULD NOT provide the original Note nor Mortgage upon Demand (R. p. 43 L 9-11) at the unlawful hearing performed by W O. Spencer Jr. , Ipso Facto, was not the Holder and Owner at the time the claim was filed (*Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) clearly supports the notion that the Plaintiff must clearly own the Note and the Mortgage to foreclose on the property. Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed." see *Deutsche Bank National Trust Company vs. Scott J. Heinrich* (The ninth judicial circuit, state of South Carolina, Charleston, July 30,2013)). The Respondent also did not and COULD NOT deny the fact that the Appellant was in possession of the

Original Wet Ink Note (§36-3-301), *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."); §36-3-301 (Supp. 2014) ("'Person entitled to enforce' an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to [s]ection 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument."), Ipso Facto, Proves the Perjury Order (R. p. 10 - 26) of William O. Spencer Jr. itself contains Perjury. The Respondent did not and Could Not present the Original Mortgage and Note when demanded at the hearing, Ipso Facto, was not the Holder nor Owner of either the Note nor Mortgage at the time the Respondent filed its claim. The Respondent is not entitled to enforce neither the Note nor Mortgage due to the instruments are "Lost or Destroyed" to them (§36-3-309 (b) A person seeking enforcement of an instrument under Subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. ... The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.)

It is clear that to have standing in this foreclosure case, Plaintiff must not only be the holder & owner of the original Note, but also the Mortgage as well. Plaintiff's Complaint in this case fails to meets this criteria. Plaintiff lacks the standing to initiate and

prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b) (6) SCRCP is appropriate.

Under the "FAIR DEBT COLLECTION PRACTICES ACT"(P6 L25- P7 L1-2), 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 FDCPA 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 (R. p. 57, sec 4, p. 58). 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). §39-5-20(a) states "Unfair … or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.". Also under the Uniform Commercial Code §3-603(b) states "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." (R. p. 59, 60)

When a party acquires/pays off a debt and fails or refused to acquire the Note and/or Mortgage that secures it, that party waves any rights or entitlement to the securities, Ipso Facto, the debt in which the Note and/or Mortgage secures becomes extinguished and the Note and/or Mortgage becomes Null and Void. This Court holds the notion that the Ultimate Contract of America (The United States Constitution, Fifth Amendment) is waved by failing to claim it, then it must hold the same notion to every lesser contract. (*Elvin v. Wuchetich*, 157 N.E. 243, 244–45 (Ill. 1927) ("It has been often

decided that a mortgage cannot exist as an independent security in the hands of one person while the note which it is given to secure belongs to another."); *Merritt v. Bartholick,* 36 N.Y. 44, 45 (1867) ("[A] transfer of the mortgage without the debt is a nullity, and no interest is acquired by it.")).

The Mortgage itself under Part 23 of the Mortgage (R. p. 56) states "Upon Payment of all sums secured by this Security instrument, this Security instrument become null and void. Lender shall release this Security instrument. Borrower shall by any recordation costs.". Therefore, the Mortgage itself clarifies that when the debt was extinguished without being assigned to any party for security, itself becomes Void and Null. A Null and Void Mortgage is nothing more than a worthless piece of paper with no legal standing, Ipso Facto, when a Null and Void Mortgage is assigned (R. p. 58) to another party, it remains a worthless piece of paper with no legal standing and the same holds true to the Note.

The above said is also supported by 15 U.S. Code §1602(x) in which the transactions of a mortgaged debt must include the debt, note and mortgage at the same time to retain any Equity and continue to be considered as a "MORTGAGE". In accordance to 15 U.S. Code §1602(x) The term "**residential mortgage transaction**" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling. Therefore, no mortgage transaction has accrued and there is not legal standing nor equity.

Therefore in the said above violations, Chase was not entitled to an equitable lien

or any other form of equitable relief and any seizer of the Appellants property. Without legal standings it would be a direct violation of the Fourth Amendment of the United States for an unlawful Seizer.

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 inequitableness or 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).

