

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
Case No. 2012-CP-23-2080

RECEIVED

APR 05 2013

SC Court of Appeals

South Carolina Court of Appeals Appellate Case No. 2012-212893

Edward J. Rivera and Michele L. Rivera,

Appellants

vs.

BAC Home Loans Servicing, L.P.

Respondent

RECORD ON APPEAL

Bridget D. Swing
SC Bar No. 13616
Foreclosure Defense Law Firm,
LLC
PO Box 8246
Greenville, SC 29604
Tel: (864) 551-4353
Fax: (864) 551-4353
Attorney for Appellants

Genevieve S. Johnson
SC Bar No. 78480
Butler & Hosch
1201 Main Street, Suite 1110
Columbia, SC 29201
Tel: (803) 252-7370
Fax: (803) 771-7768
Attorney for Respondent

Chad Burgess
SC Bar No. 72520
Brock and Scott
3800 Fernandina Road, Suite 110
Columbia SC 29210
Tel: (803) 454-3540
Fax: (803) 454-3521
Attorney for Respondent

347-5000
Bridget D. Swing, SC Bar No. 13616
Foreclosure Defense Law Firm, LLC
PO Box 8246
Greenville, SC 29604
Tel & Fax: (864) 551-4353
Attorney for Appellants

Genevieve S. Johnson, Esq., SC Bar No. 78480
Butler & Hosch
1201 Main Street, Suite 1110
Columbia, SC 29201
(803) 252-7370
Attorney for Respondents

INDEX TO RECORD ON APPEAL

ORDERS and JUDGMENTS

Judgment of Foreclosure and Sale – September 3, 2010	1
Order Granting the Defendant’s Motion to Dismiss and Denying the Plaintiff’s Motion for Judgment on the Pleadings- August 8, 2012	21

PLEADINGS

Summons, Complaint Foreclosure of Real Estate Mortgage- August 20, 2009	25
Summons and Action to Quiet Title Complaint – March 23, 2012	33

TRANSCRIPTS

May 29, 2012 Hearing Transcript pp. 1-13.....	70
---	----

MOTIONS

Notice of Motion and Motion to Dismiss – April 11, 2012.....	83
Memorandum in Support of The Defendant’s Motion to Dismiss and in Opposition to the Plaintiff’s Motion for Judgment on the Pleadings – May 29, 2012.....	85
Plaintiff’s Motion for Judgment on the Pleadings- May 3, 2012.....	88
Memorandum in Support of Plaintiff’s Motion for Judgment on the Pleadings – June 7, 2012.....	101

MISCELLANEOUS DOCUMENTS

Foreclosure Affidavits of Service	109
Foreclosure Affidavit of Default.....	111
Foreclosure Notice of Final Hearing.....	112

Master in Equity Foreclosure Deed	114
Notice of Appeal – September 6, 2012	117
Certificate of Appellant.....	121

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a
SouthBanc Mortgage,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2009-CP-23-7123

7 2:25
MASTER IN EQUITY'S REPORT AND
JUDGMENT OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

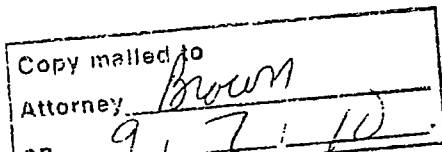
ENTERED COURT

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Master In Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 20, 2009.
2. The Summons and Complaint were filed on August 20, 2009.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendant(s) are in default as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.



[Handwritten signature]

Verified
SCANNED

RECEIVED
09-15-07
SET
DISTRICT CLERK

6. All Defendants were notified of the time, date and place of hearing in this matter.
7. For value received, Edward J. Rivera made, executed and delivered a note, dated November 10, 2004, promising thereby to pay to the order of Countrywide Home Loans, Inc. the sum of \$116,519.00 with interest at the rate of 5.875% per annum. Other terms and conditions are stated in the note, which is of record herein.
8. To better secure the payment of the note described above, the said Edward J. Rivera and Michele L. Rivera made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., in writing, dated November 10, 2004, covering real property in Greenville County, which is the same as that described in the Complaint. The mortgage was recorded on December 7, 2004, and is of record in the Greenville County Registry in Book 4281 at page 962.
9. This mortgage constitutes a valid first lien on the subject property.
10. By Assignment of Mortgage dated August 27, 2009, and recorded in the office of the Register of Deeds/RMC Office for Greenville County in Book 5054 at page 1908 on September 1, 2009, Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc. assigned the subject note and mortgage to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P.. By virtue of said assignment, the Plaintiff in this action is the owner and holder of the note and mortgage.
11. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Servicer states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, this loan is not eligible for modification under the HMP because the loan is owned or guaranteed by the Federal Housing Administration (HUD) and said entity does not participate in the HMP Program.



09-15607

The titleholder(s) of record of the subject property as of the filing of the Lis Pendens in this action were Edward J. Rivera and Michele L. Rivera.

13. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of its attorney of record herein for collection.

14. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$1,200.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

15. The amount due and owing on the note and mortgage, with interest at the rate provided in the note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

Principal due as of today's date:	09/03/10	\$ 109,656.08
Accrued interest from:	03/02/09 to: 09/03/10	\$ 10,200.34
Accruing at:	5.875% per annum	
Advancements to Escrow		\$ 2,942.54
Corporate Advances		\$ 135.00
Late charges:		\$ 108.35
Other charges:		\$ 0.00
Costs of collection prior to hearing:		\$ 1,077.00
Attorney's fees:		\$ 1,200.00



09-15607

tal Debt secured by note and mortgage, including interest to date is \$125,319.31. Interest for the period from the date shown in (b) above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein, and interest after the date of Judgment at the rate of 5.875% per annum, pursuant to the terms of the note and mortgage on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

16. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRPC.

17. The Defendant, below listed, claims or may claim a lien upon or interest in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The said Defendants and such claim or lien are as follows:

The Defendant, Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage, has or may claim to have some interest in the Property by virtue of mortgage given by Edward J. Rivera and Michelle L. Rivera to Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage in the original principal amount of \$37,500.00 which mortgage was recorded in the Greenville County Registry on November 17, 2003 in Mortgage Book 4074 at Page 946. Said mortgage was subordinated to Plaintiff's mortgage by Subordination Agreement dated October 27, 2004 and recorded December 7, 2004 in Book 4281, page 969. Said mortgage is junior and subordinate to the Plaintiff's mortgage and is hereby ordered removed from title to the subject Property.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.



09-15607

That there is due to the Plaintiff on its note and mortgage the sum of \$125,319.31, representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the note to the date hereof.

3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 5.875% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendants liable for the aforesaid mortgage debt shall, prior to the date and time of the sale of the subject property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Greenville County Courthouse, in the City of Greenville, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Master In Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiffs debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 5.875% per annum.
 - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
 - D. Purchaser to pay for the deed and the cost of recording the deed.



09-15607

If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.

4. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
5. That the undersigned Master In Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Master In Equity may re-advertise the premises for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.
6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
7. That the undersigned Master In Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiffs Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and



NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCF.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.
9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Greenville County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Greenville County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master In Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.



09-15607

12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the premises herein ordered to be sold:

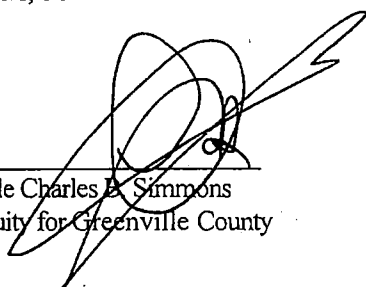
ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING AT THE SOUTHWESTERN INTERSECTION OF CONFEDERATE CIRCLE AND AVON DRIVE, NEAR THE CITY OF GREENVILLE, IN THE COUNTY GREENVILLE, STATE OF SOUTH CAROLINA AND KNOWN AND DESIGNATED AS LOT NO. 40, SECTION 2, OF A SUBDIVISION KNOWN AS SHEFFIELD FOREST, PLAT OF WHICH IS RECORDED IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY IN PLAT BOOK BBB AT PAGE 61, SAID LOT HAVING THE METES AND BOUNDS AS SHOWN THEREON.

THIS BEING THE SAME PROPERTY CONVEYED TO EDWARD J. & MICHELE L. RIVERA BY DEED FROM ALEXIA M. SMITH DATED JULY 27, 2002, RECORDED JULY 29, 2002 IN BOOK 2003 AT PAGE 1423, GREENVILLE COUNTY RECORDS.

CURRENT ADDRESS OF PROPERTY: 110 Confederate Circle, Taylors, SC 29687

TMS: T033000221300

AND IT IS SO ORDERED.



The Honorable Charles B. Simmons
Master In Equity for Greenville County

Date: 9/3/10
Greenville, South Carolina

09 -CP-23- 7123

MASTER'S EXHIBIT

PLEASE DO NOT REMOVE FROM FILE WITHOUT
ASSISTANCE FROM CLERK STAFF

RECEIVED

EXHIBIT LIST

The Honorable Charles B. Simmons, Jr., Judge

BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P.,	
Plaintiff	File #30928
against	
Edward J. Rivera, Michale L. Rivera, et al.,	C.A. 09-CP-23-7123
Defendant(s)	

ATTORNEY FOR PLAINTIFF: Ronald Johnson, Esquire
Brock & Scott

DATE OF HEARING: 9/3/10

Plaintiff's Exhibits

- | | |
|---|-------------------------------|
| 1 | Waiver of Deficiency Judgment |
| 2 | Note, mortgage and assignment |

Exhibits received from Ann D. Campbell, CVR, Court Reporter,
Office of Master in Equity - Date: 9/3/10

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

vs.

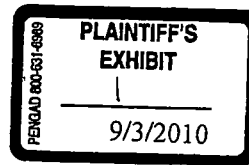
Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a
SouthBanc Mortgage,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-23-7123

**WAIVER OF DEFICIENCY
JUDGMENT**



The Plaintiff, BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P., through its attorneys hereby waives all rights it may have to a personal or deficiency judgment in the above captioned case, in order that the sale may become final on the scheduled sale day.

A handwritten signature in black ink, appearing to be "Ronald F. Johnson, Jr.", written over a horizontal line.

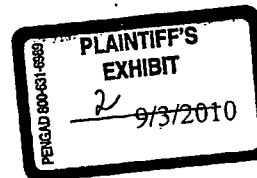
Ronald F. Johnson, Jr., SC Bar #16931
Jason L. Branham, SC Bar #72902
Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540 Fax 803-454-3541
Attorneys for Plaintiff(s)

Dated: August 27, 2010
Columbia, South Carolina

Prepared by: ISABEL LARA

Certified to be true
and correct copy

SET



Multistate

NOTE

LOAN #: 85040629

FHA Case No.
SC4613944084703

NOVEMBER 10, 2004
[Date]

110 CONFEDERATE CIR, TAYLORS, SC 29687-3909
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means COUNTRYWIDE HOME LOANS, INC. and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of ONE HUNDRED SIXTEEN THOUSAND FIVE HUNDRED NINETEEN and 00/100

Dollars (U.S. \$ 116,519.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of FIVE & SEVEN-EIGHTHS percent (5.875 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on JANUARY 01, 2005. Any principal and interest remaining on the first day of DECEMBER, 2034, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at P.O. Box 660694, Dallas, TX 75266-0694 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 689.25. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

11R (0303)

CHL (03/03)(d)

Page 1 of 2
VMP MORTGAGE FORMS - (800)521-7291

FHA Multistate Fixed Rate Note - 10/95
Initials: SLC



EXHIBIT

A

CASE #: SC4613944084703

LOAN #: 85040629

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of FOUR percent (4.000 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

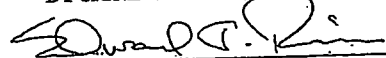
Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.


EDWARD J. RIVERA (Seal)
-Borrower

(Seal)
-Borrower

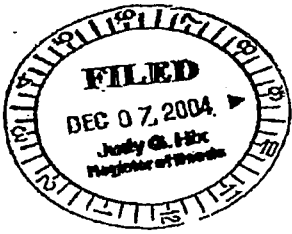
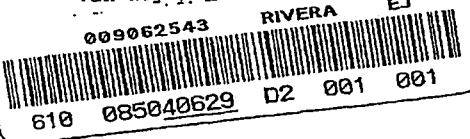
(Seal)
-Borrower

(Seal)
-Borrower

BOOK 4281 PAGE 962 ✓

6204-527

Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410



SC4613944084703
(Case #)

RIVERA
(Escrow/Closing #)

0008504062911004
(Doc ID #)

State of South Carolina

MORTGAGE

FHA Case No.
SC4613944084703

MIN 1000157-0004395252-8

THIS MORTGAGE ("Security Instrument") is given on NOVEMBER 10, 2004. The Mortgagor is EDWARD J RIVERA, AND MICHELE L RIVERA

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

COUNTRYWIDE HOME LOANS, INC. ("Lender") is organized and existing under the laws of NEW YORK, and has an address of 4500 Park Granada, Calabasas, CA 91302-1613

Borrower owes Lender the principal sum of ONE HUNDRED SIXTEEN THOUSAND FIVE HUNDRED NINETEEN and 00/100

Dollars (U.S. \$ 116,519.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on DECEMBER 01, 2034. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in GREENVILLE County, South Carolina:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: SC

FHA South Carolina Mortgage with MERS - 4/96

Page 1 of 8

VMP -4N(SC) (0305) CHL (12/03)(d)

VMP Mortgage Solutions (850)521-7201

Initials:



DEC 07 2004

110468

EXHIBIT

B

12-06-2004 0012367

RECORDED 12.06

CASE #: SC4613944084703
which has the address of

DOC ID #: 0008504062911004
110 CONFEDERATE CIR, TAYLORS
(Street, City)

South Carolina 29687-3909 ("Property Address");
[Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the

CASE #: SC4613944084703

DOC ID #: 0008504062911004

insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property;** Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Gam-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

CASE #: SC4613944084703

DOC ID #: 0008504062911004

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.
- (c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.
- (d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.
- (e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

Initials: ER
CVR

CASE #: SC4613944084703

DOC ID #: 0008504062911004

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. **Waivers.** Borrower waives all rights of homestead exemption in the Property.

21. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)].

☐ Condominium Rider
☐ Planned Unit Development Rider

☐ Growing Equity Rider
☐ Graduated Payment Rider

☒ Other [specify] 0

CASE #: SC4613944084703

DOC ID #: 0008504062911004

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

[Signature]
(12)

[Signature] (Seal)
 EDWARD J. RIVERA -Borrower

[Signature] (Seal)
 MICHAEL L. RIVERA -Borrower

____ (Seal)
 -Borrower

____ (Seal)
 -Borrower

STATE OF SOUTH CAROLINA,

Personally appeared before me
 he/she saw the within named Borrower sign, seal, and as his/her/their act and deed, deliver the within written Mortgage; and that he/she with witnessed the execution thereof.

