

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

Hon. Bentley D. Price
Circuit Court Judge

AUG 26 2022

SC Court of Appeals

Appellate Case No. 2021-000504

Wilmington Savings Fund Society FSB, not in its individual capacity but solely
As owner trustee for CSMC 2018-RPL6 Trust, Respondent

v.

Rex A. Field, Tracy L. Field, Dulamo Estates Home Owner's Association, Inc., Defendants

Of whom Rex A. Field and Tracy L. Field are the Appellants.

RECORD ON APPEAL
VOLUME IV

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Not in its individual capacity; but solely as
Owner Trustee for CSMC 2018-RPL5 Trust

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Wilmington Savings Fund Society, FSB, not
in its individual capacity, but solely as owner
trustee for CSMC 2018-RPL6 Trust

Plaintiff

vs.

Rex A. Field and Tracy L. Field

Defendants/Counter-Plaintiffs

Rex A. Field and Tracy L. Field

Third-Party Plaintiff

vs.

Federal National Mortgage Association (Fannie Mac)
Wilmington Savings Fund Society, FSB,
Christiana Trust Company of Delaware
DLJ Mortgage Capital Inc.,
and Unknown Defendants 1-10

Third-Party Defendants

C/A No: 2019-CP-0702279

FILED
JUL 22 PM 3:00
CLERK OF COURT

**MOTION TO RECONSIDER ORDER FILED
JULY 12, 2021 ON MOTION TO RECALL
THE HONORABLE BENTLEY D. PRICE
AFFIDAVIT**

PRIORITY MATTER

The Honorable Bentley D. Price

(Jury Trial Demanded)

Defendants' Rex and Tracy Field ("Defendants") hereby move before the Court ("The Honorable Bentley D. Price, Chief Administrative Judge") pursuant to Rules 52(b) and 59(e), SCRCF, as well as pursuant to applicable law, all other applicable South Carolina Rules of Civil Procedure, South Carolina Code of Judicial Conduct Rule 501, South Carolina Supreme Court Administrative Order 2019-06-28-02, and the *due process clause* of the federal and state constitutions in the above-captioned action for an Order that reconsiders and/or alters or amends

the Order (*Exhibit "A"*) filed July 12, 2021 relating to the denial of Defendants' Motion to Recuse The Honorable Bentley D. Price ("Order") and in support of this Motion is attached "Memorandum in Support of Motion to Recuse The Honorable Bentley D. Price; Affidavit" (*Exhibit "B"*) . In addition to the Motion to Recuse and exhibits filed on June 21, 2021, and this Motion to Reconsider and exhibits (July 22, 2021), the grounds for this Motion are as follows:

PURSUANT TO THE SOUTH CAROLINA ADMINISTRATIVE ORDER 2019-06-28-02, RE: DUTIES OF THE CIRCUIT COURT CHIEF JUDGES FOR ADMINISTRATIVE PURPOSES, states in part the following:

"IT IS FURTHER ORDERED that if a trial or hearing has been commenced and the judge is unable to proceed, the chief judge for administrative purposes shall assign the trial or hearing to a successor judge. If the chief administrative judge has a conflict and is thereby prevented from performing this duty, the matter shall be referred to the Chief Justice to assign a successor judge. The successor judge may proceed with the trial or hearing upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties. In a hearing or a trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify without undue burden. A successor judge may provide for the recall of any witnesses."

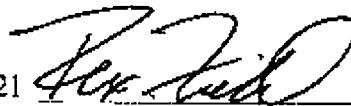
WHEREFORE, for the reasons set forth above, the Defendants pray that this Court grant Defendants' Motion to Recuse The Honorable Bentley D. Price, Chief Administrative Judge, that Judge Price promptly recuses himself for all purposes of this case, including all administrative duties forthwith, and the matter shall be referred to the Chief Justice to assign a successor judge pursuant to The South Carolina Administrative Order 2019-06-28-02 so that a hearing before an impartial Judge without any appearance of partiality, may be promptly and properly set.

AFFIDAVIT

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, Rex A. Field and Tracy L. Field, who after being duly sworn deposes and states that they are authorized to make this verification on behalf of themselves and the statements and evidence are true and correct based upon their personal knowledge.

Respectfully Submitted,

This day, July 22, 2021

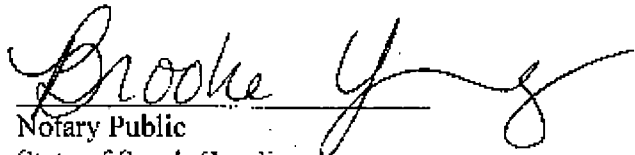


Rex A. Field
PO Box 975.
St. Helena, SC 29920



Tracy L. Field

Sworn before me, this 22nd day of July, 2021



Notary Public
State of South Carolina
Beaufort County



EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER **2019CP0702279**Wilmington Savings Fund
Society Fsb not in its individual

Csme 2018-Rpl6 Trust

Rex A Field
Federal National Mortgage
Association
Christiana Trust Company
of Delaware
Unknown Defendants 1-10Tracy L Field
Fannie Mae
DLJ Mortgage Capital
Inc
Wilmington Savings Fund
Society Fsb Individual
Capacity

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

The Motion to Recuse the Honorable Bentley Price filed on June 21, 2021, came before the court on July 2, 2021. The Motion to Recuse is respectfully DENIED.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

The Honorable Bentley Price
Circuit Court Judge

2766
Judge Code

7/8/2021
Date

For Clerk of Court Office Use Only

This judgment was entered on this day of July, 2021, and a copy mailed first class or placed in the appropriate attorney's box on this day of July, 2021, to attorneys of record or to parties (when appearing pro se) as follows:

James Martin Page 339 Heyward Street 2Nd Floor Columbia,
SC 29201

Rex A Field P.O. Box 975 Saint Helena Island, SC 29920
Tracy L Field P.O. Box 975 Saint Helena Island, SC 29920
George Benjamin Milam 214 N. Tryon St. Suite 3700
Charlotte, NC 28202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Beaufort Common Pleas

Case Caption: Wilmington Savings Fund Society Fsb not in its individual , plaintiff, et al VS Rex A Field , defendant, et al
Case Number: 2019CP0702279
Type: Order/Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-07-11 11:39:00 page 3 of 3

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

2021 JUL -2 AM 9:57

IN THE COURT OF COMMON PLEAS

WILLIAM A. GOSWAM
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Wilmington Savings Fund Society, FSB, not
in its individual capacity, but solely as owner
trustee for CSMC 2018-RPL6 Trust

C/A No: 2019-CP-07-02279

Plaintiff

**MEMORANDUM IN SUPPORT OF MOTION TO
RECUSE THE HONORABLE BENTLEY D. PRICE;
AFFIDAVIT**

vs.

Rex A. Field and Tracy L. Field

Defendants/Counter-Plaintiffs

The Honorable Bentley D. Price

Rex A. Field and Tracy L. Field

(Jury Trial Demanded)

Third-Party Plaintiff

vs.

Federal National Mortgage Association (Fannie Mae)
Wilmington Savings Fund Society, FSB,
Christiana Trust Company of Delaware
DLJ Mortgage Capital Inc.,
and Unknown Defendants 1-10

Third-Party Defendants

Defendants' Rex and Tracy Field ("Defendants") hereby respectfully submit this memorandum in support of Defendants' Motion to Recuse The Honorable Bentley D. Price ("Motion") pursuant to applicable law, the South Carolina Rules of Civil Procedure, South Carolina Code of Judicial Conduct Rule 501, South Carolina Supreme Court Administrative Order 2019-06-28-02, and the *due process clause* of the federal and state constitutions. In addition to the Motion to Recuse and exhibits filed on June 21, 2021 and the Court record, the memorandum in support

is as follows:

1. On June 21, 2021, the Defendants *timely* filed and *served* "Motion to Recuse The Honorable Bentley D. Price, Affidavit".
2. On June 22, 2021, THE COURT ("The Honorable Bentley D. Price, Chief Administrative Judge") filed a Form 4 Order stated, in part: **"This Court is not assigned to this case, so the Motion to Recuse is not necessary. The Clerk of Court shall place this matter on the next available roster."** Judge Price's Order is vague and ambiguous and fails to grant or deny said Motion.
3. Judge Price's June 22, 2021 **Order failed to grant or deny Defendants' "Motion to Recuse The Honorable Bentley D. Price."** (emphasis added) Instead, THE COURT (Judge Price) deemed the Motion to Recuse unnecessary because **"This Court is not assigned to this case, so the Motion to Recuse is not necessary"** and improperly exercised control over the Clerk of Court by ordering the clerk to **"shall place this matter on the next available roster"** in violation of the South Carolina Code of Judicial Conduct Rule 501, Cannon 3, which states in part: CANON 3(5) states: "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice... ..and **shall not permit staff, court officials and others subject to the judge's direction and control to do so.**"... .."A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute."
4. In the above captioned action, Judge Price, in his capacity as chief administrative judge, is synonymous with THE COURT. Judge Price has assigned himself the last **five out of five** motion hearings, whether they were heard or not, the scheduled hearings were ultimately switched to Judge Price at his behest. The following motions hearings were assigned to Judge Price:

- a). First motion hearing noticed on 12/29/2020 and heard on 1/13/2021 – assigned to Judge Price.
- b). **Second Motion** hearing noticed 2/18/2021 and heard on 3/10/2021 – assigned to Judge Price
- c). On 4/8/2021 the Clerk of Court noticed a **CP- Jury Roster for 5/11/2021** (Notice of Case Roster Publication Sent) – assigned to Judge McCoy. On 4/9/2021, Judge Price immediately intervened with Judge McCoy's calendared jury trial roster and instructed Ms. Karen Johnson (Judicial Clerk) to send the parties an email stating **"Judge Price would like to hear these motions sometime next week and will notify all parties once they have been scheduled"**, consisting of five pending motions, including the Plaintiff's Motion to Dismiss filed on 4/9/2021 that was filed after the CP – Jury Roster notice and lacking the (10) ten day notice requirement. On the afternoon of 4/12/2021, Judge Price's law clerk (Ms. Aimée Intagliata) emailed the parties indicating that Judge Price wanted to hear the outstanding motions on 4/15/2021. Thus, Judge Price scheduled and **assigned the Third Motion hearing (4/15/2021)** hearing to himself in contravention to the already scheduled 5/11/2021 CP- Jury Roster with Judge McCoy, thus, the CP Jury Roster was canceled. On 4/15/2021, the off-roster motions hearing was assigned to Judge Price by Judge Price, scheduled by Judge Price, heard by Judge Price, and ruled on by Judge Price. The hearing is not reflected on the Court's public index.
- d). **Fourth motion** hearing noticed (**Notice of Motions Roster Publication**) 5/13/2021 at 12:23pm with **Judge McCoy to be heard on 6/17/2021**. On 5/13/2021 at 12:54pm (31 minutes later), Ms. Karen Johnson (Judicial Clerk) emailed all parties stating that Judge Price will be scheduling a hearing for all pending motions the week of 5/24/2021 and **"we will send notification as to exact day (week of May 24) and time as soon as we know."** Once again, Judge Price contravened with Judge McCoy's calendared and noticed roster and assigned the case to himself, scheduling the hearing weeks in advance of Judge McCoy's 6/17/2021 already

noticed hearing date. On Monday, 5/24/2021, Ms. Tamara Walters (Administrative Assistant to Judge Price) emailed all parties stating that "Judge Price will hear the motions this Friday, May 28th at 11:00am", the Friday before Memorial Day weekend with less than (4) four days notice. The Defendants were unavailable Friday the 28th, so Judge Price moved the hearing up to Thursday, the 27th, with less than (3) three days notice. Ultimately, the hearing was continued. Nonetheless, the notice and scheduling of Judge Price's off-roster hearing is not reflected on the Court's public index. Judge Price has established a pattern of assigning this case to himself in contravention of Judge McCoy's roster, scheduling stealth off-roster motion hearings on short notice via email in violation of the (10) ten day notice rule.

e). **Fifth motion hearing noticed (MOTION_Roster/Notice of Motions Roster Publication)** on Friday, 6/11/2021 at 4:50pm for hearing on 7/2/2021 with Judge Price's SANCTIONS roster, the Friday before the 4th of July holiday. The same sanctions roster that has approximately (55) fifty-five other cases scheduled and noticed by the Clerk of Court on 5/28/2021 to be heard on 7/2/2021. Judge Price waited two full weeks to notice the Defendants on 6/11/2021 when the other (55) fifty-five cases had the luxury of being noticed two weeks earlier on 5/28/2021. To add insult to injury, the Defendants are defending against/arguing at least (8) eight motions all at once, July 2, 2021, the Friday before the Fourth of July weekend:

- 1). Plaintiff's Motion for Summary Judgment;
 - 2). Plaintiff's Motion to Dismiss Amended Answer, Counterclaims, and Third-Party Complaint;
 - 3). Defendants' Motion to Join Third-Party Defendants;
 - 4). Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction;
 - 5). Defendants' Motion to Amend Answer, Counterclaims, and Third-Party Complaint;
 - 6). Defendants' Motion for Continuance; Objection to Summary Judgment;
 - 7). Defendants' Motion for Stay Pending Appeal; and
 - 8). Defendants' Motion for Continuance of Plaintiff's Motion for Summary Judgment 56(f) and to Deem Requests for Admissions Admitted Rule 36.
5. The above referenced motion hearings (a. through e.) show clearly and convincingly that, **five out of five** motions hearings, Judge Price was either *assigned* the case for the hearings or he assigned himself, even when another judge was assigned beforehand, thus, Judge Price, as

Chief Administrative Judge, contravened and assigned himself. Pursuant to the South Carolina Code of Judicial Conduct Rule 501, Cannon 3(B)(1) states: **Adjudicative Responsibilities.**

"A judge shall hear and decide matters assigned to the judge except those in which disqualification is required."

6. The January 13, 2021 motion hearing, Beaufort, South Carolina BEFORE: The Honorable Bentley Price, Judge Presiding, **TRANSCRIPT - Motion to Dismiss and Sanctions** J.Martin Page, Esq.(Plaintiff) and Andrew Sims Radeker, Esq. (Defendants)

THE COURT: ..."but apparently your clients are hiding behind some either document that wasn't assigned appropriately or that they weren't afforded their 30 days to respond or they don't believe that he owns the loan out of bankruptcy, but that argument is -- **I'm not buying one single bit of that. So, Mr. --** "

THE COURT: ..."Mr. Page, I couldn't agree, I mean, Mr. Radeker, I couldn't agree with him more. It seems like your clients are hiding behind this document that wasn't filed to just toll the time and **basically simply giving the baseless claims** that they won't have a mediation, when Mr. Page has said, "We'll have the mediation"

THE COURT: ..."But, my point is that -- **that's just delaying the inevitable...**"

THE COURT: ..."All right. Here's the question. Mr. Page, are you denying them foreclosure intervention? The answer is no."

THE COURT: ..."I agree with you one hundred percent. I agree. I mean I think you've complied with it as fully as I think that the order would have contemplated. I think just because the clients are alleging that there's some deficiency, that certainly does not go against what the *intent* of the order... ..But you can't, I mean, you can lead that horse to water only so many times, Mr. Page, until you've just got to walk away and let the horse, you know, *thirst to death*, which is what I think you're doing now, saying, "I can only take it there so many times."

THE COURT: "...therefore I assume they're not making any payments on the house currently, and so we're going to be right back to where they're not making any payments, they're not making any good faith effort to try to resolve this with the bank..."

THE COURT: "...I don't think that's what they tried to do... ...I think Mr. Page has done everything he could do to attempt to try to make them come to the table with something... ...and, then, you know, they tie it up for the next two years in litigation to not even show up to the mediation or to not do, you know, not to participate in the case......We're all fully aware of what is the issue in the case, the amount of money that's in the case, all those type of things that -- I assume the discovery in this would be minimal at best, if any at all at this point in time, simply to show the clients that they own the loan and this is what they owe on it, I mean, there's two pieces of paper... ...I'm going to allow your clients the 30 days to answer from today's date, and then I'm going to order a mediation within 60 days of that date and if it's not resolved at mediation at the close of those 60 days, then Mr. Page can file a motion for a default. (END).