Therefore a the party seeking foreclosure has the burden of establishing the existence of legally binding debt with a valid Note and Mortgage of which must be a valid transaction and recorded upon the Record of the Mortgage. The Record of the Mortgage must also show the assignment or transfer of the debt, Mortgage, Note as well as documented assignees and attorney-in-facts. The party must also provide the Original wet ink Note and Mortgage upon Demand at hearing. If party can not provide the Original wet ink Note and Mortgage upon Demand then the Note and/or Mortgage must be considered

as non-enforceable thus destroyed, lost, or in the hands of another party.

III. THE RESPONDENT HAD NO CAUSE OF ACTION

The Respondent clearly quoted that the Cause of Action of this Foreclosure is "**Foreclosure**" (R. p. 35 L11-13, p. 36 L7-9, p. 42 L14 - 16), Ipso Facto, the Respondent had no Cause of Action. "[a]ll allegations of material fact are taken as true and construed in the light most favorable to the non-moving party." *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir.1996).

However, mere conclusions couched in factual allegations are not sufficient to state a cause of action. *Papasan v. Allain,* 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986); *see also McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir.1988). The complaint must plead "enough facts to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) and quoted by *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir.2008). Summary judgment is not appropriate when "further inquiry into the facts is desirable to clarify the application of the law." *Carolina Chloride, Inc. v. S.C. Dep't of Transp.*, 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011).

IV. WILLIAM O. SPENCER JR. NO JURISDICTION NOR AUTHORITY AND CONSPIRED WITH THE RESPONDENT WITH THEIR COUNSELS AND THE CLERK OF COURT

The Clerk of Court refused to Notify the Appellant to the hearing for 05/25/2016 although the Appellant learn just prior and without time to prepare a defense while the

Respondent defaulted and abandoned any cause or issues, Ipso Facto, violated the Appellants Rights of Due Process and committed Extrinsic fraud. Judge Henderson continued the FCI due to (1) Respondent not notified, (2) no Cause of Action on claim (3) Respondent failed to Appear, (4) check (R. p. 59, 60) had not cleared the bank (later to be found out that the Respondent refused payment again, Ipso Facto, **dual tracking**. (5) Respondent failed to disclose evidence (Rule RULE 37(3). SCRCP). In order for a lawyer (William O. Spencer Jr. as in this case) to have Equity jurisdiction there must be consent of the parties and/or Court Order of Consent.

A year later, On May 17, 2017 (R. p. 35 L16 - 23), the Respondent filed a Motion/order of reference specifying "William O. Spencer Jr." as special referee and without the Consent of the Appellant nor Order of the presiding Judge (R. p. 2, p 35 L13-14, L15-20, p. 37 L1-2, L11-15) in which the Clerk of Court signed/issued the Order within 5 days of the service (Rubber Stamped) and Failed/Refused to notify the Appellant (R. p. 2) (§14-11-60 stating "reason for which cause can be shown the **presiding circuit court judge, upon agreement of the parties**, may appoint a special referee" , §14-17-250 stating "The clerk of any county in which the office of master does not exist may, **by consent of parties**, sign orders of reference" and Rule 53 SCRCP of which plainly states "In an action **where the parties consent** ...may be referred ... by order of a circuit judge or the clerk of court."),

In said case, the Order/Referred to Master is based upon Fraud and Filed without Jurisdiction and without the Consent of the Appellant. See *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App. 1998) ("Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be

raised sua sponte by the court."). The Orders of William O. Spencer Jr. also fails to have any evidence which reasonably supports the findings.

The Appellants Motion of Default, Dismiss and Counter Claim (RULE 41(b), SCRCP) scheduled (Notice of hearing) and supposedly heard in front of William O. Spencer Jr. in direct violations of said Codes. Ipso Facto, Committing Perjury, conspiracy, Barratry and creating a Shame Legal Process as stated below.