[Signature] County ss:

Sworn before me this 10 day of Nov, 2010

[Signature]
 Notary Public for South Carolina

My Commission Expires: 4/6/11

BOOK 4281 PAGE 968

* Prepared by: ISABEL LARA

COUNTRYWIDE HOME LOANS, INC.

DATE: 11/10/2004
CASE #: SC4613944084703
DOC ID #: 0008504062911004
BORROWER: EDWARD J. RIVERA
PROPERTY ADDRESS: 110 CONFEDERATE CIR
TAYLORS, SC 29687-3909

Branch #: 0000710
6440 SOUTHPOINT PARKWAY, #300
JACKSONVILLE, FL 32216
Phone: (866)205-9595
Br Fax No.: (904)000-0000

LEGAL DESCRIPTION EXHIBIT A

File No. GR04-527

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being at the southwestern intersection of Confederate Circle and Avon Drive, near the City of Greenville, in the County of Greenville, State of South Carolina and known and designated as Lot No. 40, Section 2, of a subdivision known as Sheffield Forest, plat of which is recorded in the Register of Deeds Office for Greenville County in Plat Book BBB at Page 61, said lot having the metes and bounds as shown thereon.

This being the same property conveyed to Edward J & Michele L Rivera by deed from Alexia M Smith dated 07-27-02, recorded 07-29-02 in Book 2003 at page 1423, Greenville County records.

TMS# T033.00-02-213.00

110 Confederate Circle
Taylors, SC 29687

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 09:00 AM
12 07 04 RECORDED IN MORTGAGE
BOOK 4281 PAGE 0982 THRU 0988
DOC # 2004110468

Judy A. Hix

FHA/VA/CONV
Legal Description Exhibit A
2C404-XX (04/03)(d)



* 23991 *

ER
GR



* 08504062900002004N *

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Edward J. Rivera and Michele L. Rivera,

Plaintiff,

v.

BAC Home Loans Servicing, L.P.,

Defendant(s)

THIRTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-23-2080

ORDER GRANTING THE DEFENDANT'S
MOTION TO DISMISS AND DENYING THE
PLAINTIFF'S MOTION FOR JUDGMENT ON
THE PLEADINGS

THIS MATTER came before me on May 29, 2012 on the Defendant's Motion to Dismiss pursuant to SCRCF Rule 12(b)(6) and the Plaintiff's Motion for Judgment on the Pleadings. Present at the hearing were Chad W. Burgess, counsel for the Defendant, and Bridget D. Swing and Keary B. Warner, counsels for the Plaintiff. After careful review of the pleadings, arguments of the parties, the applicable rules of civil procedure and the applicable law, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Defendant initiated foreclosure proceedings against the Plaintiff concerning the subject property on August 20, 2009 (Civil Action Number 2009-CP-23-7123). As shown by the Affidavits of Service filed in that action, Plaintiffs were served on August 20, 2009. No Answer or other responsive pleading was filed by the Plaintiffs as shown on the Affidavit of Default filed on April 5, 2010. The case was referred to the Honorable Charles B. Simmons, Jr. as Master in Equity for Greenville County. A final foreclosure hearing was held on September 3, 2010. Although being duly notified of the hearing as is shown by the Notice of hearing filed August 23, 2010, the Plaintiffs did not attend. The Master in Equity's Report and Judgment of Foreclosure and Sale was filed on September 7, 2010 and a judicial sale of the subject property was held on October 4, 2010. The Defendant (Plaintiff in the foreclosure action) was the successful bidder at the foreclosure sale. The Court's records do not reflect any SCRCF Rule 59 or 60(b) motions

ENTERED COMPUTER

filed regarding the Master in Equity's Report and Judgment of Foreclosure and sale nor do the records reflect any appeal from the Master in Equity's ruling.

The instant action was filed by the Plaintiffs on March 23, 2012 alleging a quiet title action as to the subject property and that the Defendant lacked standing to bring the prior foreclosure action. With leave of the Court, the Plaintiffs submitted a Memorandum in support of their Motion for Judgment on the Pleadings outlining their position that standing to sue confers subject matter jurisdiction and cannot be waived.

A determination as to whether or not standing to sue is tantamount to subject matter jurisdiction is not necessary in considering the motions before me. Each motion will be taken up in turn with the Plaintiff's Motion for Judgment on the Pleadings being addressed first.

The granting of a Motion for Judgment on the Pleadings is a drastic measure and should be granted only where the pleadings are so defective that, even when taking the facts alleged as admitted, no cause of action or defense could be sustained. Lydia v. Horton, 343 S.C. 376, 540 S.E.2d 102 (Ct. App. 2000).

Plaintiffs allege that the Defendant did not have standing to bring the prior foreclosure action because the filing of an Assignment of Note and Mortgage into BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. occurred after the filing of the foreclosure action and, as such, the Defendant did not own the subject Note and Mortgage until after it filed its foreclosure action. The filing of an assignment of mortgage of public record serves to put the world at large on record notice of the transfer and is not indicative of the date of transfer of a negotiable instrument. As such, this Court cannot take the date of filing of the assignment as indicative of the Defendant's lack of standing at the filing of the prior foreclosure action. Quite the contrary, the filing of the Assignment of Note and Mortgage serves as evidence of the prior transfer and evidence of the Defendant's standing to enforce the Note. As such, when the pleadings are taken in the light most favorable to the Defendant, a defense to the

Plaintiff's action could be sustained and the Plaintiff's SCRCF 12(c) Motion for Judgment on the Pleadings should be denied.

Conversely, the facts alleged and inferences reasonably deducible therefrom do not afford the Plaintiff any relief on any theory of the case as the Plaintiff's action is barred by the doctrine of res judicata.

The doctrine of res judicata bars a litigant from raising any issues that were adjudicated in a prior suit and any issues which might have been raised in the former suit. Plum Creek Development Co., Inc. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). The doctrine of res judicata is comprised of three elements: 1) the parties must be identical, 2) the subject matter must be identical, and 3) the subject issue must have been litigated in the former suit. Id.

The aforementioned foreclosure action involved the identical parties and subject matter as the instant action. The subject issue, BAC Home Loans Servicing, L.P.'s standing to bring the foreclosure action, was decided in the former suit. It should be noted that no challenge to the Master in Equity's Report and Judgment of Foreclosure and sale and resulting foreclosure sale were made in the previous foreclosure action.

CONCLUSIONS OF LAW

Based upon the foregoing, the Plaintiff's Motion for Judgment on the Pleadings should be denied as a matter of law. The Plaintiff's action is barred by the doctrine of res judicata and, as such, the Defendant's Rule 12(b)(6) Motion to Dismiss should be granted.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion for Judgment on the Pleadings is denied. The Defendant's Rule 12(b)(6) Motion to Dismiss is granted and the action is hereby dismissed with prejudice.

IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

Dated: 8/7/12
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

vs.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a
SouthBanc Mortgage,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-23-7123

A 10:48

CLERK OF COURT
C.O. S.C.
GREENVILLE

SUMMONS AND NOTICES

(Non-Jury)

**FORECLOSURE
OF REAL ESTATE
MORTGAGE**

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 3800 Fernandina Road, Suite 110, Columbia, SC 29210, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

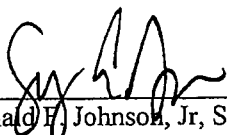
TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Attorney for Plaintiff.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an Order of Reference or the Court may issue a general Order of Reference of this action to a Master-in-Equity/Special Referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

B&S No.: 09-15607

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Attorney for Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage and the Complaint attached hereto.



Ronald H. Johnson, Jr, SC Bar #16931
Mark A. Pearson, SC Bar #15926
Brian L. Campbell, SC Bar #74521
Andrew M. Thompson, SC Bar #71090
Suzanne E. Brown, SC Bar#76440
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 8 / 18 / 09
Wilmington, North Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2009-CP-23-7123 A 10:48 C/A NO.:

2009-CP-23-7123

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

CLERK OF COURT
JUL 10 2009
GREENVILLE

Plaintiff,

COMPLAINT

(Non-Jury)

vs.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a
SouthBanc Mortgage,

FORECLOSURE
OF REAL ESTATE
MORTGAGE
(Deficiency Judgment Demanded as to Defendant
Edward J. Rivera)

Defendant(s).

The Plaintiff above named, complaining of the Defendant(s) herein alleges that:

1. Plaintiff, BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P., is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendant(s) Edward J. Rivera and Michele L. Rivera are resident(s) and citizen(s) of the County of Greenville, State of South Carolina; and, Defendant(s) Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage is a business entity and is duly authorized to conduct business in the State of South Carolina.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Greenville, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on November 10, 2004, Edward J. Rivera (hereinafter "Borrower(s)") made, executed, and delivered to Countrywide Home Loans, Inc. (hereinafter "Lender") a certain Note in writing (hereinafter "Note"), wherein and whereby Edward

B&S No.: 09-15607

- J. Rivera promised to pay to Countrywide Home Loans, Inc., the principal sum of \$116,519.00, together with interest at the rate of 5.875% per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said Note is fully paid. A copy of said Note is attached hereto as Exhibit "A."
5. In order to secure the payment of said Note, the said Edward J. Rivera and Michele L. Rivera (hereinafter "Mortgagor(s)"), did on the same date, to wit, November 10, 2004, make, execute, and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successors and assigns, a certain mortgage (hereinafter "Mortgage") securing real property located in the County and State aforesaid and described in said Mortgage (hereinafter "Property"). See Attached Exhibit "B."
 6. On December 7, 2004, said Mortgage was recorded in the Greenville County Registry in Mortgage Book 4281 at Page 962. Thereafter the Mortgage was assigned to the Plaintiff herein.
 7. The Mortgage evidences and secures the repayment of money advanced by the Lender to, or on behalf of, the Mortgagor(s) and constitutes a valid first lien on the Property.
 8. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Servicer states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, Plaintiff alleges upon information and belief, that this loan is not eligible for modification under the HMP because the loan is owned or guaranteed by the Federal Housing Administration (HUD) and said entity does not participate in the HMP Program.

9. Any notice required by the terms of the Mortgage or by State or Federal law has been given to the applicable defendant(s) prior to the commencement of this action.
10. In and by the terms of said Note and the Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.
11. In and by the terms of the said Note it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys fees if the said Note be placed in the hands of an attorney for collection after default.
12. The Plaintiff demands a personal or deficiency judgment, and the Plaintiff has the right to seek a deficiency judgment against the maker(s) of its Note, Edward J. Rivera. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant(s) in the amount of such deficiency.
13. The installments of principal and interest falling due from and after April 1, 2009, have not been paid although demand for the payment thereof has been made and the Plaintiff, as holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of \$109,656.08, together with interest at the rate of 5.875% per annum from the date of the last payment, together with reasonable attorneys fees for the

collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

14. Upon information and belief, said information having been obtained from the records of Greenville County, South Carolina, the Defendant(s) below named has/have or may claim to have some interest in or lien upon the Property by virtue of the matters and things herein below alleged, to-wit:

1. The Defendant, Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage, has or may claim to have some interest in the Property by virtue of mortgage given by Edward J. Rivera and Michelle L. Rivera to Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage in the original principal amount of \$37,500.00 which mortgage was recorded in the Greenville County Registry on November 17, 2003 in Mortgage Book 4074 at Page 946. Said mortgage was subordinated to Plaintiff's mortgage by Subordination Agreement dated October 27, 2004 and recorded December 7, 2004 in Book 4281, page 969. Said mortgage is junior and subordinate to the Plaintiff's mortgage and should be removed from title to the Property.

WHEREFORE, Plaintiff prays judgment that:

1. The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
2. Appoint a Receiver to collect the rents, issue, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgage(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.
3. Plaintiff's Mortgage be declared a valid first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid

by Plaintiff, together with attorney's fees and for the costs of this action.

4. The Property be sold according to law and the practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

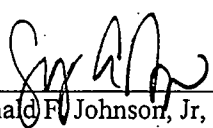
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, the surplus, if any, be distributed according to law;

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant(s), Edward J. Rivera, in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness, including costs of collection.

5. For such other and further relief as may be just and proper.

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendant(s) in possession herein, the Sheriff of Greenville County will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said Property without delay, and to keep the successful bidder or his assigns in such peaceable possession.



Ronald F. Johnson, Jr, SC Bar #16931
Mark A. Pearson, SC Bar #15926
Brian L. Campbell, SC Bar #74521
Andrew M. Thompson, SC Bar #71090
Suzanne E. Brown, SC Bar#76440
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 8 / 18 / 09
Wilmington, North Carolina

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended**

1. The amount of the debt is stated in the Complaint attached hereto.
2. The plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt is described in the Complaint attached hereto and evidenced by the copy of the Mortgage Note attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
4. If the debtor notifies the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
5. If the creditor named as plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original written requests should be addressed to Brock & Scott, PLLC, 3800 Fernandina Road, Suite 110, Columbia, SC 29210.
6. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

***** THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN
DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING
PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS
AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS*****

B&S No.: 09-15607

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Edward J. Rivera and Michele L. Rivera)
)
Plaintiffs,)
vs.)
BAC Home Loans Servicing, L.P.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-23- 2080

SUMMONS AND NOTICE
Action to Quiet Title

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the
Complain in this matter, a copy of which is hereby served upon you, and to serve a copy of your
Answer on the subscribers at their offices, 301 Augusta Street, Suite 101, Greenville, SC 29601,
within thirty (30) days after the service hereof, exclusive of the day of such service; except that
the United States of America, if named, shall have sixty (60) days to answer after the service
hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be
rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S)
UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S)
RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a
guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you.
If you fail to do so, application for such appointment will be made by Attorney for Plaintiffs.

This the 23rd day of March, 2012.

Bridget D. Swing K3W

Bridget D. Swing, S.C. Bar No. 13616

Foreclosure Defense Law Firm, LLC

PO Box 8246

Greenville, SC 29604

bridget@foreclosuredefensefirm.com

tel & fax: (864) 551-4353

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
Edward J. Rivera and Michele L. Rivera	)	
	)	C.A. No. 2012-CP-23- <u>2080</u>
Plaintiffs,	)	
vs.	)	
	)	COMPLAINT
BAC Home Loans Servicing, L.P.	)	Action to Quiet Title
	)	
Defendant.	)	
	)	

Plaintiffs Edward J. Rivera and Michele L. Rivera, by and through their undersigned counsel, would respectfully allege and show unto this honorable Court the following:

JURISDICTIONAL STATEMENT

1. That Plaintiffs Edward J. Rivera and Michele L. Rivera are citizens and residents of the County of Greenville, State of South Carolina.
2. That, upon information and belief, Defendant BAC Home Loans Servicing, L.P. is a business entity duly authorized to conduct business in the State of South Carolina. Defendant BAC Home Loans Servicing, L.P. is amendable to the jurisdiction of this court by virtue of the Code of Laws of South Carolina §36-2-803 (1976 Ann.).
3. That the real property hereinafter described, which is the subject matter of this action, is situate and located in the County of Greenville, State of South Carolina:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being at the southwestern intersection of Confederate Circle and Avon Drive, near the City of Greenville, in the County of Greenville, State of South Carolina and known and designated as Lot No. 40, Section 2, of a subdivision known as Sheffield Forest, plat of which is recorded in the Register of Deeds Office for Greenville County in Plat Book BBB at Page 61, said lot having the metes and bounds as shown thereon.