7. As referred above in the transcript, Judge Price has blatantly and improperly expressed his opinion on the merits of the case. It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of *due process* embodied in the United States Constitution. In re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955). Given Judge Price's false assumptions of the facts and extreme bias towards the Defendants relating to his predetermined outcome of the case from day one, Judge Price could not possibly impartially decide this case. Further, given Judge Price's apparent excessive favoritism towards the Plaintiff and combative and defensive attitude towards the Defendants exhibited during the motion hearings on January 13, 2021 and April 15, 2021, respectively, Judge Price could not possibly impartially decide the "Motion to Recuse".
8. In the final analysis, while appellate courts will accord "great weight to the trial judge's

assurances of his own impartiality, [they will] find a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record. (emphasis added)

9. Judge Price's mindset requires recusal. This is a case where the The Honorable Bentley D. Price, Chief Administrative Judge, in stark, plain and unambiguous language, told the parties that his goal, from the beginning, **"if it's not resolved at mediation at the close of those 60 days, then Mr. Page can file a motion for a default"**, clearly was something other than what it should have been and, indeed, was improper and extreme bias. . . . It is difficult to imagine a starker example of when opinions formed during the course of judicial proceedings display a high degree of antagonism against the Defendants. The Court, in determining whether a judge had the duty to disqualify him or herself, **the focus must be on the reaction of the reasonable observer. If there is an appearance of partiality, that ends the matter.** (emphasis added)

JUDGE PRICE'S FALSE ASSUMPTIONS AND EXTREME BIAS

10. COURT'S FALSE ASSUMPTION: ...**"basically simply giving the baseless claims** that they won't have a mediation, when Mr. Page has said, "We'll have the mediation."
FACT: Mr. Page and the actual Plaintiff subsequently failed to attend mediation, not the Defendants;
11. COURT'S EXTREME BIAS: ...**"But, my point is that --that's just delaying the inevitable..."**
12. COURT'S EXTREME BIAS: **"...Here's the question. Mr. Page, are you denying them foreclosure intervention? The answer is no."**
13. COURT'S EXTREME BIAS: ...**"I agree with you one hundred percent.** I agree. I mean I think you've complied with it as fully as I think that the order would have contemplated."
14. COURT'S FALSE ASSUMPTION AND EXTREME BIAS: **"...But you can't, I mean, you can lead that horse to water only so many times, Mr. Page, until you've just got to walk away and let the horse, you know, *thirst to death*, which is what I think you're doing now, saying, "*I can only take it there so many times.*"**
15. COURT'S FALSE ASSUMPTION AND EXTREME BIAS: **"...We're all fully aware of what is the issue in the case,** the amount of money that's in the case, all those type of things that -- I assume the discovery in this would be minimal at best, if any at all at this point in time, simply to show the clients that they own the loan and ***this is what they owe on it***, I mean, there's two pieces of paper...
16. COURT'S EXTREME BIAS: ...**"I'm going to order a mediation within 60 days of that date and**

if it's not resolved at mediation at the close of those 60 days, then Mr. Page can file a motion for a default."

17. The above referenced quotes (Judge Price) cited from the transcript shows the following:

- a). Judge Price predetermined/prejudged the outcome of the case and carried out his extreme bias in favor of the Plaintiff to the detriment of the Defendants;
- b). Judge Price falsely predetermined/prejudged that the Defendants would not participate in mediation;
- c). Judge Price falsely predetermined/prejudged *the inevitable*;
- d). Judge Price showed extreme favoritism by asking questions to the Plaintiff and answering his own questions on their behalf;
- e). Judge Price falsely predetermined/prejudged that the Plaintiff should *"thirst to death"* the Defendants;
- f). Judge Price falsely predetermined/prejudged what the issues are in the case and predetermined that the Plaintiff should prevail because Judge Price predetermined that Defendants were in default and predetermined that that the Defendants owed the Plaintiff money;
- g). Judge Price falsely predetermined/prejudged the outcome of mediation, *"then Mr. Page can file a motion for a default."*
- h). Judge Price falsely predetermined/prejudged that the Defendants are not entitled to discovery;
- i). Judge Price falsely predetermined/prejudged that the Defendants are not entitled to trial;
- j). Judge Price falsely predetermined/prejudged that he would grant Plaintiff's Motion to Dismiss Defendants' Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint in advance of the April 15, 2021 motion hearing when the Motion was neither properly noticed, scheduled, or heard that day.
- k). Judge Price falsely predetermined/prejudged that he would deny Defendants' Motion to Join Third-Party Defendants in advance of the April 15, 2021 motion hearing when the Motion was neither properly noticed, scheduled, or heard that day.

WHEN DUE PROCESS REQUIRES RECUSAL

18. The constitutional right to due process may require a judge to recuse. "It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876 (2009) (quoting In re Murchison, 349 U.S. 133, 136 (1955)). Every

person who appears in court expects to receive a determination of his case based on the merits of the case – rather than on extrinsic circumstances – and **there is no question that the right to a fair trial includes the right to be tried by an impartial and unbiased judge**. See *S. Pac. Comms. v. AT&T*, 740 F.2d 980 (D.C. Cir. 1984) (“[t]he determination that a judge is not disqualified necessarily includes a [finding] that the right to a fair trial is not violated by the judge’s presiding over the case”), cert. denied, 105 S. Ct. 1359. Also compare *Colonial Pipeline Co. v. Weaver*, 310 N.C. 93, 103, 310 S.E.2d 338, 344 (1984) with *State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 323 S.E.2d 294. (1984). **Due process is, therefore, a necessary incident of a fair and impartial trial**, *People v. Lydell*, 37 Cal. 4th 310, 2005 Cal. LEXIS 9546, *61-62 (Cal. 2005); *State v. Biddle*, 652 N.W.2d 191, 198 (Iowa 2002); *State v. O’Neill*, 261 Wis.2d 534, 543, 663 N.W.2d 292 (Wis. App. 2002); *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991); *Easter House v. Dept. of Children and Family Servs.*, 561 N.E.2d 1266, 1268 (Ill. App. 1990). The procedural process that is due require that a judge must not only be qualified to preside over a matter, but **must be sufficiently free of predisposition to be able to render an impartial decision in it**. See, e.g., *Gardiner v. A.H. Robins Co., Inc.*, 747 F.2d 1180 (8th Cir. 1984) (the essence of due process is a fair trial before a tribunal free from bias); *Sandstrom v. Butterworth*, 738 F.2d 1200 (11th Cir. 1984), cert. denied, 105 S. Ct. 787; *People v. Flanagan*, 201 Ill. App. 3d 1071, 559 N.E.2d 1105, 1111 (1990) (procedural due process requires a fair trial in a fair tribunal with an absence of any actual bias on the part of the judge); *Collins v. Dixie Transport, Inc.*, 543 So. 2d 160, 162 (Miss. 1989); *Murray v. Murray*, 128 Wis. 2d 458, 383 N.W.2d 904, 906 (1986); *Washington County Cease, Inc. v. Persico*, 120 Misc. 2d 207, 465 N.Y.S.2d 965, 980, aff’d, 64 N.Y.2d 923 (1983). Thus, **due process minimally requires the opportunity to be fully and fairly heard before a judge without actual bias or an interest in the outcome of the case**. See, e.g., *Bracy v. Gramley*, 117 S. Ct. 1793, 138 L. Ed. 2d 97, 100-101 (1997). **Because the existence of a biased tribunal**

is repugnant to the concept of due process, *In re Antar*, 71 F.3d 97, 102 (3d Cir. 1995). Also compare *N. Dak. Family Alliance, Inc. v. Bader*, 361 F. Supp. 2d 1021 (D.N.D. 2005) (“[t]here is no question that an impartial judge is critical to due process”) with *Alaska Right to Life Political Action Comm. v. Feldman*, 380 F. Supp. 2d 1080 (D. Alaska 2005) (echoing Bader), the constitutional due process guarantee is a basis for seeking judicial disqualification; on violations of the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution, See, e.g., *U.S. v. Wilson*, 77 F.3d 105, 110 (5th Cir. 1996); *U.S. v. Mapco Gas Prods., Inc.*, 709 F. Supp. 900, 901 (E.D. Ark. 1989), or corresponding provisions in the South Carolina constitution, See, e.g., *State v. Thomas*, 268 Neb. 570, 685 N.W.2d 69, 2004 Neb. LEXIS 150, *12 (Neb. 2004) (“The right to an impartial judge is guaranteed under the Due Process Clause of the 14th Amendment to the U.S. Constitution and the Due Process Clause of the Nebraska Constitution”); *Murray v. Murray*, 128 Wis. 2d 458, 383 N.W.2d 904, 906 (1986). Likewise, where a biased judge has already rendered a decision, reversal of that decision may occasionally be sought on due process grounds, *Walberg v. Israel*, 766 F.2d 1071, 1076 (7th Cir. 1985) (where a judge is actually biased, there can be a violation of due process even when the judge is neither the trier of fact nor has conveyed his bias to the jury that is); *Daye v. Attorney General*, 696 F.2d 186, 197 (2d Cir. 1982) (en banc); *U.S. v. Holland*, 655 F.2d 44, 47 n.5 (5th Cir. Unit B 1981)

DISQUALIFICATION FOR EXPRESSING OPINION ABOUT A CASE

19. A judge should recuse when the judge previously has expressed, directly or indirectly, an opinion as to the merits of the case, casting doubt on the ability to be impartial. To disqualify a judge, the expression must have been such as to indicate that the judge already had formed a firm opinion about the outcome. (emphasis added) The Honorable Bentley D. Price, Chief Administrative Judge, in stark, plain and unambiguous language, told the parties that his goal,

from the beginning, "if it's not resolved at mediation at the close of those 60 days, then Mr. Page can file a motion for a default."

PURSUANT TO THE SOUTH CAROLINA ADMINISTRATIVE ORDER 2019-06-28-02, RE: DUTIES OF THE CIRCUIT COURT CHIEF JUDGES FOR ADMINISTRATIVE PURPOSES

20. **SCSC ADMIN. ORDER 2019-06-28-02 #2**, States: *"To set jury and non jury trial rosters and/or dockets for all civil terms of circuit court and to designate which presiding judge shall hear each roster or rosters. In addition, the chief judge for administrative purposes shall set the common pleas jury and non jury trial roster for those terms to be established during the first month following this six-month period."*

SCSC ADMIN. ORDER 2019-06-28-02 #9, States: *"To direct and supervise the activities of all circuit court secretaries in the circuit to the extent that it does not unreasonably conflict with their other judicial duties. In those circuits with two chief judges for administrative purposes, this responsibility shall be assumed by the chief judge for administrative purposes for the court of common pleas."*

SCSC ADMIN. ORDER 2019-06-28-02 - IT IS FURTHER ORDERED that when a chief judge for administrative purposes has a conflict in a matter or proceeding and is thereby prevented from performing these duties in a matter or proceeding reserved to the chief judge for administrative purposes, the following procedures shall be followed.

b. In those circuits with two chief administrative judges, the matter or proceeding shall be referred to the other chief administrative judge. If the other chief administrative judge is also disqualified, the matter or proceeding shall be referred to the Chief Justice for assignment to the chief administrative judge of an adjoining circuit.

IT IS FURTHER ORDERED that if a trial or hearing has been commenced and the judge is unable to proceed, the chief judge for administrative purposes shall assign the trial or hearing to a successor judge. If the chief administrative judge has a conflict and is thereby prevented from performing this duty, the matter shall be referred to the Chief Justice to assign a successor judge. The successor judge may proceed with the trial or hearing upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties. In a hearing or a trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify without undue burden. A successor judge may provide for the recall of any witnesses.

21. **THE COURT HAS FAILED TO RULE ON THE MOTION FOR RECUSAL** stating in part, "This Court is not assigned to this case, so the Motion to Recuse is not necessary."

The Court record, Defendants' Motion to Recuse, and the Motion to Reconsider the Form 4 Order (January 22, 2021) shows uncontroverted evidence that Judge Price is the assigned judge in this case having either been assigned all the motion hearings or The Court (Judge Price)

having the authority to assign cases has assigned the case to himself (5) five out of (5) five times being the only judge allowed by the Court (Judge Price, Chief Administrative Judge) to hear said motions. The Court has failed to rule by not granting or denying the Motion to Recuse. Judge Price's June 22, 2021 Form 4 Order failed to state the grounds for the Order other than the Motion to Recuse was "*not necessary*" because "*The Court is not assigned the case*", thus, the Order does not comply with the relevant rule since it did not deny the recusal or state any grounds for the denial, as such, there wasn't a denial. The mere fact that Judge Price (Chief Administrative Judge) is claiming that he (The Court) is not the assigned to the case is, in it of it self, prejudicial. Thus, Judge Price's Order is insufficient for failing to state the reasons for the Order and for failing to grant or deny the Motion. Given that the Motion to Recuse is still pending, **the Court is required to defer action on all matters relating to this case. The Court's failure to make the required findings means that all subsequent orders would be improper and would be vacated by the lower court or on appeal.** (emphasis added)

JUDGE PRICE MUST CEASE TO ACT UPON THE MERITS OF THE MATTER UNTIL A DETERMINATION IS MADE ON THE RECUSAL

Judge Price must temporarily cease to act upon the merits of the matter and shall immediately make a determination whether recusal would be warranted. If it is found that recusal would be authorized if some or all of the facts set forth in the affidavit are true, another judge is assigned to hear the motion to recuse.

RECUSAL SHOULD BE DECIDED BY ANOTHER JUDGE

22. If the allegations made about the judge's bias or other potential disqualification are made with sufficient support to require findings of fact, the motion to recuse should be referred to another judge. *Ponder v. Davis*, 233 N.C. 699, 704 (1951) The judge whose impartiality is being questioned then may respond by affidavit or testimony to rebut the allegations. "The bias, prejudice or interest which requires a trial judge to be recused from a trial has reference to the

personal disposition or mental attitude of the trial judge, either favorable or unfavorable, toward a party to the action before him.” Scott, 343 N.C. at 325 (emphasis added).

THE COURT DID NOT ADDRESS THE DEFENDANTS' ARGUMENTS

While this motion should be granted, even if it is not, the Court should address the Defendants' arguments, which it did not do in its Order.

THE HONORABLE BENTLEY D. PRICE IS REQUIRED TO RECUSE HIMSELF:

- a). Judge Price, for all purposes, is the assigned judge;
- b). Judge Price has failed to rule on the Motion to Recuse;
- c). Judge Price has failed to grant or deny the Motion to Recuse;
- d). Judge Price did not address the Defendants' arguments;
- e). South Carolina Code of Judicial Conduct Rule 501, requires Judge Price to recuse;
- f). The *due process clause* of the federal and state constitutions, requires Judge Price to recuse.
- g). South Carolina Supreme Court Administrative Order 2019-06-28-02, requires Judge Price to recuse himself from all Administrative duties and shall be referred to the other chief administrative judge;
- h). Judge Price as Chief Administrative Judge over Common Pleas (“The Court”) is required to recuse because Judge Price is “The Court” responsible for assigning cases to judges and Judge Price (“The Court”) has assigned the case to himself (“The Court”), thus, Judge Price is the assigned judge, as such, is required to recuse himself;
- i). Judge Price has no duty to sit where his impartiality might be reasonably questioned;
- j). Judge Price's recusal should be decided by another judge;
- k). Judge Price must cease to act upon the merits of the matter until a determination is made by another judge or Judge Price recuses himself.

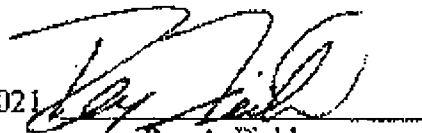
WHEREFORE, for the reasons set forth above, the Defendants pray that this Court grant Defendants' Motion to Recuse The Honorable Bentley D. Price, Chief Administrative Judge, that Judge Price promptly recuses himself for all purposes of this case, including all administrative duties forthwith, and the case shall be referred to the other chief administrative judge so that a hearing before an impartial Judge without any appearance of partiality, may be promptly and properly set.

AFFIDAVIT

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, Rex A. Field and Tracy L. Field, who after being duly sworn deposes and states that they are authorized to make this verification on behalf of themselves and the statements and evidence are true and correct based upon their personal knowledge.

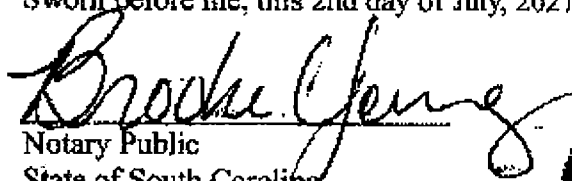
Respectfully Submitted,

This day, July 2, 2021


Rex A. Field
PO Box 975,
St. Helena, SC 29920


Tracy L. Field

Sworn before me, this 2nd day of July, 2021


Notary Public
State of South Carolina
Beaufort County



STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0702279

Wilmington Savings Fund Society Fsb not in its Individual et al
PLAINTIFF(S)

Rex A Field et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow); ☒ Statement of Judgment by the Court:

This Form 4 Order is in reference to the Motion to Recuse the Honorable Bentley Price filed by Defendants Rex Field and Tracy Field on June 21, 2021.

This Court is not assigned to this case, so the Motion to Recuse is not necessary. The Clerk of Court shall place this matter on the next available roster.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/22/2021 .

Tracy L Field for Tracy L Field
Rex A Field for Rex A Field
Tracy L Field for Tracy L Field
Unknown Defendants 1-10
Rex A Field for Rex A Field

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.

ELECTRONICALLY FILED - 2021 JUN 22 12:19 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702279



Beaufort Common Pleas

Case Caption: Wilmington Savings Fund Society Fsb not in its individual , plaintiff, et al VS Rex A Field , defendant, et al
Case Number: 2019CP0702279
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2021-06-22 11:50:26 page 3 of 3

ELECTRONICALLY FILED - 2021 JUN 22 6:51 AM BEAUFORT COMMON PLEAS CASE#2019CP0702279

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Wilmington Savings Fund Society, FSB, not in its
individual capacity, but solely as owner trustee for
CSMC-2018-RPL6 Trust

Plaintiff,

vs.