When the Appellant filed Demand for Jury Trial (RULE 38(b), 40(d),(f) SCRCP) on Aug 25, 2017, it was docket for Jan 5 (in front of Judge Burch of which is Barred from case) and cancelled due to weather. The Respondent filed a Motion for Summery Judgment on Dec. 28, 2017 specifying William O. Spencer Jr. after the Motion (R. p. 27) RULE 12(b) SCRCP and Demand for Trial by Jury and docketed date. The Demand for Jury trial was never docketed again RULE 39(a) SCRCP, discarded and never heard while the Respondents Motion for Summery Judgment continued, again Violating the Respondents Due Process. The South Carolina Constitution provides that "the right to a jury trial shall be preserved inviolate.". Prior to any Equity entitlement, Legal standing must be established. Permitting Equity Judgment and seizer of ones property is a Direct Violation of the Fourth Amendment. When a party does not consent to a seizure of their property then it falls upon the Uniform Commercial Code and appropriate State Statues, Ipso Facto, Legal Standing of the Contracts must be established or be considered as an Unlawful Seizer by a Judge in which the Fourth Amendment Prohibits. When a Party deceives by any means for another party to willfully give consent to the seizer, that party violates the Fair Debt Collection Practices Act. This Act includes employees of the Judicial Systems. "In determining whether any triable issues of fact exist, the circuit court

must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *RWE NUKEM Corp. v. ENSR Corp., Op. No. 26320* (S.C. Sup. Ct. filed Apr. 30, 2007) (Shearouse Adv. Sh. No. 18 at 21). "'[I]n considering cross motions, the court should draw all inferences against each movant in turn.'" Id. at 24 (quoting 73 Am. Jur. 2d Summary Judgment § 43 (2001)). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Vaughan v. McLeod Reg'l Med. Ctr.*, 372 S.C. 505, ___, 642 S.E.2d 744, 746 (2007).

William O. Spencer Jr. also does not have authority nor jurisdiction to sale property without consent (§14-11-160 stating "Whenever real estate is adjudged to be sold by a master such sale may take place by **consent of the parties** to the cause ..." , §15-39-630 stating "And whenever real estate is adjudged to be sold by a master, such sale may take place by **consent of the parties** to the cause ..." and §15-39-635 stating "**referred to him by the presiding judge ...**".)

Therefore through Conspiracy (§16-17-410 stating "The common law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means" and §16-5-10 stating "It is unlawful for two or more persons ... attempt by any means, measures, or acts to hinder, prevent, or obstruct a citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws ...") by the Respondent and counsels, the Clerk of Court and W. O. Spencer Jr. Knowingly created a Sham Legal Process (§16-17-735(A) It is unlawful for a person to impersonate a state or

local official ...in connection with a sham legal process. ... knowing that his conduct is illegal, he: (1) subjects another to ... seizure, ... or other infringement of personal or property rights; or (2) denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity. (B) It is unlawful for a person falsely to assert authority of state law in connection with a sham legal process (C) It is unlawful for a person to act without authority under state law as a ... a master-in-equity, ... in determining a controversy, adjudicating the rights or interests of others, or signing a document as though authorized (E)(3) "Sham legal process" means the issuance, ... reliance on as lawful authority, or other use of an instrument that is not lawfully issued,... which purports to: (a) be a ... judgment, lien,... or other order of a court of this State, ... (b) assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property; or (c) require or authorize the ..., seizure, ... trial, or sentencing of a person or property. (4) "Lawfully issued" means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, an agency, or a political subdivision of a state.) and committed Barratry (§16-17-10 (2) Wilfully bring, prosecute or maintain an action, at law or in equity, ... (b) thereby seeks to defraud or mislead the court, (d) directly or indirectly receives any money ... to induce the bringing of such action;). §16-17-735C states "It is unlawful for a person to act without authority under state law as a ... a master-in-equity..." and Code §30-9-30(4) "stating For purposes of this subsection: (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"). Therefore, Both Intrinsic and Extrinsic fraud has been placed upon the Court.

Therefore, knowingly in direct violations of the above said, any payment from the sale of property by William O. Spencer Jr. would be embezzlement and/or extortion as well as racketeering. The Respondent, their counsels and the Clerk of Court would then be conspirators to these criminal acts.