This being the same property conveyed to Edward J. & Michele L. Rivera by deed from Alexia M. Smith dated 07-27-02, recorded 07-29-02 in Book 2003 at Page 1423, Greenville County records.

TMS# 0539.07-01-029.00

110 Confederate Circle
Taylors, SC 29687

4. This action is commenced pursuant to Rules 17(a) of the South Carolina Rules of Civil Procedure to overturn Defendant BAC Home Loans Servicing, L.P.'s foreclosure order on the subject property due to its lack of standing in the foreclosure action. In the alternative, Plaintiffs seek relief under Rule 60(b) of the South Carolina Rules of Civil Procedure, wherein the court has the power to relieve a party from judgment, order or proceeding, or to set aside a judgment for fraud on the court.

FACTS AND ALLEGATIONS

5. That on or about November 10, 2004, Plaintiff Edward J. Rivera made, executed and delivered to Countrywide Home Loans, Inc. a certain Note in writing (hereinafter "Note") for value received. A copy of the Note is attached hereto as Exhibit "A".
6. That in order to secure the payment of said Note, Plaintiffs Edward J. Rivera and Michele L. Rivera did on the same date, to wit November 10, 2004, make, execute and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successors and assigns, a certain mortgage (the "Mortgage") encumbering the above-referenced real property. A copy of the Mortgage is attached hereto as Exhibit "B".
7. That on December 7, 2004, said Mortgage was recorded in the Greenville County Registry in Mortgage Book 4281 at Page 962.
8. That on or about August 20, 2009, Defendant BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. filed a Complaint against Plaintiffs to foreclose on

said Note and Mortgage, as the Plaintiff to Civil Action No. 2009-CP-23-7123. A copy of the Complaint is attached hereto as Exhibit "C".

9. On or about August 27, 2009, Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc., executed an "Assignment of Note and Mortgage" purporting to assign said Mortgage "[t]ogether with the note or obligation described in said mortgage, and monies due and those that will become due thereon" to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. Said "Assignment of Note and Mortgage" was filed with the Greenville County Registry on September 1, 2009. A copy of the Assignment of Note and Mortgage is attached hereto as Exhibit "D".

10. Upon information and belief the original Note executed by Plaintiff Edward Rivera has never been endorsed and/or assigned to the Defendant.

11. Upon information and belief, at no time during the foreclosure litigation, or anytime before, was Defendant the holder or owner of the promissory note at issue.

12. Upon information and belief, Defendant never held the note and/or was never the holder in due course as defined by the Code of Laws of South Carolina §36-3-302 (1976 Ann.).

13. As set forth in the Master in Equity's Report and Judgment of Foreclosure and Sale, Defendant represented to the Court that it was the owner and holder of the note and mortgage. Defendant's representation to the court that it was the owner and holder of the note was fraudulent and/or a material misrepresentation. A copy of the Report and Judgment of Foreclosure and Sale is attached hereto as Exhibit "E".

FOR A FIRST CAUSE OF ACTION
As to Defendant BAC Home Loans Servicing, L.P.
(Action to Quiet Title)

14. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

15. Defendant BAC Home Loans Servicing, L.P. filed said Complaint prior to the execution date of said Assignment of Note and Mortgage through which Defendant BAC Home Loans Servicing, L.P. claimed alleged interests to the Note and Mortgage in its foreclosure complaint.

16. Furthermore, the Assignment of Note and Mortgage was insufficient to transfer any interests in said Note and Mortgage to Defendant BAC Home Loans Servicing, L.P. because Mortgage Electronic Registration Systems, Inc. was not the title holder of the Note and Mortgage nor did it have proper authority from Countrywide Home Loans, Inc. to effectuate such transfers.

17. In addition, said Assignment of Note and Mortgage was executed by one Sylvia Jones as "Attorney in Fact for BAC Home Loan (sic) Servicing, LP *as servicer* for Mortgage Electronic Registration Systems, Inc." (emphasis added) and that such language constituted an admission by Defendant BAC Home Loans Servicing, L.P. that it was not the owner of said Note and Mortgage. Nor did the Assignment of Note and Mortgage or the foreclosure complaint provide any authority for Defendant BAC Home Loans Servicing, L.P. to execute documents on behalf of Mortgage Electronic Registration Systems, Inc.

18. Therefore, Defendant BAC Home Loans Servicing, L.P. was not a real party in interest to the Complaint under Rule 17(a) of the South Carolina Rules of Civil Procedure.

19. As a result, the Master in Equity's Report and Judgment of Foreclosure and Sale obtained by Defendant BAC Home Loans Servicing, L.P. against Plaintiffs dated September 7, 2010, must be overturned for Defendant's lack of standing in the original foreclosure action.

FOR A SECOND CAUSE OF ACTION
As to Defendant BAC Home Loans Servicing, L.P.
(Fraud on the Court)

20. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

21. By and through its duly acting attorneys of record, Defendant BAC Home Loans Servicing, L.P. fraudulently obtained said Master in Equity's Report and Judgment of Foreclosure and Sale from the court by misrepresenting that it was the actual owner and holder of the Note and Mortgage at issue.

22. However, as clearly demonstrated above, Defendant BAC Home Loans Servicing, L.P. was not the owner and holder of the Note and Mortgage upon which it instituted its Complaint against Plaintiffs.

23. Therefore, Defendant BAC Home Loans Servicing, L.P. did not have the legal right to bring action against Plaintiffs because it was not a real party in interest to the matter as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

24. As a direct and proximate result, Plaintiffs have been damaged by Defendant BAC Home Loans Servicing, L.P.'s fraud on the court and are entitled to equitable relief from the Master in Equity's Report and Judgment of Foreclosure and Sale dated September 7, 2010, as well as to actual and punitive damages in an amount to be determined by the Court and by the citizens of Greenville County empaneled and empowered to hear such cause.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth their Complaint, Plaintiffs Edward J. River and Michele L. Rivera pray for the following judgment:

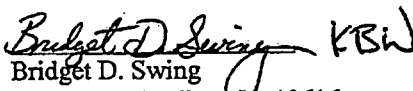
1. That the Master in Equity's Report and Judgment of Foreclosure and Sale obtained by Defendant BAC Home Loans Servicing L.P.'s against Plaintiffs dated September 7, 2010, be overturned for Defendant's lack of standing in the original foreclosure action, and title to the subject property rightfully be restored in the name of Plaintiffs under Rule 17(a) of the South Carolina Rules of Civil Procedure; or, in the alternative

2. That as a result of its fraud on the court, any interest Defendant BAC Home Loans Servicing, L.P. may have had in the subject property be declared unenforceable and, therefore,

null and void, and title to the subject property rightfully be restored in the name of Plaintiffs under Rule 60(b) of the South Carolina Rules of Civil Procedure;

3. For actual and punitive damages in an amount to be determined by the Court; and
4. For any other relief the Court deems just and proper under the circumstances.

This the 23rd day of March, 2012


Bridget D. Swing
South Carolina Bar No. 13616

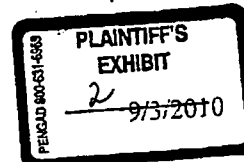
Foreclosure Defense Law Firm, LLC
301 Augusta Street
PO Box 8246
Greenville, SC 29604
Tel & Fax: (864) 551-4353

Exhibit A

Prepared by: ISRAEL LATA

Certified to be true
and correct copy

SET



Multistate

NOTE

LOAN #: 85040629

FHA Case No.
SC4613944084703

NOVEMBER 10, 2004
[Date]

110 CONFEDERATE CIR, TAYLORS, SC 29687-3909
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means COUNTRYWIDE HOME LOANS, INC. and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of ONE HUNDRED SIXTEEN THOUSAND FIVE HUNDRED NINETEEN and 00/100

Dollars (U.S. \$ 116,519.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of FIVE & SEVEN-EIGHTHS percent (5.875 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on JANUARY 01, 2005. Any principal and interest remaining on the first day of DECEMBER, 2034, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at P.O. Box 660694, Dallas, TX 75266-0694 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 689.25. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

1R (03/03)

CHL (03/03)(d)

Page 1 of 2
VMP MORTGAGE FORMS - (800)521-7291

FHA Multistate Fixed Rate Note - 10/25
Initial: 1.25%



A

CASE #: SC4613944084703

LOAN #: 85040629

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of FOUR percent (4.000 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

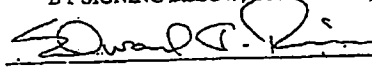
Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.


EDWARD J. RIVERA (Seal)
-Borrower

(Seal)
-Borrower

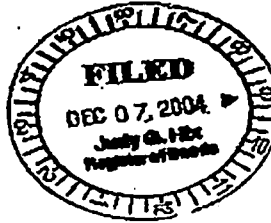
(Seal)
-Borrower

(Seal)
-Borrower

Exhibit B

6204-5271

Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91411



(Space Above This Line For Recording Data)

SC4613944084703
(Case #)
State of South Carolina

RIVERA
(Borrower/Closing #)
MORTGAGE

0008504062911004
(Doc ID #)

FHA Case No.
SC4613944084703

MIN 1000157-0004395252-8

THIS MORTGAGE ("Security Instrument") is given on NOVEMBER 10, 2004. The Mortgagor is EDWARD O RIVERA, AND MICHELE L RIVERA

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Miami, MI 48501-2026, tel (888) 679-MERS.

COUNTRYWIDE HOME LOANS, INC.
("Lender") is organized and existing under the laws of NEW YORK
4300 Park Granada, Calabasas, CA 91302-1613

, and has an address of

Borrower owes Lender the principal sum of
ONE HUNDRED SIXTEEN THOUSAND NINE HUNDRED NINETEEN and 00/100

Dollars (U.S. \$ 116,519.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on DECEMBER 01, 2034. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in GREENVILLE County, South Carolina:

SHE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

12-07-2004 09:28:16

Parcel ID Number: 5C

MIA South Carolina Mortgage with MERS - 4/28 Page 1 of 5
VMP 4N(SG) (0305) CHL (12/03) (0) VMP Mortgage Solutions (800) 841-7291

Initials: *ER*
JRH
Amended 2/01



DEC 07 2004

110468 EXHIBIT
B

CASE #: SC4613944004703
which has the address of

110 CONFEDERATE CIR. TAYLORS
(Street, City)

DOC ID #: 0008504062911004

South Carolina 29687-3909 ("Property Address");
(Zip Code)

TO HAVE AND TO HOLD this property unto MERS (nearly as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary. In a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the

CASE #: SC4613944084703

DOC ID #: 0008504062911004

Insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leasehold.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations regarding Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) cures in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

ER
SAR

CASE #: SC4613944084703

DOC ID #: 0008504062911004

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to result a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

Initials: E.R.
J.M.R.

CASE #: SC9613944084733

DOC ID #: 0008504062911004

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recitation costs.

20. **Waivers.** Borrower waives all rights of homestead exemption in the Property.

21. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)].

☐ Condominium Rider ☐ Growing Equity Rider ☒ Other [specify] _____
☐ Planned Unit Development Rider ☐ Graduated Payment Rider 0

12/1/03
 [Signature]

CASE #: 3C4613944084703

DOC ID #: 0008504062911009

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

[Signature]
①

[Signature] (Seal)
EDWARD J. RIVERA
Borrower

[Signature] (Seal)
MICHAEL L. RIVERA
Borrower

____ (Seal)
____ Borrower

____ (Seal)
____ Borrower

STATE OF SOUTH CAROLINA,

Personally appeared before me
he/she saw the within named Borrower sign, seal,
Mortgage; and that he/she with
witnessed the execution thereof.

[Signature] County ss:
[Signature] and made oath that
he/she saw the within named Borrower sign, seal, and as his/her/their act and deed, deliver the within written
Mortgage; and that he/she with
witnessed the execution thereof.

Sworn before me this

10 day of Nov 2016

[Signature]
Notary Public for South Carolina

My Commission Expires: 4/6/17

Prepared by: ISABEL LARA

COUNTRYWIDE HOME LOANS, INC.

DATE: 11/10/2004
CASE #: SC4613944084703
DOC ID #: 0005504062911004
BORROWER: EDWARD J. RIVERA
PROPERTY ADDRESS: 110 CONFEDERATE CIR
TAYLORS, SC 29687-3909

Branch #: 0000710
6440 SOUTHPOINT PARKWAY, #300
JACKSONVILLE, FL 32216
Phone: (904)205-9595
Fax No.: (904)000-0000

LEGAL DESCRIPTION EXHIBIT A

File No. GR04-527

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being at the southwestern intersection of Confederate Circle and Avon Drive, near the City of Greenville, in the County of Greenville, State of South Carolina and known and designated as Lot No. 40, Section 2, of a subdivision known as Sheffield Forest, plat of which is recorded in the Register of Deeds Office for Greenville County in Plat Book 388 at Page 61, said lot having the metes and bounds as shown thereon.

This being the same property conveyed to Edward J & Michelo L Rivera by deed from Alexia M Smith dated 07-27-02, recorded 07-29-02 in Book 2003 at page 1423, Greenville County records.

TMS# TD33.00-02-213.00

110 Confederate Circle
Taylors, SC 29687

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 09:00 AM
12 07 04 RECORDED IN MOUNTAIN
BOOK 4281 PAGE 0962 THRU 0963
DOC # 2004110400

FLAWA000V
Legal Description Exhibit A
20404-JO (04/08) (f)



23981



066040629000002004N

Exhibit C

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

10-48 C/A NO.:

2009-CP-11 7123

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

vs.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a
SouthBanc Mortgage,

Defendant(s).