Rex A. Field, Tracy L. Field

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-07-02279

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

J. Martin Page, Bar No. 100200

Address:

Bell Carrington Price & Gregg

339 Heyward Street, 2nd Floor

Columbia, SC 29201

Phone: 803-509-5078 Fax _____

E-mail: mpage@bellcarrington.com Other: _____

Defendant's Attorney:

Rex A. Field, Tracy L. Field, pro se, Bar No. n/a

Address:

PO Box 975

St Helena Is. SC 29920

Phone: 803-609-0410 Fax _____

E-mail: cyberport@protonmail.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion:

**MOTION TO RECONSIDER ORDER FILED JULY 12, 2021 ON MOTION TO RECUSE
THE HONORABLE BENTLEY D. PRICE; AFFIDAVIT**

Estimated Time Needed: 30 Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☐

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of ☒ Defendants, *pro se*

Date submitted: 07/22/2021

SECTION III: Motion Fee

☒ **PAID AMOUNT:** \$25.00

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's
instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

JUDGE CODE _____

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Wilmington Savings Fund Society, FSB, not
in its individual capacity, but solely as owner
trustee for CSMC 2018-RPL6 Trust

C/A No: 2019-CP-07-02279

Plaintiff

vs.

Rex A. Field and Tracy L. Field
Defendants/Counterclaimants/Third-Party Plaintiffs

**MEMORANDUM IN SUPPORT OF
MOTION FOR RULE TO SHOW CAUSE AS TO
WHY SANCTIONS SHOULD NOT BE ISSUED
FOR VIOLATION OF COURT ORDER; AFFIDAVIT**

vs

Federal National Mortgage Association (Fannie Mae)
Wilmington Savings Fund Society, FSB, (in its individual capacity)
Christiana Trust Company of Delaware
DLJ Mortgage Capital Inc.,
and Unknown Defendants 1-10

Third-Party Defendants

Defendants Rex and Tracy Field, ("Defendants") hereby files this MEMORANDUM IN SUPPORT OF
MOTION FOR RULE TO SHOW CAUSE AS TO WHY SANCTIONS SHOULD NOT BE ISSUED
FOR VIOLATION OF COURT ORDER; AFFIDAVIT ("Memorandum"). This Memorandum is
supported by "TRANSCRIPT OF HEARING", July 2, 2021, BEFORE The Honorable Bentley Price
Presiding (*Exhibit A*):

1. Page 38, line 17:

THE COURT: Did you have full authority to full authority to settle the case?

MR MILAM: Yes, Your Honor. Britney Gomez from Newrez, LLC, which is the servicer for
this account, attended as representative for the Plaintiff. She came with full authority to settle.

2. Page 42, line 16:

THE COURT: What was her role? What was her job, her status with the company?

MR MILAM: She is an authorized representative for Shellpoint Mortgage Servicing and when Shellpoint is servicing a loan, they have a limited power of attorney for Wilmington, so they – if Wilmington is involved in litigation, Newrez, Shellpoint, will send one of its representatives to appear as the representative for Wilmington based on that limited power of attorney.

AFFIDAVIT

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, Rex A. Field and Tracy L. Field, who after being duly sworn deposes and states that they are authorized to make this verification on behalf of themselves and the statements and evidence are true and correct based upon their personal knowledge.

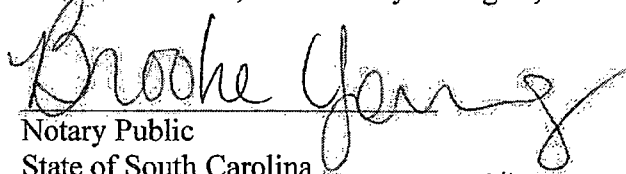
Respectfully Submitted,

This day, August 11, 2021


Rex A. Field


Tracy L. Field

Sworn before me, this 11th day of August, 2021


Notary Public
State of South Carolina
Beaufort County

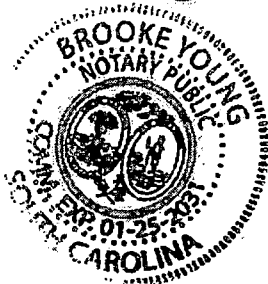


EXHIBIT A

1 THE COURT: Mr. Field, just so I know, what
2 motions did you choose? I told you it was your
3 choice when we had the status conference yesterday,
4 which motions of yours that you wanted heard and I
5 told you I'd be happy to hear any of them that you
6 would like to have heard.

7 Mr. FIELD: Your Honor, we have a pending motion
8 to recuse, and we have a reconsideration of the
9 order, to the June 22nd order.

10 THE COURT: Correct.

11 MR. FIELD: We'd like for you to either rule on
12 those motions or hear them. We'd prefer for you to
13 just recuse and then we'd have another judge look at
14 it or if you want to go ahead and hear the motions,
15 then we can present our motion, but if you would
16 prefer to just rule in advance of that, then I'd
17 prefer that.

18 THE COURT: Right. So, what are the two motions
19 to reconsider? Because there were like five
20 motions, and then I continued three of them for you
21 and then I ruled on two. Correct?

22 MR. PAGE: I believe that's correct, Your Honor.

23 THE COURT: All right. What are the two
24 motions?

25 MR. FIELD: I am not aware of any of the

1 continuances. There's -- We'd have to clarify
2 which motions you're talking about that were the
3 continuance motions, because I'm not aware of
4 that.

5 THE COURT: I'm not sure what you're
6 talking about with the continuance motions. I
7 said reconsideration.

8 MR. FIELD: Okay. There's just one.

9 THE COURT: Okay. And that's the
10 reconsideration of your order on June 22nd
11 relating to our motion to recuse.

12 THE COURT: No.

13 MR. FIELD: Well, it was late to the order. It
14 was late to the order. There was an order that you

15 THE COURT: I have it.

16 MR. FIELD: Would you like to see it, Your
17 Honor?

18 THE COURT: Sure. Okay. I understand what
19 you're saying now. All right. So, what was your
20 basis for the recusal. You just didn't like what I
21 ordered, so you appealed it and you asked me to
22 recuse myself and I said, "No, I'm not going to
23 recuse myself. I've done nothing wrong and I've
24 ordered the Clerk to place it on the next available
25 roster, which she did. Just because you don't like

1 my order, doesn't mean that you get to go to another
2 judge and say, "Well, I think maybe they should take
3 a look at it", which is what you just said. That's
4 not how that works.

5 BY MR. FIELD: Well, we filed a fifteen-page
6 memorandum.

7 THE COURT: I know that.

8 BY MR. FIELD: With the supporting
9 documentation, and that order resulted from it but
10 the order says that you didn't have to rule on it
11 because you were not the assigned judge, so we
12 really didn't get a ruling on an actual motion.
13 That was an order that didn't admit or deny our
14 motion.

15 THE COURT: Oh, I see what you're saying. Okay.
16 I'll deny your motion for a recusal. So, I now need
17 to hear --

18 BY MR. FIELD: Well, I'd like to present my
19 motion. I'd like to argue my motion.

20 THE COURT: Okay. This is just a motion to
21 reconsider though?

22 BY MR. FIELD: This is the -- we're arguing our
23 motion to recuse.

24 THE COURT: I understand that but I'm trying to
25 keep the record clean, Mr. Field.

1 BY MR. FIELD: Okay. I'm sorry. Attached to
2 our motion is the transcripts from the three
3 hearings that had been held in this case with Your
4 Honor. There's been actually five hearings
5 scheduled. Three of them were heard. The case was
6 in Master in Equity for eleven months prior to
7 coming to this Court. It was an order to vacate,
8 order of reference that was filed before the case
9 commenced, so the case was pretty much -- it was in
10 Master in Equity for the void order, and there was
11 also a stay on the case relating to foreclosure
12 intervention that we requested that we never
13 received a response from the Plaintiff on.

14 We requested mediation and filed a motion for
15 mediation, and we didn't hear from them on that.
16 They ignored our request for foreclosure
17 intervention, and they filed for a final hearing in
18 April of 2020. Right after they filed for that
19 final hearing, the Chief Justice ordered a
20 moratorium on foreclosures from April through the
21 end of August.

22 They lifted the moratorium and Mr. Page filed --
23 what he did is he scheduled another final hearing
24 with Judge Dukes. It was an eight-hour hearing.
25 There was one-sided communication with the Court, so

1 what happened was, it was like mid-July or something
2 that he got the hearing scheduled but then we
3 weren't notified until right around Labor Day.

4 So, we didn't even know about the hearing until,
5 like, three weeks before this final hearing, an
6 eight-hour hearing. So, I contacted Drew Radeker,
7 hired an attorney, and he contacted Judge Dukes and
8 yet he -- I'll get to the refusal, I just want to
9 set this -- just to understand the procedural
10 history.

11 So my attorney determined that that order needed
12 to be vacated. There was a hearing on September
13 29th with Judge Dukes and he vacated to order. They
14 put on the case -- there were several motions
15 pending, but they seemed to just like all of a
16 sudden be resolved, but with them never heard or
17 ruled on.

18 So, the case, I guess it really didn't have
19 anywhere to go at that point and so what
20 happened was, Mr. Page all of a sudden was now -
21 - because the order was vacated, he was now all
22 of a sudden interested in foreclosure
23 intervention. So, now we're a year into the
24 case, he didn't contact me, didn't do anything,
25 didn't answer any of my motions. I didn't talk

1 to him for the entire time for a year.

2 He didn't, you know, there was no
3 communication back and forth with Mr. Page.
4 Okay? So, during that time, Mr. Page decided,
5 "Well, I'm going to certify a foreclosure
6 intervention". So, he files a certification for
7 foreclosure intervention but doesn't meet any of
8 the requirements of the order to certify,
9 because you have to -- there's a check list you
10 have to go through and then you have to send a
11 denial letter through the mail to us and deny
12 it. He never did that.

13 What he did was, it was on a Friday during
14 that month. I think it was October. He sent
15 Drew an email and said, "We're putting you in
16 default". That's what he said. So, it was not
17 a good weekend. And again, we hadn't been
18 certified or anything. So, the following
19 Monday, Mr. Radeker filed a motion to dismiss
20 and sanctions. That following Monday. Now, it
21 was pretty upsetting to my attorney what Mr.
22 Page did, and how he handled it and Mr. Radeker
23 identified at least four violations of that
24 administrative order. So, that led us to the
25 next hearing that was put on Carmen Mullen's

1 roster. That was back still in -- so December
2 20 was on Carmen Mullen's roster.

3 Like, a few days before the hearing, the
4 computer system goes down in the Court, they --
5 somehow it was sent back to Judge Dukes. Judge
6 Dukes says, "No, I vacated it". Then it went
7 back to Carmen Mullen and then Carmen Mullen's
8 clerk said, "It's going on the next roster".
9 So, it was just never heard in December of 2020.

10 So, then that's when it was put on your
11 roster, on January 13th of 2021, it was put on
12 your roster. So, we feel like that from a
13 procedural standpoint, up to that point, we --
14 we don't know of any case in the history in
15 South Carolina or even in the country, where
16 there's been an order of reference signed before
17 a case commences. Can't find a case anywhere
18 about it. I don't think it's ever happened.
19 It's just truly astonishing that that even
20 happened. So, the --

21 THE COURT: You're talking about an order of
22 reference from Master in Equity to circuit court?

23 MR. FIELD: No, no. He filed this complaint
24 October 11th of 2019. He filed an order of
25 reference, he didn't know this, before the case --

1 before the summons and complaint was filed, they
2 filed an order of reference, a proposed order, the
3 Clerk of Court signed it, before we were served a
4 summons and complaint and pursuant to Rule 3 --

5 THE COURT: Oh, I thought you were talking about
6 something else. All right. Go ahead.

7 MR. FIELD: So, that put us on -- that put us in
8 bad shape right out of the gate because, you know,
9 normally they'd file the complaint and we'd answer
10 it or something like along those lines.

11 So, I just wanted to take the highlights of the
12 Dukes hearing, and then we'll go to the next
13 hearing.

14 THE COURT: Well, Mr. Field, we have another
15 hearing at 11:00 and thus far you haven't argued any
16 or your motions yet, so if you've got some motions
17 you'd like for me to hear, order, and rule on, I'm
18 happy to do it. I'm here for you, but I don't know
19 the procedural posture from 2019.

20 MR. FIELD: Okay. We're going to go to January
21 now.

22 THE COURT: January? No, no. Why don't we
23 fast-forward to June 22nd of 2021. That was the
24 last time we had a hearing. I made some rulings,
25 you appealed those and then filed a motion for me to

1 recuse and asked that another judge hear or take a
2 look at those.

3 MR. FIELD: What's the date on that?

4 THE COURT: You told me June 22nd. That's the
5 date I wrote down.

6 MR. FIELD: No, that's just the day you signed
7 the order. There was --

8 THE COURT: Well, I don't know what the hearing
9 date was. You just said June 22nd, so that's the
10 date I wrote down.

11 MR. FIELD: No, I filed the motion to recuse on
12 June 21st.

13 THE COURT: Okay.

14 MR. FIELD: You signed an order on June 22nd.

15 THE COURT: Oh, you're talking about this one?
16 Right, so I'm talking about let's get to that, where
17 you want me to reconsider. That's the motion to
18 reconsider.

19 MR. FIELD: Yes, and I'm going to give you the
20 reasons why I want you to reconsider.

21 THE COURT: That's what I'm trying to get to.

22 MR. FIELD: Okay. There are two hearings that
23 you presided over. One was January the 13th and the
24 other one was April 15th.

25 THE COURT: All right. January 13th, April

1 15th. All right. Yes, sir.

2 MR. FIELD: Okay, so the January 13th, it was a
3 motion to dismiss and sanctions. Okay? This was --
4 Drew Radeker represented me in this hearing and Mark
5 Page was the attorney for the other side.

6 Now, this motion is seventeen pages, the
7 transcript is seventeen pages. Okay? Drew speaks
8 for the first seven pages of the transcript and then
9 The Court comes in and talks for two more pages --
10 excuse me, three.

11 Drew comes in for half a page, The Court comes
12 back in for a page and a half. Drew comes back in
13 and then you said, "Hold on". Okay. Now, the point
14 here is, this was a sanctions motion against Mr.
15 Page. Now, we're already on page 11 and Mr. Page
16 hasn't spoken.

17 So, then we go -- so, out of the 17 pages of
18 this transcript, this back and forth between the
19 Court and Mr. Radeker and the, you know, and then on
20 page 15, he has a quarter of a page. So, there's
21 literally -- he spoke twice, but the thing is, is
22 that the Court was speaking on his behalf and
23 there's a lot of points in this hearing that are not
24 consistent with the facts. So, we feel like we have
25 -- the Court has been an advocate for Mr. Page in

1 this hearing and --

2 THE COURT: I can tell you this, Mr. Field, if I
3 ask questions that I need to know the answers to
4 that are going to assist the Court in making a
5 decision, that would be more than likely exactly
6 what I was doing, because I don't know anything
7 about these cases when you all bring them to me. I
8 read the memorandums if I have them. Oftentimes I
9 don't have the memorandums so I'm trying to ask
10 questions to get caught up to speed. To be honest
11 with you, I've never seen Mr. Page other than the
12 other time. Do you know who I am? Have we ever
13 spoken outside of any of these hearings?

14 MR. PAGE: I've never --

15 THE COURT: I even got the wrong person and that
16 shows you I have no earthly idea about -- so, I'm
17 not advocating for him in the slightest.

18 MR. FIELD: I'm not suggesting that, Your Honor.
19 I'm not suggesting that, Your Honor. What happened
20 was, when Mr. Page got -- after a year into the
21 case, got all of a sudden about -- interested in
22 foreclosure intervention after he has ordered them
23 vacated, he starts sending -- he sent Drew a series
24 of emails and all those emails were quoted by the
25 Court in this transcript and not by Mr. Page, but by

1 the Court and --

2 THE COURT: So, I read the correspondence
3 between the parties?

4 MR. FIELD: Well, there's --

5 THE COURT: Is that what happened, Mr. Page? I
6 was reading the correspondence?

7 MR. PAGE: Yes, Your Honor, and they were
8 actually attached to their motions.

9 THE COURT: Oh, gotcha. Gotcha.

10 MR. FIELD: Okay, so the -- here's -- you're
11 quoting Mr. Page, "It is my client's position --

12 THE COURT: I'm reading an email that you
13 attached to your motion. That's what I'm doing.
14 Correct?

15 MR. PAGE: Yes, Your Honor.

16 MR. FIELD: My wife wants to speak and I --

17 THE COURT: Your name for the record, ma'am?

18 MS. FIELD: Tracy Field.

19 THE COURT: Yes, ma'am.

20 MS. FIELD: On the April 15th transcript, there
21 were four motions scheduled that day.

22 THE COURT: Okay.

23 MS. FIELD: At the beginning of the hearing, you
24 said that there was four motions scheduled that day.
25 We heard four motions. At the end, you ruled on six

1 and the two that were not heard or scheduled, you
2 ruled against us on those two.

3 THE COURT: What were those two? What were
4 they?

5 MS. FIELD: It was the motion to dismiss the
6 counterclaims. Motion to dismiss Plaintiff's
7 counterclaims was granted and --

8 MR. FIELD: Motions to dismiss -- Plaintiff's
9 motion to dismiss --

10 MS. FIELD: Our counterclaims, our answer and
11 counterclaims. All that. You granted that. That
12 was not heard, that was not scheduled. You were
13 aware of that at the beginning of the hearing.