V. ISSUES RAISE AND NOT UPON A WRITTEN ORDER AND ISSUES NOT RAISED AND UPON A WRITTEN ORDER ARE PRESERVED FOR REVIEW DUE TO BEING PERJURY AND FRAUD UPON THE COURT

An issue is preserved for review when it is upon the Record of the trial. The Ruling/Decision of a court may be by actions (or the lack of) or upon written order. Therefore when an issued is raised and is not addressed upon a written order, it is known as the act of Perjury §16-9-10(A)(2) for incomplete information. When a written order has a ruling upon it and that issue has not been raise at trial, that is also an act of Perjury §16-9-10(A)(2) for false information. Both of these Criminal acts are violation of color of law and abuse of discretion, Ipso Facto, Extrinsic Fraud upon the Court of which may be raised at anytime Therefore is also known as a Sham legal processes (§15-75-60). In re *Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997) (stating an abuse of discretion occurs when the judgment is controlled by some error of law or when the order is without evidentiary support). When an issued is raised and is not addressed upon a written order it must be addressed upon appeal do to the fact that the issue was raised and is upon the Record. When a written order has a ruling upon it and that issue has not been raise at trial, that ruling upon the order must be stricken from the record for failure to be raise and can not be raised for the first time upon appeal. *Knight v.*

Waggoner, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004) (finding arguments made for first time on appeal are not preserved for review). A judge acting in an appellant manor may either correct these Errors/Criminal Acts in law or be accessories after the fact thus conspire (§16-17-410) with the lower court, Ipso Facto, commit Barratry (§16-17-10(2). With the above said, These Criminal Acts not subject to Rule 59(e), SCRCP. An appellant should not bear the burden of the Criminal Acts of a court or for Fraud upon the Court. Therefore the issues are properly before this court. Since 59(e), SCRCP does not provide a stay of sale in a Foreclosure, it intension is for the unjust enrichment of the Respondent and adding additional and unnecessary burden upon the Appellant.

An Appeal can also not be denied by claims of 59(e), SCRCP when the judge or, as in this case, Master/Referee is acting without subject matter and/or in direct violations of the statues. These Criminal Acts would be under the same Criminal Acts and without jurisdiction and considered (Extrinsic) Fraud upon the Court. The use of 59(e), SCRCP by a Judge in an Appellant act is a means of committing Barratry and Maintenance as well as being an accessory after the Fact. A trial judge is not required to sit idly by and allow perjury to be committed without bringing it to the attention of proper authorities. *State v. Brown*, 124 Ariz. 97, 602 P.2d 478 (1979).

As in this case, when a party fails to state a Cause of action or when fails to raise an issue during trial and an written Order is given for the issues not presented, it is considered as Perjury and Extrinsic fraud. *City of San Francisco v. Cartagena, 41 Cal. Rptr.* 2d 797, 801 (Cal. Ct. App. 1995), quoted with approval in *Mr. G*, 320 S.C. at 308, 465 S.E.2d at 103. By contrast, extrinsic fraud "refers to frauds collateral or external to the matter tried such as bribery or other misleading acts which prevent the movant from

presenting all of his case or deprives one of the opportunity to be heard." *Lightsey & Flanagan*, supra, at 486; see also *Hilton Head Ctr., Inc. v. Pub. Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.").

VI. MICHAEL P. LEDDY HAS NO AUTHORITY AS AN ATTORNEY-IN-FACT TO ASSIGN NOTE

An attorney-in-fact (aka power of attorney) must comply to the conditions under SC Code §30-5-30 and recorded upon the record of mortgage to be valid. "a power of attorney should be evidenced by an instrument in writing." In the *Matter of Celsor*, 330 S.C. 497, 501, 499 S.E.2d 809, 811 (1998) (citing 3 Am.Jur. Agency § 23 (1986)). Also SC Codes §30-7-20 "any contract in the nature of a subordination, … created by law or by agreement of the parties, **shall be upon the record** of the recorded mortgage ", §30-7-40 "The recordation of such an assignment or transfer … **be upon the record** of the recorded mortgage" , and §30-7-80 "the recordation of the assignments, satisfactions, releases, contracts in the nature of subordinations, waivers… mortgages or **other instruments conveying an interest** in … on personal property **must be upon the record** of the recorded mortgage", Ipso Facto, there is no Valid/Legal attorney-in-fact, Assignment of Note nor transfer of any Debt.