COMPLAINT

(Non-Jury)

FORECLOSURE
OF REAL ESTATE
MORTGAGE

(Deficiency Judgment Demanded as to Defendant
Edward J. Rivera)

The Plaintiff above named, complaining of the Defendant(s) herein alleges that:

1. Plaintiff, BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P., is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendant(s) Edward J. Rivera and Michele L. Rivera are resident(s) and citizen(s) of the County of Greenville, State of South Carolina; and, Defendant(s) Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage is a business entity and is duly authorized to conduct business in the State of South Carolina.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Greenville, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on November 10, 2004, Edward J. Rivera (hereinafter "Borrower(s)") made, executed, and delivered to Countrywide Home Loans, Inc. (hereinafter "Lender") a certain Note in writing (hereinafter "Note"), wherein and whereby Edward

B&S No.: 09-15607

J. Rivera promised to pay to Countrywide Home Loans, Inc., the principal sum of \$116,519.00, together with interest at the rate of 5.875% per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said Note is fully paid. A copy of said Note is attached hereto as Exhibit "A."

5. In order to secure the payment of said Note, the said Edward J. Rivera and Michele L. Rivera (hereinafter "Mortgagor(s)"), did on the same date, to wit, November 10, 2004, make, execute, and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successors and assigns, a certain mortgage (hereinafter "Mortgage") securing real property located in the County and State aforesaid and described in said Mortgage (hereinafter "Property"). See Attached Exhibit "B."
6. On December 7, 2004, said Mortgage was recorded in the Greenville County Registry in Mortgage Book 4281 at Page 962. Thereafter the Mortgage was assigned to the Plaintiff herein.
7. The Mortgage evidences and secures the repayment of money advanced by the Lender to, or on behalf of, the Mortgagor(s) and constitutes a valid first lien on the Property.
8. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Servicer states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, Plaintiff alleges upon information and belief, that this loan is not eligible for modification under the HMP because the loan is owned or guaranteed by the Federal Housing Administration (HUD) and said entity does not participate in the HMP Program.

9. Any notice required by the terms of the Mortgage or by State or Federal law has been given to the applicable defendant(s) prior to the commencement of this action.
10. In and by the terms of said Note and the Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.
11. In and by the terms of the said Note it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys fees if the said Note be placed in the hands of an attorney for collection after default.
12. The Plaintiff demands a personal or deficiency judgment, and the Plaintiff has the right to seek a deficiency judgment against the maker(s) of its Note, Edward J. Rivera. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant(s) in the amount of such deficiency.
13. The installments of principal and interest falling due from and after April 1, 2009, have not been paid although demand for the payment thereof has been made and the Plaintiff, as holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of \$109,656.08, together with interest at the rate of 5.875% per annum from the date of the last payment, together with reasonable attorneys fees for the

collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

14. Upon information and belief, said information having been obtained from the records of Greenville County, South Carolina, the Defendant(s) below named has/have or may claim to have some interest in or lien upon the Property by virtue of the matters and things herein below alleged, to-wit:

1. The Defendant, Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage, has or may claim to have some interest in the Property by virtue of mortgage given by Edward J. Rivera and Michelle L. Rivera to Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage in the original principal amount of \$37,500.00 which mortgage was recorded in the Greenville County Registry on November 17, 2003 in Mortgage Book 4074 at Page 946. Said mortgage was subordinated to Plaintiff's mortgage by Subordination Agreement dated October 27, 2004 and recorded December 7, 2004 in Book 4281, page 969. Said mortgage is junior and subordinate to the Plaintiff's mortgage and should be removed from title to the Property.

WHEREFORE, Plaintiff prays judgment that:

1. The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
2. Appoint a Receiver to collect the rents, issue, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.
3. Plaintiff's Mortgage be declared a valid first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid

by Plaintiff, together with attorney's fees and for the costs of this action.

4. The Property be sold according to law and the practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

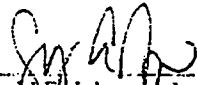
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, the surplus, if any, be distributed according to law;

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant(s), Edward J. Rivera, in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness, including costs of collection.

5. For such other and further relief as may be just and proper.

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendant(s) in possession herein, the Sheriff of Greenville County will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said Property without delay, and to keep the successful bidder or his assigns in such peaceable possession.


Ronald F. Johnson, Jr., SC Bar #16931
Mark A. Pearson, SC Bar #15926
Brian L. Campbell, SC Bar #74521
Andrew M. Thompson, SC Bar #71090
Suzanne E. Brown, SC Bar #76440
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 8 / 18 / 09
Wilmington, North Carolina

Exhibit D

Prepared by and return to:
BROCK & SCOTT, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210
File No.: 09-15607



2009069228 PSNT
Book: NO 5054 2 PGS
Page: 1908-1909
September 01, 2009 09:59:57 AM
Rec: \$7.00 Cnty Tax: \$0.00 State Tax: \$0.00

FILED IN GREENVILLE COUNTY, SC

ASSIGNMENT OF NOTE AND MORTGAGE

For valuable consideration received, the party of the first part Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc. (hereinafter referred to as "Assignor"), as holder of the referenced mortgage, does hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part, BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P., c/o BAC Home Loans Servicing, 7105 Corporate Drive, Plano, TX 75024 (hereinafter referred to as "Assignee"), that certain mortgage bearing the date of November 10, 2004, executed by Edward J. Rivera and Michele L. Rivera, in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., and recorded on the date of December 7, 2004 in Official Record Book 4281, at Page 962, Public Records of Greenville County, State of South Carolina.

Together with the note or obligation described in said mortgage, and monies due and those that will become due thereon.

TO HAVE AND TO HOLD the same unto the said Assignee, its heirs, legal representatives, successors and assigns forever.

WHEREAS, the undersigned Assignor has executed this Assignment of Note and Mortgage on this 27 day of August, 2009

Mortgage Electronic Registration Systems,
Inc. as nominee for Countrywide Home
Loans, Inc., Assignor

Signature: Sylvia Jones

Printed name: Sylvia Jones

Attorney in Fact for BAC Home Loan
Servicing, L.P. as servicer for Mortgage
Electronic Registration Systems, Inc.

Shannon Johnson
Witness signature

Shannon Johnson
Printed name

Stefani Wallace
Witness signature

STEFANI WALLACE
Printed name

THE STATE OF NC
COUNTY OF NEW HANOVER

I, Christina M. Clark, do hereby certify that the within-named Mortgage
Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc., by Sylvia
Jones (name), its Attorney-in-Fact (title), personally appeared before me this 27th day of
August, 2009 and acknowledged the due execution of the foregoing instrument.


NOTARY PUBLIC for the state of North Carolina
My commission expires: Jan 16, 2012

Christina M. Clark
Notary Public
Pender Co., NC

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2009069228 Book: 60 5854 Page: 1988-1989
September 01, 2009 09:59:57 AM

Timothy J. Hanney

Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a ...
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a
SouthBanc Mortgage,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2009-CP-23-7123

2:05
MASTER IN EQUITY'S REPORT AND
JUDGMENT OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

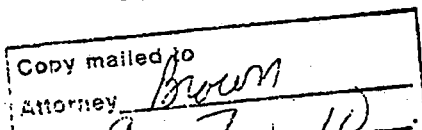
ENTERED

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRPC"), the above-entitled matter was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Master In Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 20, 2009.
2. The Summons and Complaint were filed on August 20, 2009.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendant(s) are in default as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act aka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.



[Handwritten signature]

Verified
SCANNED

RECEIVED
09-15-09
SE

6. All Defendants were notified of the time, date and place of hearing in this matter.
7. For value received, Edward J. Rivera made, executed and delivered a note, dated November 10, 2004, promising thereby to pay to the order of Countrywide Home Loans, Inc. the sum of \$116,519.00 with interest at the rate of 5.875% per annum. Other terms and conditions are stated in the note, which is of record herein.
8. To better secure the payment of the note described above, the said Edward J. Rivera and Michele L. Rivera made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., in writing, dated November 10, 2004, covering real property in Greenville County, which is the same as that described in the Complaint. The mortgage was recorded on December 7, 2004, and is of record in the Greenville County Registry in Book 4281 at page 962.
9. This mortgage constitutes a valid first lien on the subject property.
10. By Assignment of Mortgage dated August 27, 2009, and recorded in the office of the Register of Deeds/RMC Office for Greenville County in Book 5054 at page 1908 on September 1, 2009, Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc. assigned the subject note and mortgage to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P.. By virtue of said assignment, the Plaintiff in this action is the owner and holder of the note and mortgage.
11. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Servicer states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, this loan is not eligible for modification under the HMP because the loan is owned or guaranteed by the Federal Housing Administration (HUD) and said entity does not participate in the HMP Program.



09-15607

12. The titleholder(s) of record of the subject property as of the filing of the Lis Pendens in this action were Edward J. Rivera and Michele L. Rivera.

13. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of its attorney of record herein for collection.

14. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff. I find that the sum of \$1,200.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

15. The amount due and owing on the note and mortgage, with interest at the rate provided in the note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

Principal due as of today's date:	09/03/10	\$109,656.08
Accrued interest from:	03/02/09 to: 09/03/10	\$ 10,200.34
Accruing at:	5.875% per annum	
Advancements to Escrow		\$ 2,942.54
Corporate Advances		\$ 135.00
Late charges:		\$ 108.35
Other charges:		\$ 0.00
Costs of collection prior to hearing:		\$ 1,077.00
Attorney's fees:		\$ 1,200.00

09-15607

Total Debt secured by note and mortgage, including interest to date is \$125,319.31. Interest for the period from the date shown in (b) above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein, and interest after the date of Judgment at the rate of 5.875% per annum, pursuant to the terms of the note and mortgage on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

16. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRPC.

17. The Defendant, below listed, claims or may claim a lien upon or interest in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The said Defendants and such claim or lien are as follows:

The Defendant, Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage, has or may claim to have some interest in the Property by virtue of mortgage given by Edward J. Rivera and Michelle L. Rivera to Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage in the original principal amount of \$37,500.00 which mortgage was recorded in the Greenville County Registry on November 17, 2003 in Mortgage Book 4074 at Page 946. Said mortgage was subordinated to Plaintiff's mortgage by Subordination Agreement dated October 27, 2004 and recorded December 7, 2004 in Book 4281, page 969. Said mortgage is junior and subordinate to the Plaintiff's mortgage and is hereby ordered removed from title to the subject Property.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.



09-15607

2. That there is due to the Plaintiff on its note and mortgage the sum of \$125,319.31, representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 5.875% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendants liable for the aforesaid mortgage debt shall, prior to the date and time of the sale of the subject property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Greenville County Courthouse, in the City of Greenville, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Master In Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiffs debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 5.875% per annum.
 - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
 - D. Purchaser to pay for the deed and the cost of recording the deed.



09-15607

3. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.
4. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
5. That the undersigned Master In Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Master In Equity may re-advertise the premises for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.
6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
7. That the undersigned Master In Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and



NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c),
SCRCP.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.
9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Greenville County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Greenville County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master In Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.



09-15607

12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the premises herein ordered to be sold:

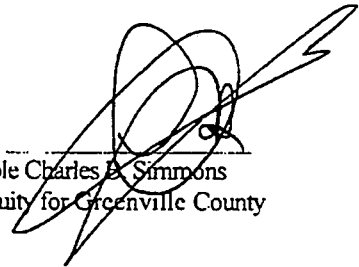
ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING AT THE SOUTHWESTERN INTERSECTION OF CONFEDERATE CIRCLE AND AVON DRIVE, NEAR THE CITY OF GREENVILLE, IN THE COUNTY GREENVILLE, STATE OF SOUTH CAROLINA AND KNOWN AND DESIGNATED AS LOT NO. 40, SECTION 2, OF A SUBDIVISION KNOWN AS SHEFFIELD FOREST, PLAT OF WHICH IS RECORDED IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY IN PLAT BOOK BBB AT PAGE 61, SAID LOT HAVING THE METES AND BOUNDS AS SHOWN THEREON.

THIS BEING THE SAME PROPERTY CONVEYED TO EDWARD J. & MICHELE L. RIVERA BY DEED FROM ALEXIA M. SMITH DATED JULY 27, 2002, RECORDED JULY 29, 2002 IN BOOK 2003 AT PAGE 1423, GREENVILLE COUNTY RECORDS.

CURRENT ADDRESS OF PROPERTY: 110 Confederate Circle, Taylors, SC 29687

TMS: T033000221300

AND IT IS SO ORDERED.



The Honorable Charles B. Simmons
Master In Equity for Greenville County

Date: 9/3/10
Greenville, South Carolina

09-15607

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

EDWARD J. RIVERA AND
MICHELE L. RIVERA,
PLAINTIFFS,

vs.

BAC HOME LOANS
SERVICING, L.P.,
DEFENDANT.

COURT OF COMMON PLEAS
2012-CP-23-02080

TRANSCRIPT OF RECORD

ORIGINAL

May 29, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

BRIDGET D. SWING, ESQ.
Attorney for the Plaintiffs

CHAD W. BURGESS, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: The next case is Rivera v. BAC Home Loans Servicing, L.P., 2012-CP-23-2080.

Well, there are, according to the roster, two motions, one for judgment on the pleadings, and one for -- the Plaintiffs move for judgment on the pleadings. And the Defendants move to dismiss.

Is that correct?

MR. BURGESS: That's correct, Your Honor.

THE COURT: Okay.

MS. SWING: That's correct.

THE COURT: All right. Yes, ma'am.

Are you going first?

MS. SWING: I can.

We filed a motion for judgment on the pleadings. And we would just ask that the action be based -- just based on the pleadings, Your Honor. It's pretty simple. Our argument is pretty straightforward. It's based on subject matter jurisdiction, which is fundamental for any case to move forward is that the party have subject matter jurisdiction. And it's our contention in the quiet title action that the Plaintiff in the foreclosure action that was finalized in 2010 did not have subject matter jurisdiction at the time the complaint was filed.

There was an assignment of mortgage that was executed

1 after the complaint was filed. The complaint was filed on
2 August 18th, 2009. The assignment of mortgage did not
3 come until August 27th, '09. As a result, the complaint
4 was brought by a party that was unauthorized, that had no
5 subject matter jurisdiction. And any judgment -- or any
6 final foreclosure order that was issued would be a
7 nullity. And we would ask that the complaint be dismissed
8 on that alone.

9 I can move forward and address the Defendant's
10 motion, or let him move forward first.

11 THE COURT: I'll let them respond to your motion.

12 Yes, sir, Mr. Burgess.

13 MR. BURGESS: And, Your Honor, I believe our motions
14 go hand in hand.

15 THE COURT: Okay.

16 MR. BURGESS: May it please the Court.

17 Your Honor, I do have a brief memorandum in support
18 of my motion to dismiss --

19 THE COURT: All right.

20 MR. BURGESS: -- along with an attachment. I'll give
21 it to Ms. Swing.

22 May I approach, Your Honor?

23 THE COURT: Sure.

24 MR. BURGESS: Your Honor, the defense to the motion
25 for judgment on the pleadings and is, actually, in support

1 of our motion to dismiss. Your Honor, this same subject
2 matter that's of this action, which is titled to the
3 property located here in Greenville County, was the
4 subject of a foreclosure action that was brought on August
5 the 20th, 2009. And, Your Honor, in that action, the
6 Plaintiff, BAC Home Loans Servicing, L.P., asserted and
7 pled that they were the real party in interest in the
8 foreclosure action, that they, actually, owned and held
9 the mortgage at the time of the filing of that action.