14 THE COURT: Okay.

15 MS. FIELD: Then it was the joiner, there was
16 our motion to join the third-party defendants
17 together.

18 MS. FIELD: You ruled on that and you denied
19 that. Those two were not heard.

20 THE COURT: All right. Did you all file motions
21 to reconsider those two?

22 MS. FIELD: No. When your order came out --

23 THE COURT: Hold on. Let me --

24 MS. FIELD: It did not include those two.

25 THE COURT: That's correct, because Mr. Field

1 had gotten upset about it and contacted the Court
2 and said that wasn't fair and I said, "I agree.
3 It's not fair". So, I continued them and said put
4 them off until the next roster.

5 MS. FIELD: No, we talked about it right here.

6 MR. MILAM: That's correct. Mr. Field objected
7 to a ruling on those motions.

8 THE COURT: And I said, "I agree".

9 MR. MILAN: Right, and they were not included in
10 the order.

11 THE COURT: That's right. They were just
12 continued and I instructed the Clerk to place them
13 on the next roster.

14 MS. FIELD: That's correct.

15 THE COURT: So, I agreed with you and asked --

16 MR. FIELD: Mr. Milam contacted the Court? Is
17 that what you're saying?

18 THE COURT: That you contacted the Court saying
19 that you were upset about it.

20 MR. MILAM: We were all -- this was all in the
21 hearing.

22 THE COURT: Right.

23 MR. MILAM: The last hearing we were all
24 together.

25 THE COURT: Oh, and that's right. He objected

1 to it and then Aimee and I discussed it and I said
2 the best thing I think to do is to just continue
3 those two and then rule on the four that were argued
4 and heard in court and so that's what I did and then
5 I said, "That's fine. I'll just continue them and
6 place them on the next roster". So, they're still
7 pending.

8 MS. FIELD: That's correct, but you pre-judged
9 those.

10 THE COURT: Okay.

11 MS. FIELD: One of those is being -- actually
12 both of those are going to be heard today.

13 THE COURT: I had already heard argument about
14 it, but that's fine. I thought out of an abundance
15 of caution I would give you all the opportunity to
16 file whatever you would like in response to that,
17 and I'll be happy to hear from you and this is your
18 what? Motion for what?

19 MR. MILAM: We have a pending motion to dismiss
20 the counterclaims and third-party claims.

21 THE COURT: That's correct

22 MR. MILAM: And we have a motion for summary
23 judgment as to the foreclosure action.

24 THE COURT: All right. Well, out of an
25 abundance of caution, let's do this, because those

1 motions are still pending. If you want to have
2 another judge hear those, I don't -- that doesn't
3 have a problem, but I do want to hear from Mr. Page
4 concerning his position. I want to figure out
5 what's going on. Just procedural posture, what's
6 going on with all of it because I'm a little lost,
7 to be honest with you.

8 MR. PAGE: Thank you, Your Honor. Martin Page
9 for the Plaintiff. This is a foreclosure action, as
10 you know. We filed a complaint and before this we
11 were actually in bankruptcy court for -- it started
12 in 2019 and we were there for a year and then it
13 spilled into this court and we actually filed the
14 complaint. Right now, what we would like to do is,
15 we've moved for summary judgment as to our
16 foreclosure cause of action and that's what we'd
17 like to argue today.

18 MS. FIELD: Your Honor, what he said was not
19 true.

20 THE COURT: Please let him speak.

21 MR. FIELD: Mr. Page is really loose with the
22 truth here. We were not in bankruptcy for a year.
23 Okay? You know what -- you were there.

24 MR. PAGE: Yeah, I have the order from 2019 for
25 the bankruptcy.

1 MR. FIELD: It's not a year.

2 MS. FIELD: It was eight months and when we came
3 out of bankruptcy, at the end --

4 THE COURT: Mr. Page, be careful now. I mean,
5 it was either eight months or a year.

6 MR. PAGE: Okay.

7 MR. FIELD: Well, he's bringing it in irrelevant
8 -- he's disparaging us with irrelevant information.
9 In the hearing on April 15, you had asked Mr. Milam,
10 "When did they make their last payment?". Mr. Milam
11 said, "Let's see, 2017 -- maybe 2018 -- no, maybe
12 2019". They're just like disparaging us
13 unbelievably in the record. They're not accurate
14 with what they're saying on the record.

15 THE COURT: All right. I'll keep Mr. Page
16 pretty tight on his accuracy. So, go right ahead,
17 sir. I'd be happy to hear from you.

18 MR. PAGE: Yes, Your Honor. Well, going
19 towards, Your Honor, the motion for summary
20 judgment, in a foreclosure it's pretty simple in
21 South Carolina. You just have to show the existence
22 of a debt, that the mortgage was in default on the
23 debt and that the party seeking foreclosure is
24 entitled to enforce the mortgage.

25 So, in the present action, we have filed an

1 affidavit in support of a motion for summary
2 judgment on June 3rd and that is a motion of -- or
3 an affidavit of the servicer who manages the
4 collection and payment on the loan. The servicer
5 has put in the affidavit that the loan is in default
6 and that as of July 1, the total amount due is
7 \$38,728.46.

8 The servicer's records indicate that the loan is
9 in default from January 1 of 2019. We also have --
10 I have the original note with me if the Court would
11 like to inspect it, showing -- and it's endorsed --
12 showing that we are the party entitled to enforce
13 this and we also have a chain of assignments
14 establishing custody of the mortgage into the
15 current Plaintiff. So, we think we're entitled to
16 foreclose, and I can give you some more information
17 about the procedural background with the debt if
18 you'd like me to.

19 MR. FIELD: Your Honor, we haven't finished
20 arguing our recusal motion.

21 THE COURT: I understand that. I just wanted to
22 get some procedural background from Mr. Page as to
23 where everything kind of one in underlying action.
24 All right.

25 MR. FIELD: May I finish our motion?

1 THE COURT: Yeah, but then I'm -- unfortunately,
2 we're going to have to take a break. You're more
3 than welcome to stick around and stay, but I'm going
4 to have to take up some other matters that I've
5 requested here today. I didn't realize that this
6 was going to take so long. We haven't even gotten
7 through one motion yet. But what is the concern
8 that you have?

9 MR. FIELD: Okay. We're back to the January
10 13th, 2021 motion to dismiss and sanctions hearing.
11 At the end of the transcript, the Court says, "I'm
12 scared to do that. I have a feeling we're going to
13 be right back here in five months, and they are
14 still going to be alleging that any type of
15 foreclosure proceedings are stayed, therefore I
16 assume they're not making their payments on the
17 house currently and so we're going to be right back
18 where we were, not making any payments". Now,
19 that's an assumption that --

20 THE COURT: No, you had said that. We talked
21 about it at the hearing. I said, "When was the last
22 time they made a payment?", and they said that. You
23 never corrected them.

24 MR. FIELD: No, this was the hearing before
25 that. This is the January hearing.

1 THE COURT: Well, okay.

2 MR. FIELD: That was the April hearing.

3 THE COURT: Okay.

4 MR. FIELD: Then, the issue was that the Court
5 was concerned, "Yes, I'll give them 30 days to
6 answer, you know, and then they tied it up for the
7 next two years in litigation, not even to show up to
8 the mediation or not to do, you know, to participate
9 in the case. They've done a great job of doing that
10 at this point".

11 THE COURT: Correct.

12 MR. FIELD: That's not true.

13 THE COURT: Okay.

14 MR. FIELD: There was a moratorium. There was a
15 stay. There was an avoid order going on. There was
16 -- they had to certify the COVID virus thing, all
17 that had to be cleared up before the case could move
18 forward.

19 Now, the Court says, "We are fully aware of what
20 is the issue in this case, the amount of money
21 that's in the case, all those types of things. I
22 assume the discovery in this case will be minimal at
23 best, if any. I mean, it's just two pieces of
24 paper. I'm going to allow your clients the 30 days
25 to answer from today, today's date, and then I'm

1 going to order mediation within 60 days of that date
2 and if it's not resolved at mediation at the close
3 of those 60 days, then Mr. Page can file a motion
4 for default".

5 THE COURT: Okay.

6 MR. FIELD: So, what we did -- now, I just
7 recently got a copy of this transcript. I was not
8 at the hearing and so this is new information for
9 me. But I tell you, it really upset my attorney
10 beyond belief. Now --

11 THE COURT: Where is he?

12 MR. FIELD: The -- he's not on the case anymore.

13 THE COURT: Okay.

14 MR. FIELD: So, what that did, with that
15 statement, when you said that --

16 THE COURT: That's not a statement, that's an
17 order.

18 MR. FIELD: Well, the order was not -- that was
19 not in the order, that you were going to default us
20 after 60 days. The default part was not in the
21 order.

22 THE COURT: Okay.

23 MR. FIELD: In the order it said that if we
24 don't participate in mediation we would have our
25 affirmative defenses and our counterclaims stricken.

1 THE COURT: That's correct.

2 MR. FIELD: But we didn't have anything pending
3 at that point. We hadn't answered but that's fine.
4 That was the order. We lived with it.

5 So, we started the mediation process and I
6 contacted -- by the way, Drew Radeker had set up an
7 appointment for us before he was relieved from the
8 case. It was with a mediator in Florence.

9 The mediator in Florence told me, a really good
10 one, said, "Make sure that you have someone that is
11 from the plaintiff that will be at the mediation
12 that has full authority to settle.

13 So, for a month -- now, remember, I only had 60
14 days. So, we were back and forth in emails about
15 this, and Mr. Page would never commit to having
16 someone with full authority to settle. He said, "A
17 plaintiff would be there, the plaintiffs will be
18 there, the plaintiffs will be there", but he would
19 never say, "Someone with full authority to settle".

20 So, when Mr. Milam came on the scene, Mr. Page
21 disappeared, but right before he did, he had agreed
22 -- we had agreed on a mediator in Beaufort. Okay --
23 go ahead.

24 MS. FIELD: Okay, I'm sorry. What my husband is
25 failing to communicate, is that Mr. Page is painting

1 the bankruptcy as if we're dragging our feet. We
2 wanted them to prove up that they owned our loan,
3 that our loan was in this trust, and they owned it.
4 The bankruptcy judge, Judge Waits, at some point
5 towards the end, determined that this was much more
6 complicated than he wanted to get into and suggested
7 we go back to State court, we go with State court,
8 take it up in State court, which we did.

9 What happened was, our bankruptcy ended in
10 August. We got a letter from Shellpoint saying,
11 "You send us \$12,000. You will be back on track and
12 we'll get -- you can continue your payments". We
13 made that \$12,000 payment. They returned the check
14 and Mr. Page started foreclosure proceedings before
15 we got the check back.

16 MR. FIELD: Before the end of the right to cure.

17 MS. FIELD: So, when Mr. Milam says that their
18 last payment was so-and-so, that is not true. We
19 paid in full and so when we read in this transcript
20 and we hear Your Honor saying, "Well, when was their
21 last payment? Are they still in the house?", you're
22 painting us as some sort of deadbeats when we paid
23 them completely, but you never asked them, "Well,
24 what goods have you got on them? What have you got
25 on them?". They have to prove their case against us

1 and so, that's where we're coming up with the bias
2 here, along with that you pre-judged those two
3 motions.

4 THE COURT: All right.

5 MR. FIELD: And, Your Honor, I'd like to finish
6 with my part about the mediation.

7 THE COURT: I'm good. So, I understand Ms.
8 Field. Thank you very much for clarifying. No, I
9 have not pre-judged anything. I was attempting to
10 try to resolve some motions to try to see if we
11 could get this case moving forward, but me simply
12 asking two questions does not show bias whatsoever.
13 It's just me trying to ascertain and gain
14 information so I can make it clear consensually on a
15 motion that was before me.

16 So, I apologize if you felt that was painting
17 you in some off-light or something like that. I
18 would apologize. I certainly didn't mean it in any
19 derogatory fashion. I don't anything about y'all.
20 I don't know what your financial status is. I don't
21 know anything about it. I just know this is a
22 foreclosure action and so, I thought it was very
23 appropriate to ask the questions. So I did, and I
24 got the answers and moved on and that's it. All
25 right.

1 So, I'll deny the motion to recuse. I'm not
2 saying that I'm going to keep the case or whatever,
3 but I do need to hear -- because I know Mr. Page is
4 here as well, but I do need to hear one other
5 motion, so -- is that everything you need to put on
6 the record, Mr. Page?

7 MR. PAGE: Yes, Your Honor. I believe that's
8 all. If you'd like to inspect the original note,
9 I've got it with me.

10 THE COURT: All right. I don't. It's part of
11 the record, I assume.

12 MR. PAGE: Yes, Your Honor. It's attached to
13 the exhibit -- the affidavit in support of the
14 motion for summary judgment.

15 THE COURT: All right. Thank you very much.
16 You have a motion as well, sir? Correct?

17 MR. MILAM: That's correct, Your Honor. We have
18 a motion to dismiss the counterclaims and third-
19 party claims in this case. There are nine
20 counterclaims and third-party claims under the
21 Unfair Trade Practices Act. Civil conspiracy, fraud
22 and misrepresentation, slander of title, libel and
23 slander, Fair Debt Collection Practices Act, unjust
24 enrichment and quiet title. I don't know if I
25 stated for the record, I'm Ben Milam, on behalf of

1 the client for the third-party defendants.

2 Your Honor, each of these claims is based on the
3 allegation that Wilmington Savings Fund Society is
4 not entitled to enforce the note and that the
5 mortgage has somehow been impaired or rendered
6 ineffective during the securitization process and
7 transfers between financial entities.

8 Under South Carolina law, as Mr. Page said, the
9 person who holds a note, as this one that's endorsed
10 in blank, is entitled to enforce it. If you have
11 possession of a valid note with the proper
12 endorsements, then you're entitled to enforce it and
13 there is no need to go into all of these issues that
14 the Fields want to raise about the securitization
15 process in transfers as long as we hold a valid
16 note.

17 So, there were two prior proceedings. One,
18 CitiMortgage filed a foreclosure action in 2012.
19 The foreclosure was resolved through a modification
20 ultimately, but in that case, the Fields also filed
21 counterclaims, including some of the same
22 counterclaims that they've filed in this action.
23 Judge Dukes dismissed those claims with prejudice
24 for the reason that I've stated, because what the
25 lender needs to show is that it is the holder of the

1 note.

2 Subsequently, Judge Waites issues a ruling in the
3 bankruptcy case on their challenge to the proof of
4 claim that Wilmington filed a bankruptcy and Judge
5 Waites determined that Wilmington was entitled to
6 enforce the note. So, this claim and the issues that
7 have been raised, have been twice adjudicated and the
8 claims are now barred by collateral estoppel and the
9 specific issue of whether Wilmington is entitled to
10 enforce the note is barred by collateral estoppel.

11 We've raised some other issues in our brief, but
12 those are the principle ones, is that all of these
13 claims do not have merit and have been previously
14 twice adjudicated and we're asking the Court to
15 dismiss both the counterclaims and third-part claims
16 with prejudice.

17 THE COURT: All right. Thank you, sir.
18 Anything you'd like to say in response briefly, sir?

19 MR. FIELD: I have more than a brief response,
20 Your Honor.

21 THE COURT: Well, how long do you think you
22 need? You filed your motion in opposition, correct?
23 That's the 106-page document that was filed that I
24 looked at. Correct?

25 MR. FIELD: Yes.

1 THE COURT: Yeah, I've seen it. 127 pages.

2 MR. FIELD: Well, I have some documents here I'd
3 like to go through in response to them. Now, if you
4 want to take a break so I can hear these other
5 people and we can come back.

6 THE COURT: All right. That will be fine.
7 Let's just take a quick break.

8 (Interruption in the proceedings.)

9 THE COURT: Okay, back on the record. So, you
10 all sufficiently argued your positions and it's just
11 Mr. Field's turn to respond.

12 MR. MILAM: Yes, Your Honor. If I could just
13 briefly, because there was a motion to stay filed
14 and more than one motion for a continuance, I would
15 just add that we would object to any further delay
16 of the proceedings. We had a hearing set in May,
17 but the Fields said they needed a continuance so
18 they could get counsel and we again consider the
19 pending motions for continuance as an effort just to
20 delay the proceedings further and would object to
21 that. Unless Your Honor has any questions on the
22 two motions, nothing further right now, Your Honor.

23 THE COURT: Thank you very much.

24 MR. FIELD: Your Honor, as per our status call
25 yesterday, we talked about there is at least between

1 11 and 14 motions. As you are aware, this case is
2 on appeal and there are a couple of controlling
3 cases that I'd like to introduce into the record
4 that --

5 THE COURT: What's the issue up on appeal?

6 MR. MILAM: The ordered strike and the jury
7 demand, Your Honor. That's the only order that has
8 been appealed. Mr. Field says he intends the appeal
9 to be all-encompassing, but the only order that has
10 been appealed from is the order to strike and the
11 jury demand.

12 THE COURT: And we had some pretty extensive
13 argument over that.

14 MR. MILAM: At the April hearing.

15 THE COURT: At the April hearing. Yeah, this is
16 a foreclosure action.

17 MR. MILAM: A foreclosure action with
18 counterclaims and third-party claims. Mr. Field
19 says that a number of his claims are claims at law,
20 which is a true statement. What we disagreed with
21 at the April hearing was whether they were
22 compulsory or permissive.

23 THE COURT: I remember that.

24 MR. FIELD: Your Honor, the case that -- one of
25 the cases that I'm referring to is Johnson v. South

1 Carolina National Bank.

2 THE COURT: And this is a response to which
3 motion? The motion for summary judgment or the
4 motion to dismiss?

5 MR. FIELD: This is -- it's really relating to
6 the global issue of this case.

7 THE COURT: I want to stick to the arguments
8 made by Counsel, please. This is on appeal. They
9 are going to make this decision.