In said case, there is no record in Court filings nor filings upon the record of mortgage (other instruments of interest). Therefore, (1) the endorsement upon the copy of the Note used by the Respondent is Fraud (R. p. 44 L6-11, p. 53) and has not legal binding and invalid. (2) the endorsement is most likely cut-n-past by the Respondent and

considered Forgery. (3) an endorsed copy of an instrument remains a worthless piece of paper and has no effect upon the original. (4) With the Appellant in possession of the Original wet ink Note (R. p. 44 L6-11, p. 48 - 51) that is not endorsed, proves the previous number 3. (5) there is no evidence that grants/validates Michael P. Leddy as an attorney-in-fact. (6) in said case the Respondent used a reduced black and white monotone copy of the Note with an in-color endorsement (R. p. 53). (7) Thereby raises the questions: (a) who was Michael P. Leddy A-i-F. for; (b) when was his confirmation/expiration dates as to A-i-F ; (c) what was his the limitations as A-i-F ; (d) who witnessed his A-i-F form; (e) what court records validates his A-i-F. Therefore, Michael P. Leddy is not nor has ever been an attorney-in-fact in regards to the Note in question. In re *Celsor*, 330 S.C. 497, 501, 499 S.E.2d 809, 811 (1998) (finding improper signature without valid power of attorney, notarization of that signature, and misrepresentation to court to be fraud upon the court); In re *Jennings*, 321 S.C. 440, 446, 468 S.E.2d 869, 873 (1996) (holding forgery of signature on court document is fraud upon the court).

VII. ALL ORDERS AND ALL PARTS OF THE ORDERS OF WILLIAM O. SPENCER JR ARE PERJURY AND FRAUD UPON THE COURT

Including that stated above, by filing a claim without a cause of action and with dirty hands violating (18 U.S. Code §1951, §1952, §1956 and 15 U.S. Code §1692) then abandoning case (Failed to appear, plead or defend its actions) then a year later with the conspiracy (§16-5-10, §16-17-410) between the Respondent and their consuls, the C-o-C and the lawyer W. O. Spencer Jr. without the consent of the Appellant nor order from the

Presiding judges (§14-11-160, §15-39-630, §15-39-635) has created a Shame Legal Process (§16-17-735, §30-9-30). Knowingly, willfully and without authority to act as a Special Referee (§16-17-735) and refusing to docket and disregarding the Appellants Motions and demand for Trial by Jury and maintained these Criminal Acts, Ipso Facto, committed Barratry (§16-17-10). Therefore, every Order by William O. Spencer Jr. that includes the Order of Sep. 10, 2017 (Default and Counter Claim), the Order of July 24, 2017, Nov 7,8 2017 (Substitutions) as well as the Orders of Jan 29 2018 (foreclosure and sale) violating §15-39-630 (R. p. 2 - 26) stating "by consent of the parties to the cause " and §16-9-10 and of which created prior to the hearing and filed within 15 minutes of end of the hearing including travel time between William O. Spencer Jr.'s office and the Clerk of Courts Office. Without any motions in front of him (R. p. 31 L22-23) and without any issues being raised by the Respondent with the Cause of Action being "Foreclosure" (R. p 35 L11-13, p. 36 L7-9) and Failure to produce the Original Note or Mortgage upon Demand (R. p. 45 L10-13, p. 46 L1-6, p. 33 L14), This Court must justify each and every part of the Orders of William O. Spencer Jr. This Court must also justify each and every Issue raised by Appellant and Purposely Omitted upon the written Order which includes (1) The Appellant not giving consent (R. p. 30 L 11-13), Ipso Facto, No jurisdiction and Willful violations (R. p. 30 L4-5, L11-12, p. 33 L 23-24). (2) Appellant in Possession of the Original Wet Ink Note, Ipso Facto, Owner and Holder of the Note (R. p. 37 L16-17, 19, L25 - p.38 L1, p. 42L 10-11, 14-16). (3) the Respondent using Fraudulent Note and Mortgage (R. p. 44 L6-11, p.45 L10-13, p. 46 L1-6). (4) Violating "FAIR DEBT COLLECTION PRACTICES ACT" (R. p. 33 L25 - p. 34 L2, p. 34 L7 - 8, L11, p. 45 L21-22, L10 - 13). (5) the Respondent not owner nor holder Note nor Mortgage when

filed its claim as required by "*CARPENTER vs. LOGAN*" (R. p. 35 L1-4). If this Court can not justify the above said, then this Court must consider the Orders as Perjury, Extrinsic Fraud, Abuse of Discretion, Conspiracy, Barratry and Maintenance as well as other Criminal Acts.