10 Your Honor, Ms. Swing was correct that the assignment
11 of mortgage, which merely puts the world on notice as to
12 who the actual owner and holder is, wasn't filed until
13 after the complaint was filed and -- but our argument is
14 simply, Your Honor, that it has no effect on who the
15 actual owner and holder was at the time of the filing of
16 the pleadings. It merely put the world on notice.

17 Further, Your Honor, in that action, the Defendants,
18 Mr. and Mrs. Rivera, were served with the pleadings. They
19 were -- eventually, they failed to respond to the
20 pleadings. They were held in default. A final
21 foreclosure hearing was held before Judge Simmons after
22 reference of the case to him from the circuit court. And
23 the Riveras were given notice of that hearing. And they
24 did not appear at that hearing. And, as a result, the
25 judgment was entered.

1 Your Honor, it's our position that as of today's
2 date, there's been no challenge to that judgment. That's
3 a valid entry of judgment by the Court. And that the
4 doctrine of res judicata would bar this claim in its
5 entirety. And that any challenge to that judgment would
6 necessarily need to be brought in that 2009 action.

7 Your Honor, further, I do have -- and I handed up
8 with my memorandum copies of the original note, mortgage,
9 and assignment. And I do have the originals here in my
10 possession to, I guess, put to rest any notice -- or any
11 notion that BAC Home Loans Servicing was not the real
12 party in interest. The note is, of course, endorsed in
13 blank [phonetic]. And BAC, as much as at the time of the
14 filing of the foreclosure action as remains the case
15 today, has the original stamped in blank [phonetic].

16 So, Your Honor, there is no question as to who the
17 owner and holder of the mortgage is at this point. And we
18 would just ask that the judgment be upheld.

19 MS. SWING: Your Honor, we just received a copy of
20 their brief today, memorandum. So we really had no idea
21 what their legal arguments were going to be until just
22 right now until receiving this.

23 We did reach out to Brock & Scott several weeks ago.
24 They said that they were -- would be preparing a
25 memorandum. But we hadn't had a chance to review it or to

1 be able to respond, specifically, to the allegations until
2 today. Based on that alone, I would request more time
3 just to possibly research and argue it. But I will set
4 forth some legal arguments here today, if the Court is
5 unwilling to give us time to do that.

6 THE COURT: I don't mind giving you the time to do
7 it. But I'm -- you can go ahead and put whatever you want
8 to on the record now. But I'll, certainly, give you time
9 to respond since you just got it.

10 MS. SWING: Okay. The complaint does not -- alleges
11 that it was the holder of the mortgage and note by virtue
12 of the mortgage assignment. It did not allege that it was
13 the holder of the note by virtue of holding the note.

14 In order to negotiate a note in South Carolina, you
15 have to follow the rules of the UCC as set forth in South
16 Carolina. And an assignment of the note by virtue of its
17 mortgage assignment and note does not create a holder
18 status. They did not allege that in the complaint, nor
19 did they prove it.

20 The order of foreclosure and sale, if that's what
21 their argument is, we can, certainly, provide a copy of
22 that order of foreclosure and sale. It does not allege
23 that they were the holder of the note by virtue of holding
24 a copy of the note, or by being a holder under the UCC.
25 Their entire argument was based on the mortgage

1 assignment, which was not signed and recorded until after
2 the complaint.

3 And until that mortgage assignment is executed or
4 until they are able to establish that they were the actual
5 holder of the note, they had no subject matter
6 jurisdiction and res judicata should not be an issue.

7 THE COURT: Who didn't have subject matter
8 jurisdiction?

9 MS. SWING: The Plaintiff, BAC Home Loan Servicing,
10 whom the mortgage was not assigned to them until August
11 the 29th. The complaint was filed on August the 18th.

12 THE COURT: But the part of your argument I'm not
13 following is it was pled and, subsequently -- was the
14 complaint answered?

15 MS. SWING: The complaint was not answered, no, sir,
16 Your Honor.

17 THE COURT: So it was in default. So it ended up
18 being a judgment.

19 MS. SWING: Well, and under South Carolina law,
20 judgments are void by lack of subject matter jurisdiction.
21 In other words, the Court had no authority to enter that
22 judgment if they were basing it on a complaint that was
23 filed by a party that had no authority to be there.
24 Without subject matter jurisdiction, you have no authority
25 to be in front of the Court. And the Court has no

1 authority to make a ruling.

2 Now, if --

3 THE COURT: Wait a minute. Wait a minute now.

4 What -- subject matter jurisdiction goes to the power
5 of the Court to hear classes of cases.

6 So are you saying the circuit court doesn't have
7 power to hear foreclosure and breach of contract cases?

8 MS. SWING: I'm saying at this juncture, based on
9 what they were alleging in the complaint, if they were not
10 the real party in interest, if they were not the holder of
11 the mortgage or the note that they were not the proper
12 party. With an improper party -- another example, if John
13 Smith sues someone because they said my home was broken
14 into, but it wasn't John Smith's home, it was someone
15 else's home. I mean, it was not proper to be brought in
16 front of the Court.

17 There's several -- South Carolina case law that I can
18 point the Court to that says a judgment is void if a Court
19 acts without jurisdiction. And a void judgment is one
20 that from its inception is a complete nullity, and is
21 without legal effect, and must be just doing business from
22 any judgment that is merely avoidable.

23 Our argument is simply that at the time they came and
24 brought the case, they had no subject matter jurisdiction.
25 That's not to say that they may be able to prove it or

1 establish it at a future point in time. But they did not
2 have it at the time the complaint was brought. And, as
3 such, the judgment should be void.

4 THE COURT: Okay. How much time do you need to
5 respond to his memorandum, Ms. Swing?

6 MS. SWING: I would ask for 10 days.

7 THE COURT: Okay. I'm not sure I follow the argument
8 about subject matter jurisdiction. But I'll be glad for
9 you to supply any authority that says Judge Simmons was
10 without subject matter jurisdiction to enter an order in a
11 foreclosure case.

12 MS. SWING: I'm sorry.

13 THE COURT: I said I'll be glad for to you submit any
14 authority that would support your position that Judge
15 Simmons, as the Master in Equity, was without subject
16 matter jurisdiction to enter a judgment in a foreclosure
17 case.

18 MS. SWING: And I would say he absolutely is as the
19 Master in Equity when the proper party is brought before
20 him when --

21 THE COURT: That's not -- that doesn't have anything
22 to do with subject matter jurisdiction. If you've got a
23 case that says that, that subject matter jurisdiction
24 depends on the proper party being brought in, then I'd be
25 happy to look at it. But, otherwise, the Court's

1 jurisdiction would constantly be subject to being
2 questioned, which I don't think is the law.

3 Yes, sir.

4 MR. BURGESS: Your Honor, just briefly to add to
5 that.

6 Your Honor, our position is that under Rule 17 that
7 the proper remedy would have been for them to plead it.
8 And it wouldn't even constitute a dismissal of the
9 foreclosure action. It would just be merely a replacement
10 of the actual real party in interest.

11 Our assertion is that our client did own and hold the
12 mortgage at the time of the complaint. It is pled in the
13 foreclosure complaint that they were assigned the note and
14 mortgage. Even though no assignment was, actually, on
15 record at the time of the filing of the pleading, they
16 were the actual true party in interest. And, as such,
17 even under Rule 17, they would not have been required to
18 replace themselves with any other party, because they were
19 the true party in interest.

20 And, Your Honor, our argument is simply that the
21 Court did have subject matter jurisdiction as a court of
22 general jurisdiction to hear it. And that at its
23 inception, the Plaintiff was the proper party in interest.
24 So the judgment is valid on its face. And any attack
25 under Rule 60(b) to avoid judgment -- to avoid Judge

1 Simmons judgment would need to be brought in that case
2 pursuant to Rule 60(b). I believe it's 60(b)(3).

3 MS. SWING: 60(b)(3), I think you're right about
4 that.

5 MR. BURGESS: For -- to avoid judgment, and not in a
6 separate foreclosure action. That is an additional
7 defense that we have.

8 THE COURT: Okay. Well, I mean, if you've got cases
9 that say that -- and I understand that Rule 60 speaks to
10 avoid judgments. For instance, if the Court never had
11 personal jurisdiction over a party, but, nevertheless,
12 entered a judgment, that would be void.

13 But if you have cases that support the proposition
14 that -- some proof that the proper party wasn't before the
15 Court, even though they were served and didn't respond and
16 can later under Rule 60 bring -- or an independent action
17 bring a challenge to the judgment and have it declared
18 void, then, like I said, I'll be happy to consider it.

19 MS. SWING: Okay. Thank you, Your Honor.

20 THE COURT: Thank you.

21 *****END OF TRANSCRIPT OF RECORD*****
22
23
24
25

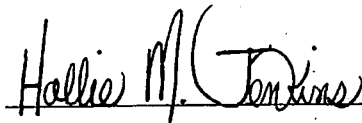
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 15, 2012

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Edward J. Rivera and Michele L. Rivera,
Plaintiff,

v.

BAC Home Loans Servicing, L.P.,
Defendant(s)

THIRTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-23-2080

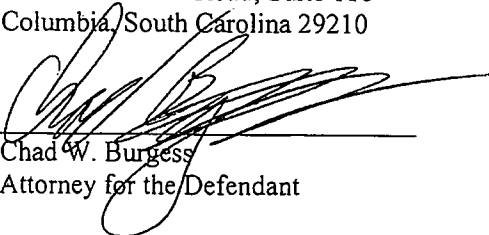
**NOTICE OF MOTION AND MOTION TO
DISMISS**

**TO: BRIDGET D. SWING, ATTORNEY FOR THE PLAINTIFFS, EDWARD J.
RIVERA AND MICHELLE L. RIVERA:**

YOU WILL PLEASE TAKE NOTICE, that, on the tenth (10th) day after service hereof, or as soon thereafter as counsel can be heard, the Defendant, BAC Home Loans Servicing, L.P., through its undersigned counsel, will move before the presiding Judge or Master In Equity in Greenville County, for an Order dismissing the Plaintiff's Complaint, with prejudice and without leave to amend, pursuant to Rule 12 (b)(6), SCRCF, for failure to state facts sufficient to constitute a cause of action upon which the relief sought may be granted.

This Motion is based upon the applicable South Carolina Rules of Civil Procedure, relevant statutes and case law as well as any memoranda presented.

Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210


Chad W. Burgess
Attorney for the Defendant

Dated: April 11, 2012
Columbia, South Carolina

B&S File No.: 09-15607

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edward J. Rivera and Michele L. Rivera,

Plaintiff,

v.

BAC Home Loans Servicing, L.P.,

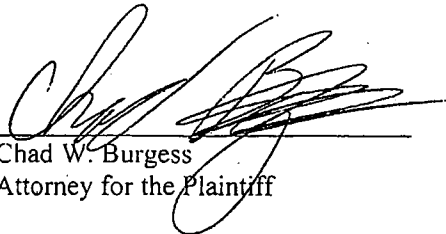
Defendant(s)

THIRTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-23-2080

CERTIFICATE OF MAILING

The undersigned hereby certifies that on April 11, 2012
he served a copy of Plaintiff's Notice of Motion and Motion to Dismiss Pursuant to Rule
12(B)(6) and Certificate of Mailing upon the person(s) below by depositing the same in the US
Mail with proper postage affixed and addressed as follows:

Bridget D. Swing, Esquire
Foreclosure Defense Law Firm, LLC
P.O. Box 8246
Greenville, South Carolina 29604


Chad W. Burgess
Attorney for the Plaintiff

Dated: April 11, 2012
Columbia, South Carolina

B&S File No.: 09-15607

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Edward J. Rivera and Michele L. Rivera,

Plaintiff,

v.

BAC Home Loans Servicing, L.P.,

Defendant(s)

THIRTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-23-2080

COPY

**MEMORANDUM IN SUPPORT OF THE
DEFENDANT'S MOTION TO DISMISS AND
IN OPPOSITION TO THE PLAINTIFF'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

TO: BRIDGET D. SWING, ATTORNEY FOR THE PLAINTIFFS:

INTRODUCTION

This is an action to quiet title to a parcel of real property located in Greenville County, South Carolina. On August 20, 2009, the Defendant, BAC Home Loans Servicing, L.P. (hereinafter referred to as "BAC"), filed a foreclosure action, bearing South Carolina Civil Action Number 2009-CP-23-7123, concerning the subject property. The Plaintiffs, Edward J. Rivera and Michele L. Rivera (hereinafter referred to as the "Riveras") were named in that action and service was completed on the Riveras on August 20, 2009. The Riveras failed to respond to BAC's foreclosure action and an Affidavit of Default was filed on April 5, 2010. On September 3, 2010, a final foreclosure hearing was held before the Honorable Charles B. Simmons, Jr. The Riveras were notified of the final hearing as is shown by the Notice of Hearing filed in that action on August 23, 2010. On September 7, 2010, the Master in Equity's Report and Judgment of Foreclosure and Sale was filed and a judicial sale was held on October 4, 2010. BAC was the successful bidder at the foreclosure sale.

Subsequently, the Riveras filed the instant action to quiet title to the real property claiming, inter alia, that BAC lacked standing to bring its 2009 foreclosure action. This Memorandum will reflect that the Riveras' quiet title action should be dismissed as a matter of law. This memorandum will further reflect that the Riveras' Motion for Judgment on the Pleadings fails as a matter of law and should be denied.

DISCUSSION

"A rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). When taken in the light most favorable to the Riveras, the allegations in the Complaint and the inferences reasonably deducible therefrom, clearly demonstrate that no relief can be afforded to the Riveras. Further, each and every issue raised in the Riveras' Motion for Judgment on the Pleadings fails as a matter of law, to wit:

1. **Res Judicata**: The doctrine of res judicata, bars a litigant from bringing any issues which were adjudicated in a prior adjudicated suit and any issues which might have been raised in the former suit. Plum Creek Development Co., Inc. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). The doctrine of res judicata is comprised of three elements: 1) the parties must be identical, 2) the subject matter must be identical, and 3) the subject issue must have been litigated in the former suit. *Id.* As stated previously, BAC's foreclosure action involved the same parties to the instant action and involved the same subject matter as the instant action (i.e., BAC's standing to bring a foreclosure action as to the subject property) and that issue was decided in the previous action. As such, the Riveras' claims are barred by the doctrine of res judicata and the instant action should be dismissed as a matter of law.