10 It says, "Where the plaintiff's complaint is
11 equitable and the defendant's counter claim is legal
12 and compulsory, does the Plaintiff have a right to a
13 jury trial on the counter claim"? All right. The
14 Court issued an order clarifying the procedure to be
15 followed under Rule 13-38-42, "When a complaint is
16 equitable and a counterclaim is legal and
17 compulsory, if the complainant is equitable and the
18 counterclaim is legal and compulsory, the defendant
19 has the right to a jury trial on the counter claim.
20 In that case, the proper procedure is as follows:
21 The trial judge should, pursuant to Rule 42, order
22 separate trials of the legal and equitable claims."
23 All right.

24 Your issue that you're going to run into, Mr.
25 Field, is this. Those counterclaims and third-party

1 claims have been dismissed not once, but twice and
2 now you're attempting to bring them for a third
3 time.

4 MR. FIELD: I haven't heard a ruling on the
5 second dismissal. There was no order for the first
6 one. It was not -- the motion was not heard and it
7 was not ruled on.

8 THE COURT: How did Judge Dukes handle that?

9 MR. MILAM: There was an order from Judge Dukes,
10 which dismissed the counterclaims in the -- this was
11 the 2012 foreclosure by CitiMortgage.

12 THE COURT: Correct.

13 MR. MILAM: And he dismissed the counterclaims
14 with prejudice and I believe we've attached that
15 order to our motion.

16 THE COURT: I would usually look it up, but my
17 computer is somewhere sitting in my driveway.

18 MR. MILAM: I believe this is it, Your Honor.
19 Let's see, the date of the order is July -- looks
20 like the 19th day of July, 2013 by Judge Dukes and
21 it says, "The City's motion to strike affirmative
22 defenses dismissed counterclaims and/or grant judge
23 on the pleadings as granted in its entirety,
24 resulting in the dismissal with prejudice of the ten
25 counterclaims asserted by defendants and striking of

1 various affirmative defenses". I'm happy to hand it
2 up.

3 THE COURT: We'll have it in the record, I just
4 -- again, I usually follow along with my computer,
5 but I can't find it.

6 MR. FIELD: Your Honor, there has been no
7 rulings on our counterclaims in this case. He's
8 arguing res judicata on a case that, seven years
9 ago, that was settled with the -- it was not ruled
10 on the merits. We have defenses of fraud and
11 collusion in that case but CitiMortgage was just, at
12 best, the servicer. Okay?
13 They were never -- the plaintiff in this case is
14 CSMC Trust that didn't come into existence until
15 2018. 2018 they came into existence. For \$200,
16 they filed a Delaware statutory trust, in the state
17 of Delaware for \$200. It's a Shell Corporation.
18 It's a Shell entity. We have documentation here
19 that shows that in that res judicata case, Citi pled
20 that Fanny Mae owned the loan. Fanny Mae is not
21 anywhere in the title, not anywhere in the
22 assignments. We've got documentation that shows
23 that they are claiming that the mortgage assignment
24 that they're using to claim that they have some
25 attachment to the mortgage has a Fanny Mae loan

1 number on it, was assigned by Fanny Mae. I've
2 actually launched a fraud investigation with Fanny
3 Mae. That's ongoing and I talked to the title
4 company twice, about 45 minutes each call. On that
5 mortgage assignment, the title company is telling me
6 -- now, this is from Nationstar to CSMC Trust. But,
7 by the way, that mortgage assignment, the title on
8 that mortgage assignment does not match the
9 plaintiff. The mortgage assignment that's in the
10 courthouse is Wilmington, in its individual
11 capacity.

12 The plaintiff is Wilmington, not in its
13 individual capacity. They also talk about
14 Christiana (phonetic) Trust on the mortgage
15 assignment and so forth. But, if we -- we have
16 every single loan number that was filed with the
17 Securities Exchange Commission, Fanny Mae loan
18 number, okay? There's 20,125 loan numbers in here.
19 This is just the first ten pages.

20 Now, they have deficiency reports on every
21 single loan number in here, then they talk about --
22 by the way, the loan number that's on the mortgage
23 assignment is not in this trust. Now, this is, like
24 I said, this is just the first ten pages of the
25 filing and if you look at the first one, where it's

1 highlighted, every one of these loans are defective.
2 Okay? The missing document note, subsequently not
3 provided. Missing document note, subsequently not
4 provided". Okay?

5 These are the most toxic mortgages that are
6 probably just about in existence and our loan number
7 is not in there. So, we've done a computer scan of
8 every -- you notice that the loan numbers start with
9 1700 on every single loan number on the sheet there.
10 That's in chronological order. That's 2005, and our
11 mortgage assignment, right here, has the Fanny Mae
12 loan number on it, 1700-119966. Fanny Mae loan
13 number.

14 Now, we have and we submitted it as exhibits,
15 the full transaction that Fanny Mae sold to DLJ
16 Mortgage Capitol. Now, this SEC filing that's part
17 of that documentation I gave you, DLJ Mortgage
18 Capitol is claiming that they acquired Nationstar --

19 THE COURT: Mr. Field, you've moved into a whole
20 other realm again. The only thing I asked you, that
21 I needed a response about, was from those two
22 gentlemen's arguments. The argument has already
23 been -- the issue has already been resolved about
24 who owns the mortgage now. Okay?

25 MR. FIELD: That hasn't been resolved.

1 THE COURT: That document right there?

2 MR. PAGE: Yes, this is the original note
3 endorsing the claim, which under South Carolina law
4 is who would own the mortgage.

5 MR. FIELD: That's -- Your Honor, there's a
6 difference between possession, if that is a true
7 document, and ownership. We sent them admissions,
8 okay? They didn't answer most of them.

9 THE COURT: What do you consider the difference
10 between possession and ownership is?

11 MR. FIELD: Okay. In order to be a holder in
12 due course, you have to pay value, which they
13 haven't. They have no injury. They won't even
14 identify where they got it from. The best guess is,
15 they got it in a dark alley.

16 So, you have to pay value. You have to
17 purchase it in good faith and you have to, without
18 any knowledge of any defects on it. And so, the --
19 they would -- I disputed this whole ownership issue
20 back in 2018. They wouldn't tell me where they got
21 it. They won't say if they paid any value for it
22 and Nationstar sent us a letter that's in the file
23 there. Okay, so Nationstar, they've got the
24 assignment of the mortgage. It says Nationstar to
25 CSMC trust. The title company says that Nationstar

1 specifically rejected that assignment. They did not
2 assign it. Every person that's on this mortgage
3 assignment here, is an employee of the title
4 company, but they swore in the affidavit that this
5 Patrick McCabe, he's claiming in a sworn affidavit
6 that he's the Vice President of Nationstar.

7 This mortgage assignment right here. The title
8 company, and I've got it on a recorded line and I'd
9 be happy to submit an affidavit, that the title
10 company told me that Patrick McCabe is an employee
11 of Nationwide Title Clearing Company.

12 THE COURT: All right. We're getting off track
13 again and I've got -- I've got to give this
14 courtroom up to another judge that needed to have
15 some hearings, so -- have you all mediated this case
16 before?

17 MR. MILAM: Yes, Your Honor, and actually
18 participated and did it and it obviously was an
19 impasse.

20 MR. PAGE: Yes, Your Honor, we mediated it.

21 MR. FIELD: No, Your Honor.

22 THE COURT: You didn't go to mediation?

23 MR. FIELD: They didn't.

24 THE COURT: What do you mean they didn't?

25 MR. FIELD: Okay.

1 THE COURT: Oh, no, no. What do you mean by
2 they didn't?

3 MR. FIELD: Mr. Page -- part of that hearing
4 that we had in January, the 13th, you ordered Mr.
5 Page to mediation.

6 THE COURT: Okay.

7 MR. FIELD: But what happened was, is I was the
8 only one that was going to get penalized with the 60
9 days and if I didn't go, I would get my

10 counterclaims and defenses dismissed. What he did
11 is, I asked him to confirm that there was going to
12 be someone with authority to settle on this case.

13 THE COURT: All right. Stop there. Mr. Page,
14 were you at the mediation?

15 MR. PAGE: No, Your Honor, I was not, but the
16 plaintiff was represented by Mr. Milam.

17 THE COURT: Did you have full authority to full
18 authority to settle the case?

19 MR. MILAM: Yes, Your Honor. Britney Gomez from
20 Newrez, LLC, which is the servicer for this account,
21 attended as a representative for the plaintiff. She
22 came with full authority to settle. We mediated the
23 case. We did not reach an agreement because the
24 parties were too far apart on what they wanted and
25 the mediator impassed and I believe submitted proof

1 of ADR compliance.

2 MR. FIELD: That's not true, Your Honor. Not
3 true, Your Honor. This Britney Gomez.

4 THE COURT: Okay. Hold on. Who do you want
5 there?

6 MR. FIELD: I want the -- okay, first of all,
7 Britney Gomez did not -- I'll answer your question,
8 Your Honor. I'll get to -- I'd like to add to it.
9 Mr. Page in email after email after email, told me,
10 "The plaintiff will be there. The plaintiff will be
11 there". That's Wilmington. That means someone from
12 Wilmington, an officer, employee or director of
13 Wilmington.

14 When he was pressed on that issue, he would not
15 answer me. I filed a motion to compel mediation and
16 you denied the motion and then what happened is, Mr.
17 Milam came on the scene and said -- and I filed a
18 notice and I said, "If you send someone from
19 Shellpoint, I'm not going to accept it", but I went
20 to mediation anyway. They set me up with a mediator
21 that had conflict with Fanny Mae and so I had to --
22 I had to change -- I want Wilmington to be there.
23 Wilmington. An employee, officer, director of
24 Wilmington.

25 MR. MILAM: Your Honor, we did not pick the

1 mediator. It was a mediator already proposed. We
2 were ready to go with that mediator. Mr. Field
3 objected because the mediator disclosed that he had
4 represented Fanny Mae at some point in the past.
5 Mr. Field objected to it, so we said, "Okay, we're
6 okay with a new mediator that Mr. Field selected.
7 That was Mr. McCoy in Columbia.

8 MR. FIELD: That's not true, Your Honor. Mr.
9 Page selected mediator. ---

10 THE COURT: You can't talk over because she
11 can't take it down.

12 MR. FIELD: I'm sorry.

13 MR. MILAM: All right. So, we mediated before
14 Mr. McCoy. Prior to the mediation, Mr. Field said
15 that he objected to having somebody from the loan
16 servicer there as the representative for Wilmington
17 and we asked for a status conference with the Court
18 to resolve that issue and Mr. -- I believe we -- I
19 can't remember whether we got a status conference or
20 not, but Mr. Field said that he would go ahead and
21 mediate as is, so we did not, you know, so we did
22 not resolve that issue since he withdrew his
23 objection, but we believe that Ms. Gomez was the
24 proper party there as a representative for the
25 plaintiff and she had full authority and the

1 mediator confirmed that.

2 MR. FIELD: Your Honor, we have too many chefs
3 in the kitchen here because --

4 THE COURT: Did you go to mediation in Columbia
5 with Mr. McCoy?

6 MR. FIELD: I did.

7 THE COURT: Then stop misrepresenting things to
8 the Court. You just now said, "That's not true".
9 It is true. There was in mediation in Columbia with
10 Mr. McCoy.

11 MR. FIELD: He made multiple points and the part
12 that I'm saying that's not true, is that -- and he
13 just said another untruth, is that Mr. Page selected
14 the mediator. Mr. Griffith, here in Beaufort.
15 Okay? I asked him, I said, "Who do you prefer"?
16 "Mr. Griffith".

17 I believe that's his name, right? So, we
18 were in a dialogue with this mediator in Beaufort
19 for like 30 days. And I kept emailing them, "Who
20 are you going to have -- so, what happened was,
21 their staff at the law firm said that they
22 represented Fanny Mae in -- back in the past in
23 cases and they identified a conflict --

24 THE COURT: That's exactly what he just said.
25 Those were his exact words just a second ago. So,

1 he agreed to have you pick another one. You picked
2 one and they went.

3 MR. FIELD: Right, but the problem is that what
4 happened was, in the mediation I asked this Brittany
5 -- by the way, she didn't talk at all, but I asked
6 her a question. I said, "Do you have authority to
7 release the lien?". Mr. Milam instructed her not to
8 answer.

9 THE COURT: Okay.

10 MR. FIELD: Okay? And so the problem is, is
11 that for one, there's a real issue about -- between
12 Shellpoint and the plaintiff. Okay? And they are -
13 - under the rules of ADR, Rule 6-B2, they are
14 required to bring somebody, an officer, director or
15 an employee of the plaintiff.

16 THE COURT: What was her role? What was her
17 job, her status with the company?

18 MR. MILAM: She is an authorized representative
19 for Shellpoint Mortgage Servicing and when
20 Shellpoint is servicing a loan, they have a limited
21 power of attorney for Wilmington, so they -- if
22 Wilmington is involved in litigation, Newrez,
23 Shellpoint, will send one of its representatives to
24 appear as the representative for Wilmington based on
25 that limited power of attorney.

1 THE COURT: All right. I've heard enough.
2 We're not going to be able to get anything resolved
3 here today, unfortunately, so I'm just going to
4 continue the motions and I'm just going to make
5 another order potentially resolved by another
6 mediation, but we just can't keep going around and
7 around and around like this.

8 Mr. Field, you've got to understand that every
9 single issue is not an attack on you. They simply
10 are just doing their jobs. I'm simply just doing my
11 job and I want you to -- I would love more than
12 anything to see you get out from up under all of
13 this.

14 I mean, Mr. Field, I spoke to you on the phone
15 yesterday and I understand that some of the staff
16 here says that you can get a little animated and get
17 excited, but you seem like the nicest guy and you're
18 extremely smart but you're wasting so much time on
19 this case. I mean, you had a 127-page file that
20 Kristen had to scan in the other day. I mean, it
21 just seems like it's just -- it's just too much for
22 you.

23 MR. FIELD: I appreciate the comments and I just
24 want to point out here that they sent -- okay, they
25 basically have extorted money from me.

1 THE COURT: I understand your position.

2 MR. FIELD: Okay. We paid them -- what happened
3 was, is they sent me a right to cure notice of
4 default. It was for a little over \$10,000. My wife
5 said 12, but what happened was, they said, "Call for
6 the exact amount due". So, what I did is, they sent
7 me a right to cure, a notice of default.

8 I call them up. I say, "How much is it?", I
9 sent them more money than they were asking for. ---
10 because I had some fees that they had added on.
11 What we did is, we sent it to them certified mail,
12 before the 45 days. Okay? What happened was, Mr.
13 Page -- they sent the check back. It took --

14 THE COURT: I remember you arguing that and I
15 understand what their position on that was.

16 MR. FIELD: And so, I'll tell you, I don't want
17 to be here. They are the ones that are running over
18 me.

19 THE COURT: All right.

20 MR. FIELD: They are the ones that created this
21 whole --

22 THE COURT: I just don't want to see this go on
23 any longer. Something is going to have to be
24 resolved. All right? I'll see what I can do.

25 MR. FIELD: Okay.

1 THE COURT: All right. Y'all enjoy the rest of
2 your 4th of July.

3 (Whereupon, at 12:37 p.m. the proceedings were
4 concluded.)

5 ***
6
7

1 CERTIFICATE OF REPORTER

2 ***

3 I, Kymberlee M. Williams, Certified Shorthand
4 Reporter/Registered Professional Reporter for the
5 14th Circuit of the State of South Carolina do hereby
6 certify that the foregoing is a true, accurate and
7 complete transcript of the proceedings held in this
8 case, relative to appeal, in the Circuit Court for
9 Beaufort County, South Carolina on the 2nd Day of
10 July, 2021.

11
12 I do further certify that I am neither of kin,
13 counsel, or interest to any party hereto.

14
15 This, the 19th day of July, 2021.
16
17
18
19
20

21 _____
Kymberlee M. Williams, CSR/RPR
22
23
24

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No.: 2019-CP-07-02279**

Wilmington Savings Fund Society, FSB, not)
in its individual capacity, but solely as owner)
trustee for CSMC 2018-RPL6 Trust,)

*Plaintiff/Counterclaim
Defendant*

Y.

Rex A. Field, et al,

*Defendants/
Counterclaim Plaintiffs*

Y.

Federal National Mortgage Association, et al.

Third-Party Defendants.

**PLAINTIFF'S REPLY TO
DEFENDANTS' SECOND AMENDED
COUNTERCLAIMS**

Plaintiff/Counterclaim Defendant Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust (“Plaintiff”) serves its reply to the Second Amended Answer, Counterclaims, and Third-Party Complaint (“Counterclaims”) served by Defendants, Rex A. Field and Tracy L. Field (“Defendants”) and states as follows:

1-51. Paragraphs 1-51.8 of the Counterclaims relate to Defendants' answer and affirmative defenses to the foreclosure Complaint and require no response. To the extent a response is required, Plaintiff denies the allegations in Paragraph 1-51.8.

52. Paragraph 52 of the Counterclaims makes no new factual allegations and no response is required. To the extent a response is required, such allegations are denied. Paragraph 52.1 of the Counterclaims is denied.