These are Direct Violations of the Rights to Due Process in an attempt to Violate the Appellants Fourth Amendments Rights. When a statute's language is plain and unambiguous and conveys a clear and definite meaning, the court has no right to impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). A statute has the superior authority over any case law or court rule, Ipso Facto, claims to rule 59(e), SCACR are thereby nullified. *Express, Inc., v. Int'l Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir. 1982) ("[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court."); *H.K. Porter Co. v. Goodyear Tire & Rubber*, 536 F.2d 1115, 1119 (6th Cir. 1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.");

VIII. RECOURSE AND REMEDY MUST BE AVAILABLE TO A MORTAGOR AT ALL TIMES OR MORTGAGE IS VOID AND NO EQUITY IS STABLISHED

In order for a creditor to have a valid mortgage and be deemed as a mortgagee with remedy of said, there must be a recourse and remedy for the Mortgagor at all times. If a Mortgagor files a claim for the following without the possible accompanying remedies then the Mortgage is invalid and void and no interest of equity available: (1) files a claim against a debt holder and no possible remedy of quieting the title, deed etc.; (2) files a

claim against a Note and/or Mortgage holder/owner and no possible remedy of breach of contract or other arguments against the debt holder; (3) files a claim against the Note holder and not possible remedy for error or augment against the Mortgage; (4) files a claim against the Mortgage holder and no possible remedy for error or other arguments against the Note holder. The said above is also supported by *Elvin v. Wuchetich*, 157 N.E. 243, 244–45 (Ill. 1927) and *Merritt v. Bartholick*, 36 N.Y. 44, 45 (1867) as referenced above. Therefore, the separation and failure of recording upon the record of the Mortgage is a waiver to the instruments not assigned at same time and obligations and equity are lost, Ipso Facto, separation of any or all parts of a "Mortgage" is a Breach of Contract and Considered Waved.

As stated in several SC codes as stated above, Instruments of interest must also be recorded upon the record of mortgage; (1) transfer of debt; (2) assignment of Note; (3) assignment of Mortgage.; (4) assignee of Note.; (5) assignee of Mortgage.; (6) Power of Attorney/ attorney-in-fact.; (7) fixture filing. If the above said is not upon the Record of the Mortgage then they are deemed to be void with no merit nor legal standing. Therefore, if a party pays off a debt without valid recordation then its nothing more then a voluntary payoff of that party with no obligation by the mortgagor and the secured debt is thereby extinguished. (§30-9-30 (A) … each clerk of court and register of deeds in this State shall keep a record, in the office in which he files all conveyances, mortgages, judgments, liens, contracts, and papers relating to real and personal property required by statute to be kept by him, by entering in the record the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, or other parties to the written instruments,)

IX. . REMEDIES FOR THE CRIMINAL ACTIONS OF THE RESPONDENT WITH THEIR COUNSELS, THE CLERK OF COURT, AND WILLIAM O. SPENCER JR.

With the Criminal Actions stated above, this case is subject to the following Remidies: (1) 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").; (2) "South Carolina Noneconomic Damage Awards Act of 2005" §15-32-200(9) "Noneconomic damages" means nonpecuniary damages arising from pain, suffering, inconvenience, ... mental anguish, emotional distress, ... injury to reputation, humiliation, other nonpecuniary damages, and any other theory of damages including, but not limited to, fear of loss ..."; (3) §39-5-140 (a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful ...the **court shall award three times** the actual damages sustained and may provide such other relief as it deems necessary or proper. ... the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.; (4) §15-75-60 A person who is injured by a sham legal process involving a violation of Section §16-17-735 has the following civil remedies against the person who committed the violation or who caused the violation to be committed:(1) actual damages;(2) punitive damages;(3) costs; and (4) reasonable attorney's fees.; and (5) "South Carolina Tort Claims Act", §15-78-40 The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, (6) 15 U.S. Code Chapter 41 for the destruction of the Appellants Credit Rating, (7) 18 U.S. Code §1964 stating "shall recover threefold the

damages" as well as any reasonable attorney's fees, costs and such other relief as it deems necessary or proper.