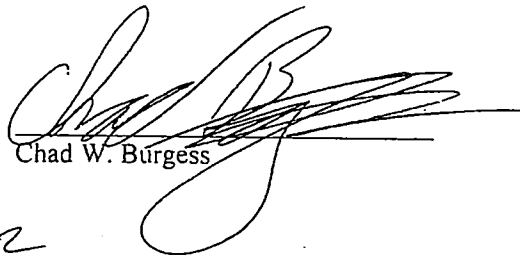
2. **Lack of Standing**: To further bolster its motion and put to rest any claims as to BAC's standing to bring the prior foreclosure action, Counsel for BAC submits to the Court a copy of the original Note, Mortgage, and Assignment of Mortgage. Counsel for BAC has the original documents in his possession and will present them for the Court's inspection at the hearing. All of these documents clearly demonstrate that BAC had standing to bring its foreclosure action. As stated previously, any challenge to BAC's standing to bring its foreclosure action should have been brought in the previous foreclosure action. As a result, the instant action should be dismissed as a matter of law.

CONCLUSION

In light of the foregoing, it is clear that the Riveras cannot recover under any theory of law as to their quiet title action. As such, BAC's motion to dismiss should be granted. Additionally, BAC has established that the Riveras' Motion for Judgment on the Pleadings

should be denied as a matter of law. Accordingly, the Plaintiff prays that the Court issue an Order denying the Riveras' Motion for Judgment on the Pleadings and dismissing this action with prejudice.

Brock and Scott, PLLC
Attorneys for the Plaintiff
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210



Chad W. Burgess

Dated: May 29, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2012 MAY

3

PM

C.A. No. 2012-CP-23-2080

Edward J. Rivera and Michele L. Rivera)

Plaintiffs,

vs.

BAC Home Loans Servicing, L.P.

Defendant.

**PLAINTIFFS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

COME NOW Edward J. Rivera and Michele L. Rivera ("Plaintiffs"), by and through their undersigned counsel, and respectfully move the Court for a Motion for Judgment on the Pleadings. This motion is brought pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure.

The test applicable for judgment on the pleadings is whether or not, when viewed in the light most favorable to the party against whom the motion is made, genuine issues of material fact remain or whether the case can be decided as a matter of law." *Smith v. McDonald*, 562 F.Supp. 829, 842 (M.D.N.C.1983), *aff'd*, 737 F.2d 427 (4th Cir.1984), *aff'd*, 472 U.S. 479, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985), *King v. Gemini Food Services, Inc.*, 438 F.Supp. 964, 966 (E.D.Va.1976), *aff'd*, 562 F.2d 297 (4th Cir.1977), *cert. denied*, 434 U.S. 1065, 98 S.Ct. 1242, 53 L.Ed.2d 766 (1978). In the case at bar, Plaintiffs would assert to this honorable Court that there is no genuine issue of fact that Defendant did not have standing to bring the original foreclosure action that is the subject matter of this current quiet title action. Therefore, the judgment in the original foreclosure action should be overturned for Defendant's lack of standing and title to the real property that was the subject matter of the foreclosure action should be returned to Plaintiffs.

Standing to sue is a fundamental requirement in instituting any action. *Joytime Distribs.*

& Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647,649 (1999). In order to maintain a cause of action (1) the plaintiff must have suffered an invasion of a legally protected interest ("injury in fact") which is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the plaintiff's injury and the conduct of which the plaintiff complains; and (3) it must be likely that the plaintiff's injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 2136 (1992). South Carolina uses these boundaries of federal constitutional standing to outline the requirements of the minimum a plaintiff must show in order to bring an action in a South Carolina court. *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 87-88, 644 S.E.2d 58 (concurring opinion of Justice Toal).

Foremost, the party seeking relief must prove that they suffered an actual and concrete injury. Absent an injury of this nature, the party lacks standing. Whether or not such an injury exists is *determined at the commencement of the lawsuit*. *Lujan*, 504 U.S. at 570 n. 5, 112 S.Ct. at 2142. (emphasis added)

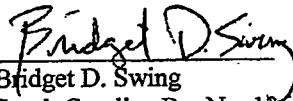
Defendant's original foreclosure action against Plaintiffs was commenced on August 20, 2009. In Paragraph 6 of its Complaint, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", Defendant alleged that "[o]n December 7, 2004, said Mortgage was recorded in the Greenville County Registry in Mortgage Book 4281 at Page 962. *Thereafter the Mortgage was assigned to the Plaintiff herein.*" (emphasis added) However, the Assignment of Note and Mortgage, through which Defendant claimed to have an interest in the foreclosure action, was not executed until August 27, 2009, and was not filed with the Greenville County Registry until September 1, 2009. A copy of said Assignment of Note and Mortgage is attached hereto and incorporated herein by reference as Exhibit "B". As a result, Defendant did

not have a legally protected interest in the foreclosure action under the *Lujan* test and, therefore, lacked standing to bring said action. Consequently, the judgment in the original foreclosure action should be overturned by this honorable Court for lack of standing and title to the real property that was the subject matter of the foreclosure action should be returned to Plaintiffs.

WHEREFORE, Plaintiffs hereby request the following relief:

1. That Plaintiff's Motion for Judgment on the Pleadings be granted by this honorable Court;
2. That title to the real property that was the subject matter of the original foreclosure action be returned to Plaintiffs by this honorable Court; and
3. For such other and further relief as this honorable Court may deem just and proper.

This the 3rd day of May, 2012


Bridget D. Swing
South Carolina Bar No. 13616

Foreclosure Defense Law Firm, LLC
301 Augusta Street
PO Box 8246
Greenville, SC 29604
(864) 551-4353
bridget@foreclosuredefensefirm.com
Attorney for Defendants

Exhibit “A”

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

vs.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a
SouthBanc Mortgage,

Defendant(s).

IN THE COURT OF COMMON PLEAS

Case No. 48 C/A NO. 2000-CP-IT-7123

COMPLAINT

(Non-Jury)

**FORECLOSURE
OF REAL ESTATE
MORTGAGE**

(Deficiency Judgment Demanded as to Defendant
Edward J. Rivera)

The Plaintiff above named, complaining of the Defendant(s) herein alleges that:

1. Plaintiff, BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P., is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendant(s) Edward J. Rivera and Michele L. Rivera are resident(s) and citizen(s) of the County of Greenville, State of South Carolina; and, Defendant(s) Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage is a business entity and is duly authorized to conduct business in the State of South Carolina.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Greenville, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on November 10, 2004, Edward J. Rivera (hereinafter "Borrower(s)") made, executed, and delivered to Countrywide Home Loans, Inc. (hereinafter "Lender") a certain Note in writing (hereinafter "Note"), wherein and whereby Edward

B&S No.: 09-15607

J. Rivera promised to pay to Countrywide Home Loans, Inc., the principal sum of \$116,519.00, together with interest at the rate of 5.875% per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said Note is fully paid. A copy of said Note is attached hereto as Exhibit "A."

5. In order to secure the payment of said Note, the said Edward J. Rivera and Michele L. Rivera (hereinafter "Mortgagor(s)"), did on the same date, to wit, November 10, 2004, make, execute, and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successors and assigns, a certain mortgage (hereinafter "Mortgage") securing real property located in the County and State aforesaid and described in said Mortgage (hereinafter "Property"). See Attached Exhibit "B."
6. On December 7, 2004, said Mortgage was recorded in the Greenville County Registry in Mortgage Book 4281 at Page 962. Thereafter the Mortgage was assigned to the Plaintiff herein.
7. The Mortgage evidences and secures the repayment of money advanced by the Lender to, or on behalf of, the Mortgagor(s) and constitutes a valid first lien on the Property.
8. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Servicer states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HAMP"); however, Plaintiff alleges upon information and belief, that this loan is not eligible for modification under the HAMP because the loan is owned or guaranteed by the Federal Housing Administration (HUD) and said entity does not participate in the HAMP Program.

9. Any notice required by the terms of the Mortgage or by State or Federal law has been given to the applicable defendant(s) prior to the commencement of this action.
10. In and by the terms of said Note and the Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.
11. In and by the terms of the said Note it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys fees if the said Note be placed in the hands of an attorney for collection after default.
12. The Plaintiff demands a personal or deficiency judgment, and the Plaintiff has the right to seek a deficiency judgment against the maker(s) of its Note, Edward J. Rivera. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant(s) in the amount of such deficiency.
13. The installments of principal and interest falling due from and after April 1, 2009, have not been paid although demand for the payment thereof has been made and the Plaintiff, as holder of the said Note and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once: that there is now due and owing and unpaid upon the said Note and Mortgage the full and just principal sum of \$109,656.08, together with interest at the rate of 5.875% per annum from the date of the last payment, together with reasonable attorneys fees for the

collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

14. Upon information and belief, said information having been obtained from the records of Greenville County, South Carolina, the Defendant(s) below named has/have or may claim to have some interest in or lien upon the Property by virtue of the matters and things herein below alleged, to-wit:

1. The Defendant, Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage, has or may claim to have some interest in the Property by virtue of mortgage given by Edward J. Rivera and Michelle L. Rivera to Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage in the original principal amount of \$37,500.00 which mortgage was recorded in the Greenville County Registry on November 17, 2003 in Mortgage Book 4074 at Page 946. Said mortgage was subordinated to Plaintiff's mortgage by Subordination Agreement dated October 27, 2004 and recorded December 7, 2004 in Book 4281, page 969. Said mortgage is junior and subordinate to the Plaintiff's mortgage and should be removed from title to the Property.

WHEREFORE, Plaintiff prays judgment that:

1. The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
2. Appoint a Receiver to collect the rents, issue, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.
3. Plaintiff's Mortgage be declared a valid first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid

by Plaintiff, together with attorney's fees and for the costs of this action.

4. The Property be sold according to law and the practice of this Court, the equity of redemption be barred and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, the surplus, if any, be distributed according to law;

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant(s), Edward J. Rivera, in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness, including costs of collection.

5. For such other and further relief as may be just and proper.

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendant(s) in possession herein, the Sheriff of Greenville County will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said Property without delay, and to keep the successful bidder or his assigns in such peaceable possession.


Ronald F. Johnson, Jr., SC Bar #16931
Mark A. Pearson, SC Bar #15926
Brian L. Campbell, SC Bar #74521
Andrew M. Thompson, SC Bar #71090
Suzanne E. Brown, SC Bar #76440
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 8/18/09
Wilmington, North Carolina

Exhibit “B”

Prepared by and return to:
 BROCK & SCOTT, PLLC
 Westpark Center
 3800 Fernandina Road, Suite 110
 Columbia, SC 29210
 File No.: 09-15607

2009069228 ASMT
 2 PGS
 Book: MO 5054 Page: 1908-1909
 September 01, 2009 09:59:57 AM
 Rec: \$7.00 Cnty Tax: \$0.00 State Tax: \$0.00
 FILED IN GREENVILLE COUNTY, SC

ASSIGNMENT OF NOTE AND MORTGAGE

For valuable consideration received, the party of the first part Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc. (hereinafter referred to as "Assignor"), as holder of the referenced mortgage, does hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part, BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P., c/o BAC Home Loans Servicing, 7105 Corporate Drive, Plano, TX 75024 (hereinafter referred to as "Assignee"), that certain mortgage bearing the date of November 10, 2004, executed by Edward J. Rivera and Michele L. Rivera, in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., and recorded on the date of December 7, 2004 in Official Record Book 4281, at Page 962, Public Records of Greenville County, State of South Carolina.

Together with the note or obligation described in said mortgage, and monies due and those that will become due thereon.

TO HAVE AND TO HOLD the same unto the said Assignee, its heirs, legal representatives, successors and assigns forever.

WHEREAS, the undersigned Assignor has executed this Assignment of Note and Mortgage on this 27 day of August, 2009

Mortgage Electronic Registration Systems,
 Inc. as nominee for Countrywide Home
 Loans, Inc., Assignor

Shannon Johnson
 Witness signature

Signature: Sylvia Jones

Shannon Johnson
 Printed name

Printed name: Sylvia Jones

Stefani Wallace
 Witness signature

Attorney in Fact for BAC Home Loan
 Servicing, LP as servicer for Mortgage
 Electronic Registration Systems, Inc.

STEFANI WALLACE
 Printed name

THE STATE OF NC
COUNTY OF NEW HANOVER

I, Christina M. Clark, do hereby certify that the within-named Mortgage
Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc., by Sylvia
Jones (name), its Attorney-in-Fact (title), personally appeared before me this 27th day of
August, 2009 and acknowledged the due execution of the foregoing instrument.


NOTARY PUBLIC for the state of North Carolina
My commission expires: Jan 16, 2012

Christina M. Clark
Notary Public
Pender Co., NC

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2009069228 Book: NO 5054 Page: 1908-1909
September 01, 2009 09:59:57 AM

Timothy J. Hanney

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Edward J. Rivera and Michele L. Rivera)
)
Plaintiffs,)
vs.)
BAC Home Loans Servicing, L.P.)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-23-2080

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2012 MAY -3 PM 3:35

CERTIFICATE OF SERVICE

The undersigned attorney of record for Edward J. Rivera and Michele L. Rivera ("Plaintiffs") hereby certifies that the foregoing Motion for Judgment on the Pleadings was served upon the following addressees by depositing a copy in the United States Postal Depository with adequate postage affixed thereon and properly addressed to the last known address as follows:

Chad W. Burgess
Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

This the 3rd day of May, 2012.

Bridget D. Swing RBW
Bridget D. Swing, SC Bar No. 13616

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2012 JUN -7) PM 3: 06
 COUNTY OF GREENVILLE) C.A. No. 2012-CP-23-2080
 FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 Edward J. Rivera and Michele L. Rivera)
 Plaintiffs,)
 vs.) MEMORANDUM IN SUPPORT OF
 BAC Home Loans Servicing, L.P.) PLAINTIFFS' MOTION FOR
 Defendant.) JUDGMENT ON THE PLEADINGS

COMES NOW Plaintiffs, by and through their undersigned counsel, and respectfully submit this memorandum in support of their Motion for Judgment on the Pleadings.

STANDING TO SUE INVOLVES SUBJECT MATTER JURISDICTION

AND CANNOT BE WAIVED AS A DEFENSE

As Plaintiffs asserted in their Motion for Judgment on the Pleadings:

[s]tanding to sue is a fundamental requirement in instituting any action. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647,649 (1999). In order to maintain a cause of action (1) the plaintiff must have suffered an invasion of a legally protected interest ("injury in fact") which is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the plaintiff's injury and the conduct of which the plaintiff complains; and (3) it must be likely that the plaintiff's injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 2136 (1992). South Carolina uses these boundaries of federal constitutional standing to outline the requirements of the minimum a plaintiff must show in order to bring an action in a South Carolina court. *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 87-88, 644 S.E.2d 58 (concurring opinion of Justice Toal).