53. With respect to Paragraph 53 of the Counterclaims, Plaintiff admits that Defendants own real property in Beaufort County, South Carolina subject to Plaintiff's Mortgage.

54. Paragraph 54 is denied.

55. Paragraph 55 is denied.

56. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations in Paragraph 56 and therefore denies such allegations.

57. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations in Paragraph 57 and therefore denies such allegations.

58. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations in Paragraph 58 and therefore denies such allegations.

59. With respect to Paragraph 59, Plaintiff admits that CSMC 2018 RPL6 Trust is a Delaware Statutory Trust and that Wilmington Savings Fund Society, FSB is its registered agent. Plaintiff denies the remaining allegations in Paragraph 59.

60. With respect to Paragraph 60, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

61. With respect to Paragraph 61, Plaintiff states that the Complaint in this action speaks for itself and denies any allegations inconsistent therewith.

62. With respect to the allegations in Paragraph 62, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

63. With respect to the allegations in Paragraph 63, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

64. With respect to the allegations in Paragraph 64, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

65. With respect to the allegations in Paragraph 65, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

66. With respect to the allegations in Paragraph 66, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

67. With respect to the allegations in Paragraph 67, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 67, and therefore denies such allegations.

68. With respect to the allegations in Paragraph 68, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

69. With respect to the allegations in Paragraph 69, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

70. Paragraph 70 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

71. Paragraph 71 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

72. With respect to the allegations in Paragraph 72, Plaintiff states that the agreements and other documents related to the formation of the trust speak for themselves and denies any allegations inconsistent therewith.

73. Plaintiff denies the allegations in Paragraph 73 of the Complaint.

74. Plaintiff denies the allegations in Paragraph 74 of the Complaint.

75. Plaintiff denies the allegations in Paragraph 75 of the Complaint.

76. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 76, and therefore denies such allegations.

77. With respect to Paragraph 77, Plaintiff states that the referenced assignment speaks for itself and denies any allegations inconsistent therewith.

78. With respect to Paragraph 78, Plaintiff lacks sufficient knowledge or information to form a belief as to whether signatories were employees of Nationwide Title Clearing, and therefore denies such allegations, Plaintiff denies the remaining allegations in Paragraph 78.

79. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 79, and therefore denies such allegations

80. Plaintiff denies the allegations in Paragraph 80.

81. With respect to Paragraph 81, Plaintiff states that the referenced assignment speaks for itself and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 81.

82. With respect to Paragraph 82, Plaintiff states that the website of Wilmington Savings Fund Society, FSB speaks for itself and denies any allegations inconsistent therewith.

83. Paragraph 83 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

84. Paragraph 84 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

85. Paragraph 85 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff states that Wilmington Savings Fund Society, FSB in its individual capacity ("Wilmington FSB") does not claim to be the owner of the subject loan.

86. Paragraph 86 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

87. With respect to Paragraph 87, Plaintiff states that the name of the trust speaks for itself and denies any allegations inconsistent therewith.

88. Plaintiff denies the allegations in Paragraph 88.

89. Plaintiff denies the allegations in Paragraph 89.

90. Plaintiff denies the allegations in Paragraph 90.

91. Paragraph 91 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff states that Wilmington Savings Fund

Society, FSB in its individual capacity (“Wilmington FSB”) does not claim to be the owner of the subject loan.

92. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 92 of the Complaint, and therefore denies such allegations.

93. With respect to Paragraph 93, Plaintiff states that Christiana Trust Company of Delaware does not claim an interest in the subject loan.

94. Paragraph 94 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

95. With respect to Paragraph 95, Plaintiff states that the referenced loan documents speak for themselves and denies any allegations inconsistent therewith.

96. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 96 of the Complaint, and therefore denies such allegations.

97. Paragraph 97 does not make any factual allegations and no response is required. To the extent a response is required, such allegations are denied.

98. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 98 of the Complaint, and therefore denies such allegations.

99. With respect to Paragraph 99, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

100. With respect to Paragraph 100, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

101. With respect to Paragraph 101, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

102. With respect to Paragraph 102, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

103. With respect to Paragraph 103, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

104. With respect to Paragraph 104, Plaintiff lacks sufficient knowledge or information to form a belief as to the content of the referenced MERS Milestones Report, and therefore denies such allegations. The remaining allegations in Paragraph 104 state a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

105. With respect to Paragraph 105, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

106. With respect to Paragraph 106, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

107. With respect to Paragraph 107, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

108. With respect to Paragraph 108, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

109. Paragraph 109 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

110. Paragraph 110 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

111. With respect to Paragraph 111, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

112. With respect to Paragraph 112, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

113. With respect to Paragraph 113, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

114. With respect to Paragraph 114, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

115. With respect to Paragraph 115, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

116. With respect to Paragraph 116, Plaintiff states that the referenced assignment speaks for itself, and Plaintiff denies any allegations inconsistent therewith.

117. With respect to Paragraph 117, Plaintiff states that the referenced assignment speaks for itself, and Plaintiff denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 117.

118. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 118 of the Complaint, and therefore denies such allegations.

119. Paragraph 119 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

120. Paragraph 120 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

121. Paragraph 121 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

122. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 122 of the Complaint, and therefore denies such allegations.

123. Paragraph 123 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

124. Plaintiff denies the allegations in Paragraph 124.

125. With respect to Paragraph 125, Plaintiff states that the recorded assignments speak for themselves and denies any allegations inconsistent therewith. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 125 of the Complaint, and therefore denies such allegations.

126. With respect to Paragraph 126, Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding the MERS Milestones Report. Plaintiff denies the remaining allegations in Paragraph 126.

127. With respect to Paragraph 127, Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding the MERS Milestones Report.

128. With respect to Paragraph 128, Plaintiff states that the recorded assignments speak for themselves and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 128.

129. With respect to Paragraph 129, Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding a title insurance claim. Plaintiff denies the remaining allegations in Paragraph 129.

130. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth the allegations concerning a confidential settlement agreement in Paragraph 130, and therefore denies such allegations.

131. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth the allegations concerning a confidential settlement agreement in Paragraph 131, and therefore denies such allegations.

132. With respect to Paragraph 132, Plaintiff states that the referenced modification agreement speaks for itself and denies any allegations inconsistent therewith.

133. With respect to Paragraph 133, Plaintiff states that the referenced modification agreement speaks for itself and denies any allegations inconsistent therewith.

134. With respect to Paragraph 134, Plaintiff states that the recorded modification agreement speaks for itself and denies any allegations inconsistent therewith.

135. With respect to Paragraph 135, Plaintiff states that the referenced modification agreement speaks for itself and denies any allegations inconsistent therewith.

136. Paragraph 136 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

137. The assignment referenced in Paragraph 137 speaks for itself and Plaintiff denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 137.

138. The assignment referenced in Paragraph 138 speaks for itself and Plaintiff denies any allegations inconsistent therewith.

139. The assignment referenced in Paragraph 139 speaks for itself and Plaintiff denies any allegations inconsistent therewith.

140. Paragraph 140 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

141. Paragraph 141 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

142. Paragraph 142 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

143. The assignment referenced in Paragraph 143 speaks for itself and Plaintiff denies any allegations inconsistent therewith.

144. The assignment referenced in Paragraph 144 speaks for itself and Plaintiff denies any allegations inconsistent therewith.

145. The assignment referenced in Paragraph 145 speaks for itself and Plaintiff denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 145.

146. The assignment referenced in Paragraph 146 speaks for itself and Plaintiff denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 146.

147. Paragraph 147 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

148. Paragraph 148 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

149. Paragraph 149 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

150. Paragraph 150 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

151. Paragraph 151 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

152. With respect to Paragraph 152, Plaintiff states that the Third-Party Defendants in this action do not claim an interest in the Note. Plaintiff denies the remaining allegations in Paragraph 152.

153. With respect to Paragraph 153, Plaintiff states that the Third-Party Defendants in this action do not claim an interest in the Note. Plaintiff denies the remaining allegations in Paragraph 153.

154. Plaintiff denies the allegations in Paragraph 154.

155. Paragraph 155 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

156. Plaintiff denies the allegations in Paragraph 156.

157. Paragraph 157 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

158. Plaintiff denies the allegations in Paragraph 158.

159. With respect to Paragraph 159, Plaintiff states that the relevant statutes and rules governing the judicial foreclosure process in South Carolina speak for themselves, and denies any allegations inconsistent therewith.

160. With respect to Paragraph 160, Plaintiff states that the relevant statutes and rules governing the judicial foreclosure process in South Carolina speak for themselves, and denies any allegations inconsistent therewith.

161. With respect to Paragraph 161, Plaintiff states that the relevant statutes and rules governing the judicial foreclosure process in South Carolina speak for themselves, and denies any allegations inconsistent therewith.

162. With respect to Paragraph 162, Plaintiff states that the relevant statutes and rules governing the judicial foreclosure process in South Carolina speak for themselves, and denies any allegations inconsistent therewith.

163. With respect to Paragraph 163, Plaintiff states that the relevant statutes and rules governing the judicial foreclosure process in South Carolina speak for themselves, and denies any allegations inconsistent therewith.

164. Plaintiff denies the allegations in Paragraph 164.

165. Paragraph 165 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies the allegations in Paragraph 165.

166. With respect to Paragraph 166, Plaintiff states that the referenced assignments speak for themselves and deny any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 166.

167. Plaintiff denies the allegations in Paragraph 167.

168. Plaintiff denies the allegations in Paragraph 168.

169. With respect to Paragraph 169, Plaintiff states that its foreclosure Complaint speaks for itself and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 169.

170. With respect to Paragraph 170, Plaintiff states that its foreclosure Complaint speaks for itself and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 170.

171. With respect to paragraph 171, Plaintiff states that the referenced assignments speak for themselves and denies any allegations inconsistent therewith. Plaintiff lacks sufficient knowledge to form a belief as to the contents of the referenced MERS Milestones Report, and therefore denies such allegations. Plaintiff denies the remaining allegations in Paragraph 171.

172. Paragraph 172 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

173. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations in Paragraph 173, and therefore denies such allegations.

174. Plaintiff denies the allegations in Paragraph 174.

175. Plaintiff denies the allegations in Paragraph 175.

176. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations in Paragraph 176, and therefore denies such allegations.

177. Plaintiff denies the allegations in Paragraph 177 of the Complaint.

178. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations in Paragraph 178, and therefore denies such allegations.

179. Plaintiff denies the allegations in Paragraph 179 to the extent they assert that the endorsements on the Note are forged. Plaintiff lacks sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 179, and therefore denies such allegations.

180. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations in Paragraph 180, and therefore denies such allegations.

181. With respect to Paragraph 181, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith. Plaintiff denies the allegations regarding the “chain of title” of the Note and Mortgage.

182. With respect to Paragraph 182, Plaintiff states that any agreements or documents evidencing the referenced transactions speak for themselves and Plaintiff denies any allegations inconsistent therewith.

183. Paragraph 183 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

184. Plaintiff denies the allegations in Paragraph 184.

185. Plaintiff denies the allegations in Paragraph 185.

186. Paragraph 186 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

187. Paragraph 187 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

188. Paragraph 188 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

189. Paragraph 189 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

190. Paragraph 190 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

191. Plaintiff denies the allegations in Paragraph 191.

192. Paragraph 192 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

193. Paragraph 193 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

194. Plaintiff denies the allegations in Paragraph 194.

195. Paragraph 195 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

196. Plaintiff denies the allegations in Paragraph 196.

197. Plaintiff denies the allegations in Paragraph 197.

198. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 198, and therefore denies such allegations.

199. Plaintiff denies the allegations in Paragraph 199.

200. Plaintiff denies the allegations in Paragraph 200.

201. With respect to Paragraph 201, Plaintiff states that the disclosures made to Defendants at the time of origination speak for themselves and Plaintiff denies any allegations

inconsistent therewith. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 201, and therefore denies such allegations.

202. Plaintiff denies the allegations in Paragraph 202.

203. With respect to Paragraph 203, the foreclosure Complaint speaks for itself and Plaintiff denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations in Paragraph 203.

204. Paragraph 204 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

205. Paragraph 205 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

206. Paragraph 206 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

207. With respect to Paragraph 207, Plaintiff states that the foreclosure Complaint speaks for itself and denies any allegations inconsistent therewith. Defendant denies the remaining allegations in Paragraph 207.

208. Paragraph 208 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

209. Plaintiff denies the allegations in Paragraph 209 of the Complaint.

210. Paragraph 210 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

211. Paragraph 211 states no new allegations and no response is required; to the extent a response is required, such allegations are denied.

212. Plaintiff denies the allegations in Paragraph 212.

213. Plaintiff denies the allegations in Paragraph 213.

214. Plaintiff denies the allegations in Paragraph 214.

215. Plaintiff denies the allegations in Paragraph 215.

216. Plaintiff denies the allegations in Paragraph 216.

217. Plaintiff denies the allegations in Paragraph 217.

218. Paragraph 218 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

219. Plaintiff denies the allegations in Paragraph 219.

220. Plaintiff denies the allegations in Paragraph 220.

221. Plaintiff denies the allegations in Paragraph 221.

222. Plaintiff denies the allegations in Paragraph 222.

223. Plaintiff denies the allegations in Paragraph 223.

224. Plaintiff denies the allegations in Paragraph 224.

225. Plaintiff denies the allegations in Paragraph 225.

226. Plaintiff denies the allegations in Paragraph 226.

227. Plaintiff denies the allegations in Paragraph 227.

228. Plaintiff denies the allegations in Paragraph 228.

229. Plaintiff denies the allegations in Paragraph 229.

230. Plaintiff denies the allegations in Paragraph 230.

231. Plaintiff denies the allegations in Paragraph 231.

232. Plaintiff denies the allegations in Paragraph 232.

233. Paragraph 233 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

234. Paragraph 234 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

235. Paragraph 235 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

236. Paragraph 236 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

237. Paragraph 237 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

238. Paragraph 238 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

239. Paragraph 239 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

240. Paragraph 240 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

241. Paragraph 241 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

242. Paragraph 242 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

243. Paragraph 243 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

244. Paragraph 244 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

245. Paragraph 245 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

246. Paragraph 246 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

247. Plaintiff denies the allegations in Paragraph 247.

248. Paragraph 248 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

249. Paragraph 249 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

250. Paragraph 250 states no new allegations and no response is required. To the extent a response is required, such allegations are denied.

251. Plaintiff denies the allegations in Paragraph 251.

252. Plaintiff denies the allegations in Paragraph 252.

253. Plaintiff denies the allegations in Paragraph 253.

254. Plaintiff denies the allegations in Paragraph 254.

255. Plaintiff denies the allegations in Paragraph 255.

256. Plaintiff denies the allegations in Paragraph 256.

257. Plaintiff denies the allegations in Paragraph 257.

258. Plaintiff denies the allegations in Paragraph 258.

259. Plaintiff denies the allegations in Paragraph 259.

260. Plaintiff denies the allegations in Paragraph 260.

261. Plaintiff denies the allegations in Paragraph 261.

262. Plaintiff denies the allegations in Paragraph 262.

263. Plaintiff denies the allegations in Paragraph 263.

264. Plaintiff denies that Defendants are entitled to the relief set forth in Paragraph 264.

265. Plaintiff denies that Defendants are entitled to the relief set forth in Paragraph 265.

266. Paragraph 266 states no new allegations and no response is required. To the extent a response is required, such allegations are denied.

267. Plaintiff denies the allegations of Paragraph 267.

268. Plaintiff denies the allegations in Paragraph 268.

269. Plaintiff denies the allegations in Paragraph 269.

270. Plaintiff denies the allegations in Paragraph 270.

271. Plaintiff denies the allegations in Paragraph 271.

272. Plaintiff denies the allegations in Paragraph 272.

273. Plaintiff denies the allegations in Paragraph 273.

274. Plaintiff denies the allegations in Paragraph 274.

275. Plaintiff denies the allegations in Paragraph 275.

276. Plaintiff denies the allegations in Paragraph 276.

277. Plaintiff denies the allegations in Paragraph 277.

278. Plaintiff denies the allegations in Paragraph 278.

279. Plaintiff denies the allegations in Paragraph 279.

280. Plaintiff denies the allegations in Paragraph 280.

281. Plaintiff denies the allegations in Paragraph 281.

282. Plaintiff denies the allegations in Paragraph 282.

283. Plaintiff denies the allegations in Paragraph 283.

284. Plaintiff denies the allegations in Paragraph 284.

285. Plaintiff denies the allegations in Paragraph 285.

286. Plaintiff denies the allegations in Paragraph 286.

287. With respect to Paragraph 287, Plaintiff states that the foreclosure Complaint speaks for itself. Plaintiff denies the remaining allegations in Paragraph 287.

288. Plaintiff denies the allegations in Paragraph 288.

289. Plaintiff denies the allegations in Paragraph 289.

290. Plaintiff denies the allegations in Paragraph 290.

291. Plaintiff denies the allegations in Paragraph 291.

292. Plaintiff denies the allegations in Paragraph 292.

293. Plaintiff denies the allegations in Paragraph 293.

294. Plaintiff denies the allegations in Paragraph 294.

295. Plaintiff denies the allegations in Paragraph 295.

296. Plaintiff denies the allegations in Paragraph 296.

297. With respect to Paragraph 297, Plaintiff states that the foreclosure Complaint speaks for itself. Plaintiff denies the remaining allegations in Paragraph 297.