X. ANNEXATION OF THE APPELLANTS MOBILE HOME IS AN UNJUST ENRICHMENT AND VIOLATION OF THE FOURTH AMENDMENT

The Order Of Sale by William O. Spencer Jr. although unlawful and considered as perjury, has no authority nor legal standing to annex the Appellants Mobile Home of which there has been no intentions to be part of the Mortgage except for the unjust enrichment of/by the Respondent. The Mortgage is for the property alone (R. p. 55) and does not include the Mobile Home which is readily adaptable for movement, There is also no fixture filing upon the Record of Mortgage of which is required by law nor has the Responded raised any issues concerning the Mobile Home during the hearing, Ipso Facto, the Responded has attempted unjust enrichment through conspiracy and perjury to directly violate the Fourth Amendment of the United States. Neither the Respondent nor William O. Spencer Jr. had any legal standing to annex or sale the Appellants Mobile Home (R. p. 17 sec. 21). A mobile home does not become a fixture by mere affixation to realty. *City of North Charleston v. Claxton*, 315 S.C. 56, 62-63, 431 S.E.2d 610, 614 (Ct. App. 1993). *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) ("A mortgage foreclosure is an action in equity. Our scope of review of a case heard by a master who enters a final judgment is to determine facts in accordance with our own view of the preponderance of the evidence."); *Carroll v. Britt*, 227 S.C. 9, 15, 86 S.E.2d 612, 615 (1955) (stating in determining whether or not a building is a fixture, the court should consider: (1) the mode of attachment or annexation; (2) the character of the structure; (3)

the intention of the person making the annexation; and (4) the relationship of the parties); *Lewis* at 171, 568 S.E.2d at 363 ("Basic contract law provides that when a contract is clear and unambiguous, the language alone determines the contract's force and effect. It is not the function of the court to rewrite contracts for parties." (citation omitted))

IN CONCLUSION

The Respondent failed to: (1) show a specific or obligated debt owed to Respondent; (2) show Original Mortgage or Note Contract on Demand, Ipso Facto, Holder or Owner; (3) show any transference of debt; (4) show any Assignment of the Note contract, Valid or not; (5) show any Assignment of a Valid Mortgage contract, only a copy used; (6) show any Consent Orders; (7) show any evidence of express or implied intent that the Appellant's Mobile Home serve as collateral; (8) show any Cause of Action; (9) show any Legal Standing; (10) show any Validity in the Mortgage or Note, (not lost, destroyed or voided); (11) show a Valid Residential Mortgage Transaction accord between the Originator of the Mortgage and any other party. Therefore the Respondent is not entitled to an equitable lien, recovery under the theory of unjust enrichment, or any other form of equitable relief

The Respondent along with their Counsels entered this case with Dirty Hands violating State and Federal Statues then conspired with the Clerk of Court and W. O. Spencer Jr. committing Barratry and Perjury (R. p. 3 - 26) in order to Deny the Appellants Rights to Due Process for the purpose and intent to Violate the Appellants Fourth Amendments Rights for unjust enrichment.

Any Judge acting in an appellant manor and refuses to uphold the all the applicable

laws in order to conspire with the parties of the lower court thereby knowingly, willfully and admit fully to accessories after the fact and conspiracy to the criminal actions including but not limited to the above Criminal Acts.

PRAYER FOR RELIEF

With the above said, the Appellant pray for judgment against the Respondent and each conspirator, jointly and severally, as follows: (1) Striking and Disregarding of all Orders of William O. Spencer Jr. for Perjury (Rule 60(b)(3), SCRCP); including to vacate and set aside the foreclosure sale.; (2) Remedies under section IX of this brief along with any appropriate attorney and Court fees, punitive, actual and non economic damages including Credit Rating Damage as well as and such other relief as it deems necessary or proper.; (3) For a declaration of the rights and duties of the parties, specifically that the foreclosure of Plaintiffs' residence was wrongful.; (4) To quiet deed and title in favor of Plaintiff and against Defendants.; (5) For compensatory, special, general and punitive damages according to proof against all Respondents, Respondents Counsels. Clerk of Court, and William O. Spencer Jr.; (6) Notify the Proper Authorities of the Criminal Acts.; (7) For civil penalties pursuant to statute, restitution, injunctive relief and reasonable attorneys fees according to proof.