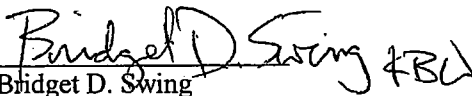
Foremost, the party seeking relief must prove that they suffered an actual and concrete injury. Absent an injury of this nature, the party lacks standing. Whether or not such an injury exists *is determined at the commencement of the lawsuit*. *Lujan*, 504 U.S. at 570 n. 5, 112 S.Ct. at 2142. (emphasis added)

Defendant's original foreclosure action against Plaintiffs was commenced on August 20, 2009. In Paragraph 6 of its Complaint, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", Defendant alleged that "[o]n December 7, 2004, said Mortgage was recorded in the Greenville County Registry in Mortgage Book 4281 at Page 962. *Thereafter the Mortgage was assigned to the Plaintiff herein.*" (emphasis added) However, the Assignment of Note and Mortgage, through which Defendant claimed to have an interest in the foreclosure action, was not executed until August 27, 2009, and was not filed with the Greenville County Registry until September 1, 2009. A copy of said Assignment of Note and Mortgage is attached hereto and incorporated herein by reference as Exhibit "B". As a result, Defendant did not have a legally protected interest in the foreclosure action under the *Lujan* test and, therefore, lacked standing to bring said action. Consequently, the judgment in the original foreclosure action should be overturned by this honorable Court for lack of standing and title to the real property that was the subject matter of the foreclosure action should be returned to Plaintiffs.

At the hearing on both Plaintiffs' Motion for Judgment on the Pleadings and Defendant's Motion to Dismiss on May 29, 2012, this honorable Court expressed reservations about Plaintiff's assertions that standing to sue was a subject matter jurisdictional issue that went to a court's ability to hear a case or controversy and that, therefore, Defendant's original foreclosure action was null and void on its face, as alleged above.

In support of these assertions, Plaintiffs would kindly offer *Lennon v. South Carolina Coastal Council*, 330 S.C. 414, 498 S.E.2d 906 (Ct.App. 1998), a copy of which is attached hereto and incorporated herein by reference as Exhibit "A". Plaintiffs would assert to this honorable Court that *Lennon* stands for the legal proposition that standing is indeed a subject matter jurisdictional issue that goes to a court's ability to hear a case or controversy and that, therefore, Defendant's foreclosure action must be held null and void by this honorable Court and title to the subject property rightfully be returned to Plaintiffs.

This the 7th day of June, 2012


Bridget D. Swing
South Carolina Bar No. 13616

Foreclosure Defense Law Firm, LLC
PO Box 8246
Greenville, SC 29604
tel & fax: (864) 551-4353
bridget@foreclosuredefensefirm.com
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Edward J. Rivera and Michele L. Rivera)
)
Plaintiffs,)
vs.)
BAC Home Loans Servicing, L.P.)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-2080

2012 JUN - 7 PM 3: 06
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENS

CERTIFICATE OF SERVICE

The undersigned attorney of record for Edward J. Rivera and Michele L. Rivera ("Plaintiffs") hereby certifies that the foregoing Memorandum in Support of Plaintiffs' Motion for Judgment on the Pleadings was served upon the following addressees by depositing a copy in the United States Postal Depository with adequate postage affixed thereon and properly addressed to the last known address as follows:

Chad W. Burgess
Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

This the 7th day of June, 2012.

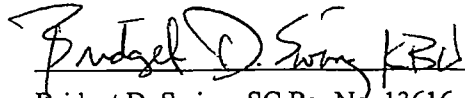

Bridget D. Swing, SC Bar No. 13616

Exhibit A

Lennon v. South Carolina Coastal Council

Court of Appeals of South Carolina. March 23, 1998. 330 S.C. 414. 498 S.E.2d 906. (Approx. 4 pages)

RELATED TOPICS

Interest In Subject Matter

Declaratory Judgment Action of Plaintiff City

Zoning and Planning

Appeal of Decision Regarding Land Use

Gered LENNON and Bonnie H. Zanetti, Appellants,

v.

SOUTH CAROLINA COASTAL COUNCIL, A State Agency, and Peter

B. Fellman and Robert Braden, Respondents.

Return to list 9 of 112 results Search term

Individual and adjacent property owner appealed decision of the South Carolina Coastal Council in the Circuit Court, Charleston County, John L. Breeden, Jr., J., to issue special permits to property owners. The Court of Appeals, Goolsby, J., held that individual did not have standing to bring suit.

Dismissed.

West Headnotes (3)

Change View

- | | | |
|--|--|---|
| 1 Action | | |
| No justiciable controversy is presented unless party has standing to maintain action. | 13
131
13k13 | Action
Grounds and Conditions
Precedent
Persons entitled to sue |
| 5 Cases that cite this headnote | | |
| 2 Action | | |
| Party must allege actual controversy in which he has personal stake to show that litigation is justiciable. | 13
131
13k13 | Action
Grounds and Conditions
Precedent
Persons entitled to sue |
| 5 Cases that cite this headnote | | |
| 3 Zoning and Planning | | |
| Former geologist for Coastal Council did not have standing to bring suit seeking judicial review of Council's decision on behalf of adjacent property owners affected by decision, where geologist did allege any individual injury. | 414
414X
414X(A)
414k1584
414k1585 | Zoning and Planning
Judicial Review or Relief
In General
Right of Review; Standing
In general
(Formerly 414k571) |

Attorneys and Law Firms

**906 *414 Christopher McG. Holmes, Charleston, for appellants.

*415 Mary D. Shahid, of the Office of Ocean & Coastal Resource Management, of Charleston, S.C. Department of Health & Environmental Control; and Ellison D. Smith, IV,

Charleston, for respondents.

Opinion

GOOLSBY, Judge:

Intervenors Gered Lennon and Bonnie Zanetti appeal from the decision of the South Carolina Coastal Council to issue special permits to property owners Peter B. Fellman and Robert Braden for construction on beachfront property. The circuit court upheld the council's decision. We dismiss the appeal for lack of standing.

FACTS

Peter Fellman and Robert Braden, partners in the real estate business, bought two lots located on Folly Beach for \$50,000 in April 1985. Several years later, in December 1993, Braden and Fellman applied to the council pursuant to the South Carolina Beachfront Management Act for special permits to be able to build on their lots. The permitting committee recommended to the council that the permits be denied.

The recommendations to the council were appealed. The council consolidated the appeals and referred them to a hearing officer to conduct an evidentiary hearing and to make factual findings and a recommendation. Gered Lennon, formerly a geologist with the council, acting *pro se*, intervened. The hearing officer recommended that the permits be granted or that the lots' fair market value be paid.

The council, after a hearing, issued its Final Administrative Order granting the permits. Lennon, joined by Bonnie Zanetti, a Braden and Fellman neighbor, then filed a summons and complaint requesting judicial review of the council's decision. The circuit court affirmed. Lennon appeals.

DISCUSSION

1 2 A threshold inquiry for any court is a determination of justiciability, *i.e.*, whether the litigation presents an active case or controversy. "No justiciable controversy is presented unless the plaintiff has standing to maintain the action." *416 *Brack v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct.App.1994). "A plaintiff must allege an actual controversy in which he has a personal stake." *Energy Research Found. v. Waddell*, **907 295 S.C. 100, 102, 367 S.E.2d 419, 420 (1988).

3 Lennon argues he has standing by virtue of the regulations of the South Carolina Coastal Council and its practice and procedure for contested cases. We disagree. The regulation on contested case process for permitting requires that "[a]ll parties desiring to intervene in the contested case hearing ... comply with" regulations 30-6(O), 30-6(P), 30-6(Q), and 30-6(R). 23A S.C.Code Ann.Reg. 30-6(D) (Supp.1997). Regulation 30-6(P), Grounds for Intervention, requires all who wish to intervene to show, among other things, that they "will be aggrieved or adversely affected by the final order." 23A S.C.Code Ann.Reg. 30-6(P) (Supp.1997).

Lennon's motion to intervene indicated that he was intervening "on behalf of four affected parties" and that he represented "Mr. and Mrs. Charles Newmwn [sic]; Ms. Bonnie Zanetti,¹ Mr. John Ungaro, and Dr. John Logothetis, each property owners adjacent to the two lots at issue."

Although an organization may represent the interests of its members if its members "have alleged an individual injury in the adverse effect of a specific decision of the Coastal Council," *South Carolina Wildlife Fed'n v. South Carolina Coastal Council*, 296 S.C. 187, 190, 371 S.E.2d 521, 523 (1988); see also *Energy Research Foundation v. Waddell*, 295 S.C. 100, 367 S.E.2d 419 (1988), Lennon is not an organization. In his brief, Lennon describes himself as a "pro se litigant," and he cannot obtain standing by alleging he is acting in another's interest if he himself has suffered no individual injury.

Lennon argues that the respondents have waived any standing issue because they have accepted him as a "proper party" *417 throughout the proceedings. He equates the standing issue with real party in interest, citing *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 485 S.E.2d 371 (1997).

In *Bardoon Properties*, the supreme court determined that a party's status as a real party in interest does not involve subject matter jurisdiction so that it may be waived if not timely raised. *Id.* The supreme court noted, however, that "there is a difference between the concepts of 'standing,' 'capacity to sue,' and 'real party in interest.'" *Id.* at 169 n. 3, 485 S.E.2d at 373 n. 3 (citing 6A Charles A. Wright et al., *Federal Practice and Procedure* § 1542, at 328-29 (1990); *Firestone v. Galbreath*, 976 F.2d 279, 283 (6th Cir.1992)). The distinction is important here.

In the realm of public law, when governmental action is attacked on the ground that it violates private rights ... the courts have tended to rely on the judgemade [sic] doctrine of standing to sue. To the extent that standing in this context is understood to mean that the litigant actually must be injured by the governmental action that he is assailing, then it closely resembles the notion of real party in interest under Rule 17(a), inasmuch as both terms are used to designate a plaintiff who possesses a sufficient interest in the action to entitle him to be heard on the merits....

However, several other elements of the standing doctrine are clearly unrelated to the rather simple proposition set out in Rule 17(a), and plaintiff must both be the real party in interest and have standing....

One significant context in which the two concepts diverge is when for standing purposes the plaintiff is required to show not only that he has been adversely affected by the governmental conduct that is under attack, but also that he has suffered an injury to a legally protected right....

Another point of departure is that standing acts as an element of the constitutional requirement that there be a "case or controversy"; when thus applied, it acts as a **908 limitation on the subject matter jurisdiction of the federal courts. In this context, objections to standing, unlike Rule 17(a) objections, cannot be waived and may be raised by a federal court sua sponte.

6A Charles A. Wright et al., *Federal Practice and Procedure* § 1542 (1990) (emphasis added) (footnotes omitted). South *418 Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached. See *Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996); *Crocker v. Barr*, 303 S.C. 1, 397 S.E.2d 665 (Ct.App.1990) (Goolsby, J., concurring), *rev'd on other grounds*, 305 S.C. 406, 409 S.E.2d 368 (1991).

We hold that Lennon does not have standing to challenge the decision of the South Carolina Coastal Council; therefore, we dismiss the appeal.

DISMISSED.

HEARN and STILWELL, JJ., concur.

Parallel Citations

498 S.E.2d 906

Footnotes

- 1 Zanetti was listed as a plaintiff in the appeal to the circuit court. The circuit court, however, determined Zanetti was not a proper party because she was not granted intervenor status during the administrative hearing. See 23A S.C.Code Ann.Reg. 30-6(O) (Supp.1997) (requiring one who wishes to intervene to file a motion with the council for leave to intervene). Neither Lennon nor Zanetti appealed this finding. Any attempt now to do so comes too late. See *Bochette v. Bochette*, 300 S.C. 109, 386 S.E.2d 475 (Ct.App.1989) (holding an appellant may not use the reply brief to argue issues not argued in the initial brief).

6/7/12

Lin v. South Carolina Coastal Council - WestlawNext

[Preferences](#)

[My Contacts](#)

[Offers](#)

[Getting Started](#)

[Help](#)

[Live Chat](#)

[Sign Off](#)

WestlawNext, © 2012 Thomson Reuters

[Privacy](#)

[Accessibility](#)

[Contact Us](#)

[1-800-REF-ATTY \(1-800-733-2889\)](#)

[Improve WestlawNext](#)

ProVest, LLC - Tampa (Rome)

202 S. Rome Suite 150 Tampa, FL 33606



SA32040730

Affidavit of Service

2009 AUG 24 A 11:37

DOCKET NUMBER: 09-cp-23-7123
COURT OF COMMON PLEAS FOR GREENVILLE COUNTY, SC
CASE STYLE:

FILE NUMBER: 09-15607

PLAINTIFF

BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P.; et seq.

vs.

DEFENDANT

EDWARD J. RIVERA, MICHELE L. RIVERA AND CORINTHIAN MORTGAGE CORPORATION D/B/A
SOUTHBANC MORTGAGE; et al.

SERVICE OF PROCESS ON:

EDWARD RIVERA

METHOD OF SERVICE:

A true and correct copy of the above-described papers were served on the below-named party in the following manner:

☒ (PERSONAL) By personally delivering a copy into the hands of the person to be served.

PLACE OF SERVICE:

110 CONFEDERATE CIRCLE
TAYLORS, SC 29687

Is the place of service the dwelling house or usual place of abode for the party being served? (x) Yes () No

DATE OF SERVICE:

08/20/2009 TIME OF SERVICE: 6:35 PM

TYPE OF DOCUMENTS:

() SUMMONS & COMPLAINT (x) LIS PENDENS
(x) OTHER: SUMMONS AND NOTICES AND COMPLAINT

DESCRIPTION OF PARTY
RECEIVING DOCUMENTS:

The person receiving the documents is described as follows:

Sex MALE ; Race WHITE ; Facial Hair Goatee ;
Age(prox.) 36-40 ; Height(prox.) 5'9" ; Weight(prox.) 180

MARITAL STATUS:

() Single ☒ Married () Separated () Unknown

MILITARY STATUS:

PER MY INVESTIGATION, SAID PERSON
() WAS ☒ WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE () UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A () YES ☒ NO () MOBILE HOME VIN NOT VISIBLE
MOBILE HOME? VIN #:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: Robert Parker

Signature of Process Server

Date

Notary Public: Sworn and subscribed before me this 21 day of AUGUST, in the year of 2009.