298. Plaintiff denies the allegations in Paragraph 298.

299. Plaintiff denies the allegations in Paragraph 299.

300. Plaintiff denies the allegations in Paragraph 300.

301. Plaintiff denies the allegations in Paragraph 301.

302. Plaintiff denies the allegations in Paragraph 302.

303. Plaintiff denies the allegations in Paragraph 303.

304. Plaintiff denies the allegations in Paragraph 304.

305. Plaintiff denies the allegations in Paragraph 305.

306. Plaintiff denies the allegations in Paragraph 306.

307. Paragraph 307 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

308. Paragraph 308 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

309. Plaintiff denies the allegations in Paragraph 309.

310. Plaintiff denies that Defendants are entitled to any of the relief requested in Paragraph 310.

311. Plaintiff denies that Defendants are entitled to any of the relief requested in Paragraph 311.

312. Paragraph 312 states no new allegations and no response is required. To the extent a response is required, such allegations are denied.

313. Plaintiff denies the allegations in Paragraph 313.

314. Plaintiff denies the allegations in Paragraph 314.

315. Plaintiff denies the allegations in Paragraph 315.

316. Plaintiff denies the allegations in Paragraph 316.

317. Plaintiff denies the allegations in Paragraph 317.

318. Plaintiff denies the allegations in Paragraph 318.

319. Plaintiff denies the allegations in Paragraph 319.

320. Plaintiff denies the allegations in Paragraph 320.

321. Paragraph 321 states no new allegations and no response is required. To the extent a response is required, such allegations are denied.

322. Paragraph 322 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff admits that the relationship between mortgagor and mortgagee is contractual.

323. Plaintiff denies the allegations in Paragraph 323.

324. Plaintiff denies the allegations in Paragraph 324.

325. Plaintiff denies the allegations in Paragraph 325.

326. Plaintiff denies the allegations in Paragraph 326.

327. Plaintiff denies the allegations in Paragraph 327.

328. Plaintiff denies the allegations in Paragraph 328.

329. With respect to Paragraph 329, Plaintiff denies that Defendants have made all of their payments for the subject mortgage loan.

330. Plaintiff denies the allegations in Paragraph 330.

331. Plaintiff denies the allegations in Paragraph 331.

332. Plaintiff denies the allegations in Paragraph 332.

333. Paragraph 333 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

334. Plaintiff denies the allegations in Paragraph 334.

335. Paragraph 335 states no new allegations and no response is required. To the extent a response is required, Plaintiff denies such allegations.

336. Plaintiff denies the allegations in Paragraph 336.

337. Plaintiff denies the allegations in Paragraph 337.

338. Plaintiff denies the allegations in Paragraph 338.

339. Plaintiff denies the allegations in Paragraph 339.

340. Plaintiff denies the allegations in Paragraph 340.

341. Plaintiff denies the allegations in Paragraph 341.

342. Plaintiff denies the allegations in Paragraph 342.

343. Plaintiff denies the allegations in Paragraph 343.

344. Plaintiff denies the allegations in Paragraph 344.

345. Plaintiff denies that Defendants are entitled to the relief sought in Paragraph 345.

346. Paragraph 346 states no new allegations and no response is required. To the extent a response is required, Plaintiff denies such allegations.

347. Upon information and belief, Plaintiff admits that the loan servicer for the subject loan furnishes information about the loan to credit reporting agencies. Plaintiff denies the remaining allegations in Paragraph 347.

348. Plaintiff denies the allegations in Paragraph 348.

349. Paragraph 349 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

350. Plaintiff denies the allegations in Paragraph 350.

351. Paragraph 351 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

352. Paragraph 352 states no new allegations and no response is required. To the extent a response is required, Plaintiff denies such allegations.

353. Plaintiff admits that Defendants own the property subject to Plaintiff's mortgage. Plaintiff denies the remaining allegations in Paragraph 353.

354. Paragraph 354 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

355. Paragraph 355 states a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

356. Plaintiff denies the allegations in Paragraph 356.

357. Plaintiff denies the allegations in Paragraph 357.

358. Plaintiff denies the allegations in Paragraph 358.

359. Plaintiff denies that Defendants are entitled to the relief sought in Paragraph 359.

360. Plaintiff denies the allegations in Paragraph 360.

361. Paragraph 361 states no new allegations and no response is required. To the extent a response is required, Plaintiff denies such allegations.

362. With respect to Paragraph 362, Plaintiff states that its pleadings and any other statements regarding Defendants speak for themselves and denies any allegations inconsistent therewith.

363. With respect to Paragraph 363, Plaintiff states that its pleadings and any other statements regarding Defendants speak for themselves and denies any allegations inconsistent therewith.

364. Plaintiff denies the allegations in Paragraph 364.

365. Plaintiff denies the allegations in Paragraph 365.

366. Plaintiff denies the allegations in Paragraph 366.

367. Plaintiff denies the allegations in Paragraph 367.

368. Plaintiff denies the allegations in Paragraph 368.

369. Plaintiff denies that Defendants are entitled to the relief asserted in Paragraph 369.

370. Paragraph 370 states no new factual allegations and no response is required. To the extent a response is required, Plaintiff denies the allegations in Paragraph 370.

371. Upon information and belief, Plaintiff admits that the loan servicer for the subject loan furnishes information about the loan to credit reporting agencies. Plaintiff denies the remaining allegations in Paragraph 371.

372. Plaintiff denies the allegations in paragraph 372.

373. Paragraph 373 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

374. Plaintiff denies that Defendants are entitled to the relief requested in paragraph 374.

375. Plaintiff denies the allegations in paragraph 375.

376. Plaintiff denies the allegations in paragraph 376.

377. Paragraph 377 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

378. Plaintiff denies that Defendants are entitled to the relief requested in paragraph 378.

379. Plaintiff denies the allegations in paragraph 379.

380. Paragraph 380 states a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies such allegations.

381. Plaintiff denies that Defendants are entitled to the relief requested in paragraph 381.

382. Paragraph 382 states no new factual allegations and no response is required. To the extent a response is required, Plaintiff denies such allegations.

383. With respect to Paragraph 383, Plaintiff admits that Defendants have sent correspondence to the loan servicer, to which the loan servicer has properly responded. The remaining allegations in Paragraph 383 state a legal conclusion to which no response is required. To the extent a response is required, such allegations are denied.

384. Plaintiff denies the allegations in Paragraph 384.

385. Plaintiff admits that it claims an interest in the subject property by virtue of the subject Mortgage. Plaintiff denies the remaining allegations in Paragraph 385.

386. Plaintiff denies the allegations in Paragraph 386.

387. Plaintiff denies that Defendants are entitled to the relief requested in Paragraph 387.

388. Plaintiff denies that Defendants are entitled to any of the relief sought in the Prayer for Relief. Plaintiff denies each and every allegation not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Defendants fail to state a claim upon which relief may be granted.

2. The claims alleged by Defendants have been litigated and decided in favor of the lender in prior cases, and are barred, in whole or in part by *res judicata* and collateral estoppel.

3. Defendants' claims are barred or limited by the applicable statutes of limitations.

4. Defendants' claims are barred by waiver and estoppel as a result of Defendants' statements and actions in connection with their execution of the loan documents and a subsequent modification agreement.

5. Defendants' claims challenging the enforceability of the loan are barred by the doctrine of laches.

6. Any statements allegedly made by Plaintiff were true and not defamatory.

7. Any statements allegedly made by Plaintiff are protected by an absolute or conditional privilege.

8. Defendants' breach of contract claim is barred as a result of Defendants' own material breach.

9. To the extent Defendants assert a demand for punitive damages, Plaintiff specifically incorporates by reference any and all standards of limitations regarding the

determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

10. To the extent that Defendants seek punitive damages, Plaintiff affirmatively pleads the following in regard to punitive damages: (a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution; (b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution; (c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise, and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution; (d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution; and (e) Defendants' claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

RESERVATION OF ADDITIONAL DEFENSES

In addition to the defenses set forth herein, Plaintiff alleges presently that it has insufficient knowledge or information upon which to form a belief whether it may have additional, as yet

unstated, affirmative defenses. Accordingly, Plaintiff reserves the right to amend this Answer and to assert additional affirmative defenses that may become known to it through further investigation, discovery or otherwise

submitted, this 10th day of September, 2021.

BRADLEY ARANT BOULT CUMMINGS LLP

/s/ G. Benjamin Milam

G. Benjamin Milam, Esq. (SC Bar No. 80311)

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Attorney for Plaintiff, Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust; Wilmington Savings Fund Society, FSB, in its individual capacity; Christiana Trust Company of Delaware; Federal National Mortgage Association; and DLJ Mortgage Capital, Inc.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Wilmington Savings Fund Society, FSB, not
in its individual capacity, but solely as owner
trustee for CSMC 2018-RPL6 Trust

C/A No: 2019-CP-07-02279

Plaintiff

vs.

Rex A. Field and Tracy L. Field
Defendants/Counterclaimants/
Third-Party Plaintiffs

**DEFENDANTS' REPLY TO PLAINTIFF'S REPLY
TO DEFENDANTS SECOND AMENDED ANSWER
AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND
THIRD-PARTY COMPLAINT**

vs.

Federal National Mortgage Association (Fannie Mae)
Wilmington Savings Fund Society, FSB, (in its individual capacity)
Christiana Trust Company of Delaware
DLJ Mortgage Capital Inc.,
and Unknown Defendants 1-10

Third-Party Defendants

Rex and Tracy Field ("Defendants" or "Counterclaimants" or "Third-Party Plaintiffs") hereby serve its reply to Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust ("Plaintiff"). The above captioned reply "Defendants' Reply to Plaintiff's Reply to Defendants' Second Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint ("Reply") states as follows:

Plaintiff's Affirmative Defenses numbered 1-10 of their Reply relate to Defendants' Second Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint and require no response.

To the extent a response is required, Defendants/Counterclaimants deny the allegations in the Affirmative Defenses numbered 1-10. Because Plaintiff/Counter-Defendant makes no new factual allegations and/or the Plaintiff's/Counter-Defendant's Affirmative Defenses fail as a matter of law,

no response is required. To the extent a response is required, such allegations and Affirmative Defenses are denied.

Defendants/Counterclaimants make this reply without waiving and, in fact, specifically preserving, all objections and defenses to the claims asserted in the Plaintiff's Reply to "Defendants' Second Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint". Because the Affirmative Defenses fail as a matter of law, these legal theories are insufficient to support the Affirmative Defenses and, therefore, necessarily fail as a matter of law. The Plaintiff's/Counter-Defendant's Affirmative Defenses lack the legal sufficiency of a claim and do not set forth sufficient allegations entitling the Plaintiff/Counter-Defendant to relief on any theory of the case.

The Plaintiff's Motion for Summary Judgment was denied. The Plaintiff's/Counter-Defendant's and Third-Party Defendants' Motion to Dismiss was denied on the same failed legal theories and arguments that are now duplicated in their Affirmative Defenses in their Reply/Answer.

RESERVATION OF ADDITIONAL DEFENSES

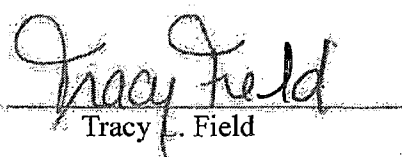
In addition to the Defendants'/Counterclaimants'/Third-Party Plaintiffs' defenses set forth, Defendants allege presently that it has insufficient knowledge or information upon which to form a belief whether it may have additional, as yet unstated, affirmative defenses. Accordingly, Defendants/Counterclaimants/Third-Party Plaintiffs reserve the right to amend thier Second Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint and to assert additional affirmative defenses that may become known to it through further investigation, discovery or otherwise.

Respectfully submitted,

This day, October 8, 2021



Rex A. Field
PO Box 975
St. Helena, SC 29920



Tracy L. Field

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Wilmington Savings Fund Society, FSB, not
in its individual capacity, but solely as owner
trustee for CSMC 2018-RPL6 Trust
Plaintiff

C/A No: 2019-CP-07-02279

vs.

Rex A. Field and Tracy L. Field
Defendants/Counterclaimants/
Third-Party Plaintiffs

**OBJECTION TO MOTION TO EXTEND TIME
FOR RESPONSES TO DEFENDANTS'
INTERROGATORIES AND FOR REQUEST
FOR PRODUCTION OF DOCUMENTS**

vs.

Federal National Mortgage Association (Fannie Mae)
Wilmington Savings Fund Society, FSB, (in its individual capacity)
Christiana Trust Company of Delaware
DLJ Mortgage Capital Inc.,
and Unknown Defendants 1-10

The Honorable Robert J. Bonds

Third-Party Defendants

YOU WILL PLEASE TAKE NOTICE that Rex and Tracy Field ("Defendants" or "Counterclaimants" or "Third-Party Plaintiffs") hereby serve its Objection to Plaintiff Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust ("Plaintiff") and Third-Party Defendants Federal National Mortgage Association ("Fannie Mae"); Wilmington Savings Fund Society, FSB in its individual capacity ("Wilmington"); Christiana Trust Company of Delaware ("CHRISTIANA"); and DLJ Mortgage Capital, Inc ("DLJMC") (Plaintiff and the Third-Party Defendants collectively, are the "Moving Parties"). Defendants/Third-Party Plaintiffs hereby object to an extension of time through November 24, 2021 for the Moving Parties to serve responses and/or objections to Defendants/Third-Party Plaintiffs outstanding interrogatories and requests for production. To date, Moving Parties have not served any responses and/or objections to the

Interrogatories or Requests for Production, the responses were due October 25, 2021. This Objection is made pursuant to The Honorable Robert Bonds' Order filed on August 26, 2021 ("Order") on the matter before the Court on August 12, 2021 **Exhibit A**, and pursuant to the provisions of Rules 1, 26, 33, 34, 36, 37, SCRCP, and corresponding case law. In support of the above captioned objection ("Objection"), the Defendants/Third-Party Plaintiffs state as follows:

1. On September 24, 2021, pursuant to the Order, the Defendants/Third-Party Plaintiffs served separate discovery requests on each of the Moving Parties. The deadline for the Plaintiff and Third-Party Defendants to respond and/or object to amended or new requests for admission, amended interrogatories, and request for production was October 25, 2021.
 - a). Defendants served on the Plaintiff 17 amended Requests for Admission, 6 Standard Interrogatories, 42 amended General Interrogatories, and 46 Requests for Production. On October 25, 2021, Plaintiff served objections on 15 out of 17 requests for admissions deemed as irrelevant. To date, Plaintiff has failed to respond or object to any of the interrogatories and failed to respond or object to any of the requests for production.
 - b). Third-Party Plaintiffs served on Third-Party Defendant Fannie Mae 12 amended Requests for Admission, 6 Standard Interrogatories, 37 amended General Interrogatories, and 45 Requests for Production. On October 25, 2021, Fannie Mae served objections on **all** 12 requests for admissions deemed as irrelevant. To date, Fannie Mae has failed to respond or object to **any** of the interrogatories and has failed to respond or object to **any** of the requests for production.
 - c). Third-Party Plaintiffs served on Third-Party Defendant Wilmington Savings Fund Society, FSB, (in its individual capacity) 17 Requests for Admission, 6 Standard Interrogatories, 35 amended General Interrogatories, and 12 Requests for Production. On October 25, 2021, Wilmington served objections on 15 out of 17 requests for admissions deemed as irrelevant. To date, Wilmington has failed to respond or object to **any** of the interrogatories and has failed to respond or object to **any** of the requests for production.

- d). Third-Party Plaintiffs served on Third-Party Defendant Christiana Trust Company of Delaware ("CHRISTIANA") 12 Requests for Admission, 6 Standard Interrogatories, 35 amended General Interrogatories, and 12 Requests for Production. On October 25, 2021, CHRISTIANA served objections on **all** 12 requests for admissions deemed as irrelevant. To date, CHRISTIANA has failed to respond or object to **any** of the interrogatories and has failed to respond or object to **any** of the requests for production.
- e). Third-Party Plaintiffs served on Third-Party Defendant DLJ Mortgage Capital Inc., ("DLJMC") 12 Requests for Admission, 6 Standard Interrogatories, 35 amended General Interrogatories, and 12 Requests for Production. On October 25, 2021, DLJMC served objections on **all** 12 requests for admissions deemed as irrelevant. To date, DLJMC has failed to respond or object to **any** of the interrogatories and has failed to respond or object to **any** of the requests for production.
2. Judge Bonds August 26, 2021 ("Order") states in part: "IT IS THEREFORE ORDERED AND ADJUDGED: ... I). Defendants may serve amended Interrogatories and Requests for Production within 14 days following the service of Plaintiff's Reply and Third-Party Defendants' Answer to the Second Amended Answer, Counterclaims, and Third-Party Complaint. **Plaintiff and Third-Party Defendants shall file responses and/or objections to Defendant's Interrogatories and Requests for Production within 30 days from the date of service of such amended Interrogatories and Requests for Production.**
 3. No other Circuit Court Judge in South Carolina, other than Judge Bonds, has the authority or discretion to enlarge the period of time because **"it is the long-standing rule in this State that a Circuit Judge cannot modify or reverse an order of another Circuit Judge."**
 4. The Plaintiff is represented by two law firms, J. Martin Page, Esq. of BELL CARRINGTON & PRICE, LLC (Counsel) and G. Benjamin Milam, Esq. of BRADLEY ARANT BOULT CUMMINGS LLP (Co-counsel), Mr. Milam also purports to represent the Third-Party

Defendants, Fannie Mae, Wilmington (in its individual capacity), CHRISTIANA, and DLJMC. Mr. Milam asserts that the basis for the motion for the extension of time is that he's too busy and that there are a large number of requests that he has been either unable to object or serve responses pursuant to the Order or the mandates by the South Carolina Rules of Civil Procedure. This contention is seriously misleading. When, in fact, the Defendants/Third-Party Plaintiff's requested discovery is proper, timely, and in compliance with SCRCR Rule 26, 33, 34, and 36. The Moving Parties cannot now be heard to justify their requested extension based upon the existence of its own foreseeable circumstances. Clearly, then, the Moving Parties obligation to respond to interrogatories and requests for production does not provide a basis or show good cause for a one-month extension. The Moving Parties attempt to justify an extension based upon "relatively large number of discovery requests and counsel's heavy schedule" is similarly lacking in merit.