☒ Personally known to me or ☐ identified by the following document:

Type:

Number/Reference:

Jan Pat Webb
Notary Public (Legal Signature)

Notary Public for South Carolina Commission Expiration 03/03/13

ProVest, LLC - Tampa (Rome)

202 S. Rome Suite 150 Tampa, FL 33606



SA32040657

2009 AUG 24 A 11:12

Affidavit of Service

DOCKET NUMBER: 09-cp-23-7123

FILE NUMBER: 09-15607

COURT OF COMMON PLEAS FOR GREENVILLE COUNTY, SC

CASE STYLE:

PLAINTIFF

BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P.; et seq.

vs.

EDWARD J. RIVERA, MICHELE L. RIVERA AND CORINTHIAN MORTGAGE CORPORATION D/B/A SOUTHBANC MORTGAGE; et al.

DEFENDANT

SERVICE OF PROCESS ON: MICHELE RIVERA

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

☒ (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

PLACE OF SERVICE: 110 CONFEDERATE CIRCLE
TAYLORS, SC 29687

Is the place of service the dwelling house or usual place of abode for the party being served? ☒ Yes ☐ No

DATE OF SERVICE: 08/20/2009 TIME OF SERVICE: 6:35 PM

TYPE OF DOCUMENTS: ☐ SUMMONS & COMPLAINT ☒ LIS PENDENS
☒ OTHER: SUMMONS AND NOTICES AND COMPLAINT

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Name EDWARD RIVERA ; Relationship/Title SPOUSE

Sex MALE ; Race WHITE ; Facial Hair Goatee ;

Age(prox.) 36-40 ; Height(prox.) 5'9" ; Weight(prox.) 180

MARITAL STATUS: ☐ Single ☒ Married ☐ Separated ☐ Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
☐ WAS ☒ WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE ☐ UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A ☐ YES ☒ NO ☐ MOBILE HOME VIN NOT VISIBLE
MOBILE HOME? VIN #:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: Robert Parker

Signature of Process Server

Date

AUGUST 21, 2009

Notary Public: Sworn and subscribed before me this 21 day of August, in the year of 2009.

☒ Personally known to me or ☐ identified by the following document:

Type:

Number/Reference:

Notary Public (Legal Signature)

Notary Public for South Carolina

Commission Expiration 03/03/13

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a Countrywide
Home Loans Servicing, L.P.,

Plaintiff,

vs.

Edward J. Rivera, Michele L. Rivera and Corinthian
Mortgage Corporation d/b/a SouthBanc Mortgage,

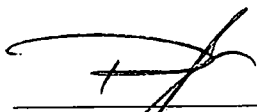
Defendant(s).

IN THE COURT OF COMMON PLEAS
C/A NO.: 2009-CP-23-7123

AFFIDAVIT OF DEFAULT

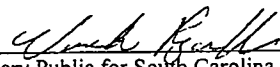
PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and says that he is one of the attorneys for the Plaintiff in the above-entitled action, and the Defendant(s) above named were duly served with the Summons and Complaint in this action.

That more than thirty (30) days have elapsed since the service of the Summons and Complaint and no Answer, Demurrer or Notice of Appearance has been received by or served upon the Plaintiff or its attorneys by or on behalf of the Defendant(s) and that these Defendant(s) are now in default.



Ronald F. Johnson, Jr, SC Bar #16931
Jason L. Branham, SC Bar #72902
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540 Fax 803-454-3541
Attorneys for Plaintiff

Sworn to before me this the
29th day of March, 2010.



Notary Public for South Carolina
Commission Expires: 2/26/2017

ENTERED COMPUTER

B&S No.: 09-15607

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

vs.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a SouthBanc
Mortgage,

Defendant(s).

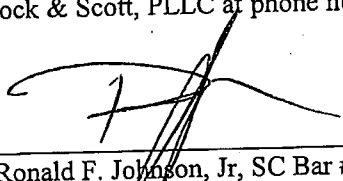
IN THE COURT OF COMMON PLEAS
FILED-CLERK OF COURT
GREENVILLE, SC C/A NO.: 2009-CP-23-7123
PAUL B. WICKENHISER

2010 AUG 23 A 9:01

NOTICE OF FINAL HEARING

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above-entitled cause, The Honorable Charles B. Simmons, Master In Equity for Greenville County, has appointed September 3, 2010 at 10:00AM at Greenville County Courthouse, 305 East North Street, Courtroom #5, 3rd Floor, Greenville, SC 29601, as the time and place for holding a Final Hearing in Foreclosure, at which time and place all interested parties will appear, and that the Plaintiff intends to prepare and submit a written Transcript of Testimony. The Master In Equity will be authorized to enter a final judgment and to order the judicial sale of the property subject to foreclosure herein.

You are requested to notify Brock & Scott, PLLC at phone number (803) 454-3540 of your intention to appear.



Ronald F. Johnson, Jr, SC Bar #16931
Jason L. Branham, SC Bar #72902
Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210
Phone 803-454-3540 Fax 803-454-3541
Attorneys for Plaintiff

Dated: August 20, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

FILED-CLERK
GREENVILLE
PAUL B. WICK

IN THE COURT OF COMMON PLEAS
C/A NO.: 2009-CP-23-7123

2010 AUG 23 A 9:01

Plaintiff,

vs.

Edward J. Rivera, Michele L. Rivera and
Corinthian Mortgage Corporation d/b/a SouthBanc
Mortgage,

Defendant(s).

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he/she is an employee of Brock & Scott, PLLC, and is a person of such age and discretion as to be competent to serve papers.

That on the 20th day of August, 2010, he/she served a copy of the Notice of Hearing by placing said copy in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

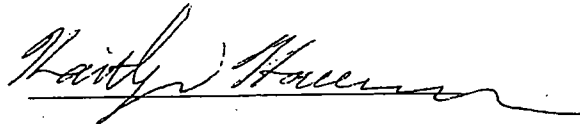
Pleading:

Notice of Final Hearing

Party (ies) Served:

Edward J. Rivera and Michele L. Rivera
110 Confederate Circle
Taylors, SC 29687

Corinthian Mortgage Corporation
dba SouthBanc Mortgage
5750 WEST 95TH ST, SUITE 155
Overland Park, KS 66207



Brock & Scott, PLLC

Columbia, South Carolina

09-15607

Prepared By/Return To:
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE



November 16, 2010 09:46:13 AM
Rec:\$10.00

2010078954
Book:DE 2380 Page:4289-4291
Cons:\$124,734.89
Cnty Tax:EXEMPT State Tax:EXEMPT
FILED IN GREENVILLE COUNTY, SC

Master In Equity's
FORECLOSURE DEED.

TO ALL TO WHOM THESE PRESENTS SHALL COME OR BE MADE KNOWN:

I, The Honorable Charles B. Simmons, as Master In Equity for Greenville County, in the said State send Greetings:

WHEREAS, in Greenville County Court of Common Pleas Case No. 2009-CP-23-7123, between BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP as Plaintiff and Edward J. Rivera and Michele L. Rivera, et al. as Defendant(s), an Order was entered on September 7, 2010, decreeing Plaintiff should have judgment of foreclosure of its Mortgage recorded in Book 4281 at Page 962 and that the property hereinafter described should be sold by the Master In Equity for Greenville County on the terms and for the purposes mentioned in the order(s) granted in the case as reference thereto will appear. Thereafter, a Foreclosure sale was held on October 4, 2010.

NOW THEREFORE KNOW ALL MEN, that I, the undersigned as Master In Equity for Greenville County, pursuant to the foregoing and in consideration of the sum of One Hundred Twenty-Four Thousand Seven Hundred Thirty-Four Dollars and Eighty-Nine Cents (\$124,734.89) as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant and release unto the grantee,

BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP
C/O BAC Home Loans
7105 Corporate Drive
Plano, TX 75024

the following described property:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being at the southwestern intersection of Confederate Circle and Avon Drive, near the City of Greenville, in the County Greenville, State of South Carolina and known and designated as Lot No. 40, Section 2, of a subdivision known as Sheffield Forest, plat of which is recorded in the Register of Deeds Office for Greenville County in Plat Book BBB at Page 61, said lot having the metes and bounds as shown thereon.

This being the same property conveyed to Edward J. & Michele L. Rivera by deed from Alexia M. Smith dated July 27, 2002, recorded July 29, 2002 in Book 2003 at Page 1423, Greenville County records.

TMS #: T033000221300

Prior Owner of Record: Edward J. Rivera and Michele L. Rivera

09-15607

Property Address: 110 Confederate Circle, Taylors, SC 29687

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereto, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, his/her/its/their heirs/successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned as Master In Equity for Greenville County, under and by virtue of the said Decree, have hereunto set my Hand and Seal this the 2nd day of November, 2010.

SIGNED, SEALED, AND DELIVERED)
in the Presence of:

Wanda E. Judge

Witness #1

[Signature]

Witness #2

[Signature]
The Honorable Charles B. Simmons
Master In Equity for Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

I, [Signature], do hereby certify that The Honorable Charles B. Simmons, as Master In Equity for Greenville County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2nd day of November, 2010.

[Signature]
Notary Public of South Carolina
My Commission expires: 6/4/11

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2010078954 Book: DE 2380 Page: 4289-4291
November 16, 2010 09:46:13 AM

Timothy J. Hanney

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

AFFIDAVIT

PERSONALLY APPEARED before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and understand such information.
2. The property transferred by Foreclosure Deed to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, dated .
3. Check one of the following: THE DEED IS
 - a. subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth;
 - b. subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary;
 - c. X **EXEMPT** from the deed recording fee because
Explanation (if required) - Foreclosure (#13)
4. Check one of the following if either item 3(a) or 3(b) above has been checked.
 - a. The fee computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
 - b. The fee is computed on the fair market value of the realty which is \$.
 - c. The fee is computed on the fair market value of the realty as established for property tax purposes which is \$.
5. Check YES or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$.
6. The DEED recording fee is computed as follows:
 - a. the amount listed in item 4 above;
 - b. the amount listed in item 5 above (no amount place zero);
 - c. subtract Line 6(b) from Line 6(a) and place the result
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Attorney for BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Plaintiff
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit if guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Suzanne E. Brown
Legal Representative connection with this transaction

Suzanne E. Brown

Printed Name

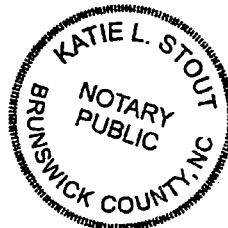
STATE OF North CAROLINA, COUNTY OF New Hanover

Personally appeared before me Suzanne E. Brown and made oath that (s)he say the above named Legal Representative sign, seal and deliver the within deed.

SWORN TO BEFORE ME on 11/12/10

Katie L. Stout
Notary Public

My Commission Expires: 2/25/2014



09-15607

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 06 2012

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2012-CP-23-2080

Edward J. Rivera and Michele L. Rivera,

Appellants,

vs.

BAC Home Loans Servicing, L.P.

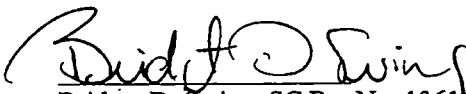
Respondent.

2012 SEP 10 PM 4:39
FILED-CLERK OF COURT
GREENVILLE CO SC
FBI & DISTRICT

NOTICE OF APPEAL

Edward J. Rivera and Michele L. Rivera appeal the order of the Honorable D. Garrison Hill dated August 8, 2012. Appellants received written notice of entry of this order on August 13, 2012.

September 5, 2012


Bridget D. Swing, SC Bar No. 13616
Foreclosure Defense Law Firm, LLC
PO Box 8246
Greenville, SC 29604
Tel & Fax: (864) 551-4353
Attorney for Appellants

Other Counsel of Record:

Chad Burgess
Brock and Scott, PLLC
380 Fernandina Road, Suite 110
Columbia, SC 29210
Tel: (803) 454-3540
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2012-CP-23-2080

Edward J. Rivera and Michele L. Rivera,

Appellants,

vs.

BAC Home Loans Servicing, L.P.

Respondent.

CERTIFICATE OF SERVICE

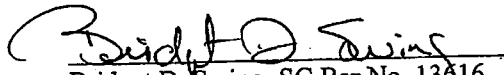
The undersigned attorney of record for Appellants Edward J. Rivera and Michele L. Rivera hereby certifies that the foregoing Notice of Appeal was personally served upon the following addressee:

Chad Burgess
Brock and Scott, PLLC
380 Fernandina Road, Suite 110
Columbia, SC 29210

RECEIVED
SEP 06 2012
SC Court of Appeals

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 SEP 10 PM 4:39

This the 6 day of September, 2012.


Bridget D. Swing, SC Bar No. 13616
Foreclosure Defense Law Firm, LLC
PO Box 8246
Greenville, SC 29604
Tel & Fax: (864) 551-4353

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
Case No. 2012-CP-23-2080

South Carolina Court of Appeals Appellate Case No. 2012-212893

Edward J. Rivera and Michele L. Rivera,

Appellants

vs.

BAC Home Loans Servicing, L.P.

Respondent

RECEIVED

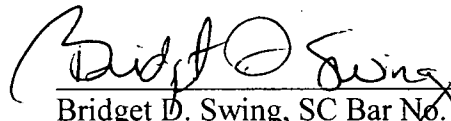
APR 05 2013

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that Appellants' Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 12, 2013
Greenville, SC



Bridget D. Swing, SC Bar No. 13616
Foreclosure Defense Law Firm, LLC
111 East North Street
PO Box 8246
Greenville, SC 29604
Tel & Fax: (864) 551-4353
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
Case No. 2012-CP-23-2080

MAR 18 2013
SC Court of Appeals

South Carolina Court of Appeals Appellate Case No. 2012-212893

Edward J. Rivera and Michele L. Rivera,
Appellants

vs.

BAC Home Loans Servicing, L.P.

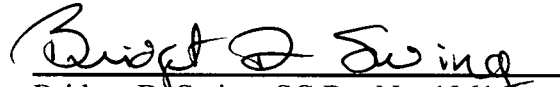
Respondent

PROOF OF SERVICE

I, the undersigned attorney of record for Appellants, do hereby certify that I have served all counsel in this action with a copy of the Record on Appeal and Certificate of Counsel in the above referenced matter by mailing a copy of same via Federal Express Overnight Mail to the following addresses:

Genevieve S. Johnson
Butler and Hosch, P.A.
1201 Main Street, Ste. 1110
Columbia, SC 29201

[signature on following page]



Bridget D. Swing, SC Bar No. 13616

Foreclosure Defense Law Firm, LLC

PO Box 8246

Greenville, SC 29604

Tel & Fax: (864) 551-4353

Attorney for Appellants

This 15th day of March, 2013

Greenville, SC