5. On Friday, October 22, 2021, one business day before the deadline on Monday, October 25, 2021, Counsel for the Moving parties reached out to Defendants to request an extension. The Plaintiff/Third Party Defendants are seeking permission from the Defendants to contravene the Order and violate the mandates of the SCRCR, as such, consent was denied.

6. **STATEMENT OF LAW**

A. As to Purpose of Discovery:

The entire thrust of all discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *Samples v. Mitchell*, 329 S.C. 105, 113-114, 495 S.E.2d 213, 217 (Ct. App. 1997). Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Id.* The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed. In *Re Anonymous Member of South Carolina Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001). In

this respect the discovery process is designed to make a trial less a game of blind man's bluff and more of a fair contest with the basic issues and facts disclosed to the fullest practicable extent. Id.

B. As to Scope of Discovery:

Rule 26(b)(1) of the South Carolina Rules of Civil Procedure states as follows: Parties may obtain discovery regarding any subject matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identify and location of persons having knowledge of any subject matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

C. Answering Party's Duty to Answer Discovery Requests:

Rule 33(a), SCRCP, states, in pertinent part: "Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer" (emphasis added). Rule 33(a) further requires that a party upon whom interrogatories are served "shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories [or] within 45 days after service of the summons and complaint upon that defendant" (emphasis added).

Rule 34(b), SCRCP, provides that a party upon whom a request for production is served "shall serve a written response within 30 days after the service of the request [or] within 45 days of service of the summons and compliant." Rule 34(b) further requires that a party's "response shall state with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to . . . in which event the reasons for

objection shall be stated” (emphasis added).

Rule 37(d)(2), SCRCP, provides that:

The failure to act as described in this subdivision [such as by failing to serve answers or objections to interrogatories or requests for production] may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c) (emphasis added).

D. Effect of an Answering Party’s Failure to Object in a Timely Manner:

Rule 1, SCRCP, provides that the rules of civil procedure “govern the procedure in all South Carolina courts in all suits of a civil nature. . . They shall be construed to secure the just, speedy, and inexpensive determination of every action” (emphasis added). The rules of civil procedure relating to discovery requests are couched in mandatory terms and provide specific timeframes in which discovery requests must be answered or objected to. Delays in discovery fly in the face of these rules and impede the efforts of the courts to assure the just, speedy, and inexpensive determination of every action.

It has been held in federal court that where a defendant’s counsel failed to object to interrogatories within the plain mandate of Rule 33, FRCP, relating to the time limit for filing objections, the court had no alternative but to grant plaintiff’s motions to compel answers, notwithstanding that much of the information sought was not relevant to the issues in the suit and notwithstanding that the interrogatories were harassing and vexatious. See *Cephas v. Busch*, 47 F.R.D. 371 (E.D. Pa. 1969).

Although state courts are bound by the South Carolina Rules of Civil Procedure, state courts may look to the federal rules for guidance since our rules are patterned by the federal civil rules. Indeed, our Court of Appeals has held that in the absence of prior state law on the issue in question, federal cases interpreting the rule are persuasive. See *Unisun v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000). It is true that the current Rule 33(b)(4), FRCP, specifically states that late objections to interrogatories are waived. However, there is ample pre-1993

amendment case law which held to this position in the federal courts. See *Howard v. Milam*, 905 F.2d 1529 (4th Cir. W.Va. 1990) UNPUBLISHED OPINION; also *Dollar v. Long Mfg.*, 561 F.2d 613 (5th Cir. Ga. 1977); and *Cephas v. Busch*, *supra*.

Moreover, when there are no South Carolina cases addressing the issue, our courts have looked to neighboring states and their decisions where there is an identical or similar rule. See *Unisun Insurance v. Hawkins*, *supra*. In Georgia, O.C.G.A. § 9-11-33 has virtually identical language to Rule 33, SCRCF. Section 9-11-33 in Georgia reads in pertinent part that:

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant.

Georgia cases hold that the failure to file a timely objection to properly served interrogatories constitutes a waiver of the right to object. See *Albers v. Brown*, 177 Ga. App. 620, 360 S.E.2d 260 (1986); *Smith v. National Bank of Georgia*, 182 Ga. App. 55, 354 S.E.2d 678 (1987).

APPLICATION TO THIS CASE

7. In the present case, Plaintiff and the Third-Party Defendants have simply ignored its duties to respond to discovery requests pursuant to the Order and the mandates of the SCRCF. Had Judge Bonds not granted Plaintiff and the Third-Party Defendants counsel the courtesy of an extension through October 25, 2021, its answers to Defendants/Third-Party Plaintiffs' first discovery requests due on July 6, 2021, would be 110 days past due. During the interim, Defendants were forced to defend a Motion to Dismiss and a Motion for Summary Judgment without the benefit of discovery that Plaintiff and the Third-Party Defendants' counsel knew very well was germane to issues of those motions. Allowing Plaintiff and the Third-Party Defendants to delay filing discovery responses for another month permitting it to file partial or incomplete responses, or to still file late objections, would clearly hinder the "just, speedy and inexpensive

determination of every action” and would therefore require a construction of the rules that does not meet the requirements of Rule 1.

8. The language of Rules 33 and 34 is couched in mandatory terms and compliance with their requirements and timeframes is not voluntary or discretionary according to a party’s litigation strategy or desire to avoid disclosing information that is unhelpful to its case. Permitting the Moving Parties to continue refusing to provide full and complete responses, or permitting it to file late objections would also eviscerate the mandatory language of Rules 33 and 34, granting all the Moving Parties a *de facto* extension to answer discovery until after it rules the late objections, thereby rewarding Plaintiff and the Third-Party Defendants dilatory tactics. Other trial judges in South Carolina have ruled similarly when presented with discovery violations of this nature. See Judge Kimball’s Order filed April 14, 2014, in the case captioned Allen v. Family Dollar Stores of South Carolina, Inc., et. al., C.A. No. 2012-CP-46-4124, attached hereto as **Exhibit B**. See also Judge Newman’s Order Compelling Discovery filed June 26, 2003, in case captioned Like v. Stonehedge Construction Company, Inc, et. al., C.A. No. 2002-CP-32- 3562, attached hereto as **Exhibit C**.
9. Memorandum from Judge Roger Young dated August 29, 2019. “Boilerplate or generalized objections are tantamount to no objection at all”, attached hereto as **Exhibit D**.
10. The trial court has broad discretion in ruling on discovery issues pursuant to Rule 37, SCRPC. See Dunn v. Dunn, 298 S.C. 499, 381 S.E.2d 734 (1989) (holding that a trial judge’s ruling on discovery matters will not be disturbed on appeal absent a clear abuse of discretion). Indeed, Rule 37(d)(2) provides in pertinent part that:

If a party fails “(2) to serve answers or objections to interrogatories submitted under Rule 33 . . . or (3) to serve a written response to a request for inspection submitted under Rule 34 . . . , the court in which the action is pending on motion may make such orders in regard to the failure as are just

Rule 37(d)(2) also provides that:

The failure to act as described in this subdivision [such as by failing to serve answers or objections to interrogatories or requests for production] *may not be excused on the ground that the discovery sought is objectionable* unless the party failing to act has applied for a protective order as provided by Rule 26(c) (emphasis added).

In this case, since the Moving Parties did not serve timely answers or objections as required by Rule 33 and Rule 34, then Rule 37 provides specific authority for the court to hold that the late objections are waived at the Court's discretion. The Court can also award attorney's fees and/or the expenses of defending this motion, and stay the pending action until such time as they have complied with Rules 33 and 34. Each of those provisions would be appropriate, not only to assist Defendants/Third-Party Plaintiffs in obtaining "the just, speedy, and inexpensive determination of this action", but also in deterring similar conduct by litigants in the future. When a party engages in discovery abuse, discovery sanctions are imposed "to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998), citing *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 545, 489 S.E.2d 679, 683 (Ct.App.1997) (quoting *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 96 S.Ct. 2778, 49 L.Ed.2d 747 (1976)).

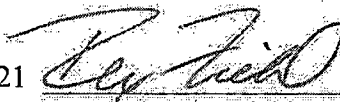
SUMMARY

Plaintiff and the Third-Party Defendants are in gross violation of the Order and of the mandates of Rules 33 and 34 in that it has simply refused to respond to discovery requests that was served on them on September 24, 2021. Moving parties have failed to carry its burden of demonstrating the existence of "good cause" to extend the time for responses and objections to interrogatories and requests for production. Indeed, the record reflects that the purported justification for delay was clearly foreseeable at the time the Order was entered and is solely

attributable to Moving Parties own lack of diligence. In assessing Moving Parties' request for an extension, this Court should also give consideration to Moving Parties' lack of diligence to date and inexcusable delay. Accordingly, Defendants/Third-Party Plaintiffs' would seek an order of this court compelling full and complete responses and **ordering that any objections to Defendants/Third-Party Plaintiffs discovery requests are waived.** In addition, Defendants/Third-Party Plaintiffs would ask that the above captioned case be stayed until such time as Plaintiff and the Third-Party Defendants have fully and completely complied with the Order, Rules 33, and 34, together with an award of attorney fees and/or expenses for this delay. Moving Parties own lack of diligence has been the primary factor underlying the discovery issues. For all of these reasons, Moving Parties have failed to carryy its burden of establishing good cause for the requested extension, and their motion should be denied.

Respectfully submitted,

This day, October 28, 2021



Rex A. Field
PO Box 975
St. Helena, SC 29920



Tracy L. Field

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No.: 2019-CP-07-02279

Wilmington Savings Fund Society, FSB, not)
in its individual capacity, but solely as owner)
trustee for CSMC 2018-RPL6 Trust,)

Plaintiff,)

v.)

Rex A. Field, et al,)

Defendants.)

ORDER

v.)

Wilmington Savings Fund Society, FSB, not)
in its individual capacity, but solely as owner)
trustee for CSMC 2018-RPL6 Trust, Federal)
National Mortgage Association, et al,)

Counterclaim)

Defendants/Third-)

Party Defendants.)

This matter came before the Court to be heard on August 12, 2021 on the following motions: 1) Defendant's Motion for Continuance and Objection to Motion for Summary Judgement, 2) Plaintiff's Motion to Dismiss Amended Answer and Counterclaims, 3) Defendant's Motion to Join Third Party Defendants, 4) Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, 5) Defendant's Motion to Dismiss for Lack of Personal Jurisdiction, 6) Plaintiff's Motion for Summary Judgement as to Foreclosure, 7) Defendant's Motion to Stay Pending Appeal, 8) Plaintiff's Motion to Stay Further Discovery Pending Ruling on Summary Judgement, 9) Defendant's Motion for Rule to Show Cause, 10) Defendant's Motion for a Continuance and to Deem Request for Admissions as Admitted. The Defendants, Rex. A. Field

and Tracy L. Field as well as counsel for Plaintiff and Third-Party Defendants were in attendance. Having reviewed the motions, pleadings, and other matters filed with the Court, having heard oral arguments, and being otherwise fully informed and advised, the Court finds and concludes as follows:

1. The Court retains jurisdiction over the motions currently pending before the Court, and a decision on the motions is not stayed by virtue of the Defendants' pending interlocutory appeal.

2. The Court has subject matter jurisdiction over this action, which was commenced on the date of filing the Summons and Complaint. *See* SCRCP 3; *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 346, 732 S.E.2d 395, 398 (2012). The Court further finds that the property which is the subject of this action is located in the state of South Carolina and that Defendants are residents of South Carolina, and the Court has personal jurisdiction over Defendants.

3. There is good cause to grant Defendants' Motion to Amend seeking to file the Second Amended Answer, Counterclaims, and Third-Party Complaint. The Second Amended Answer, Counterclaims, and Third-Party Claims will be deemed filed as of August 12, 2021. Plaintiff and Third-Party Defendants shall have 30 days to file their Reply and Answer, respectively, to the Second Amended Answer, Counterclaims, and Third-Party Complaint.

4. Plaintiff and Third-Party Defendants have failed to show good cause to dismiss the Defendants' Counterclaims and Third-Party Claims, and the Motion to Dismiss these claims is denied.

5. The Parties' submissions to the Court demonstrate disputed material issues of fact and law with respect to Plaintiff's foreclosure that cannot be resolved on a motion for summary judgment. Accordingly, Plaintiff's Motion for Summary Judgment as to Foreclosure is denied.

6. The Court will allow Plaintiff and Third-Party Defendants 45 days to file responses and/or objections to any previously served Requests to Admit.

7. Plaintiffs may serve amended Interrogatories and Requests for Production within 14 days following the service of Plaintiff's and Third-Party Defendants' responsive pleadings to the Second Amended Answer, Counterclaims, and Third-Party Complaint. Plaintiff and Third-Party Defendants shall then have 30 days from the date of service of such Interrogatories and Requests for Production to file responses and/or objections to Defendants' Interrogatories and Requests for Production.

8. The Court will continue the hearing as to Plaintiff's Motion to Join Third-Party Defendants to be rescheduled at a later date.

9. Defendants agreed to withdraw their Motion for Rule to Show Cause.

10. Defendant's Motion for Reconsideration of Judge Price's Order dated June 22, 2021 was not heard or ruled upon by this Court and is to be scheduled for hearing with Judge Price.

IT IS THEREFORE ORDERED AND ADJUDGED:

- A. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction is DENIED.
- B. Defendants' Motion to Dismiss for Lack of Personal Jurisdiction is DENIED.
- C. Defendants' Motion to Stay Pending Appeal is DENIED.
- D. Defendants' motions seeking a continuance as to Plaintiff's Motion for Summary Judgment are DENIED.
- E. Plaintiff's Motion for Summary Judgment is DENIED. In light of this ruling, Plaintiff's Motion to stay discovery pending a ruling on Summary Judgment is DENIED.

- F. Plaintiff and Third-Party Defendants' Motion to Dismiss Counterclaims and Third-Party Claims is DENIED.
- G. Defendants' Motion to Amend is GRANTED. The Second Amended Answer, Counterclaims, and Third-Party Claims is deemed filed as of August 12, 2021. Plaintiff and Third-Party Defendants shall file their Reply and Answer, respectively, to the Second Amended Answer, Counterclaims, and Third-Party Complaint by September 11, 2021.
- H. Plaintiff and Third-Party Defendants shall file responses and/or objections to any previously served Requests to Admit by September 26, 2021.
- I. Defendants may serve amended Interrogatories and Requests for Production within 14 days following the service of Plaintiff's Reply and Third-Party Defendants' Answer to the Second Amended Answer, Counterclaims, and Third-Party Complaint. Plaintiff and Third-Party Defendants shall file responses and/or objections to Defendant's Interrogatories and Requests for Production within 30 days from the date of service of such amended Interrogatories and Requests for Production.
- J. Defendants Motion to Deem Requests for Admission Admitted and Plaintiff's Motion to Stay Further Discovery are DENIED as moot in light of the Court's orders set forth above regarding discovery.
- K. Defendants' Motion for Rule to Show Cause has been withdrawn.
- L. Defendants' Motion to Join Third-Party Defendants is continued and will be rescheduled for hearing at a later date.

M. Defendant's Motion for Reconsideration of Judge Price's Order dated June 22, 2021 is continued until a hearing can be scheduled with Judge Price.

IT IS SO ORDERED.

[SIGNATURE PAGE TO FOLLOW]



Beaufort Common Pleas

Case Caption: Wilmington Savings Fund Society Fsb not in its individual , plaintiff, et al VS Rex A Field , defendant, et al
Case Number: 2019CP0702279
Type: Order/Form 4

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2021-08-25 10:29:40 page 6 of 6

ELECTRONICALLY FILED - 2021 Aug 28 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702279

EXHIBIT B

EXHIBIT E
FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4604124

Kenneth Allen

Kenneth James Allen

Family Dollar Stores Of
South Carolina Inc

Family Dollar Services
Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Peters, Murdaugh, Parker, Eltzroth &
Detrick

Attorney for: ☒ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/s. Jackson Kimball
Circuit Court Judge

3063
Judge Code

4/4/2014
Date

EXHIBIT E
For Clerk of Court Office Use Only

This judgment was entered on April 14, 2014, and a copy mailed first class or placed in the appropriate attorney's box on April 14, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Grady E. McMahan PO Box 11583 Rock Hill, SC 29731
William Franklin Barnes III PO Box 457 101 Mulberry
Street East Hampton, SC 29924-0457

ATTORNEY(S) FOR THE PLAINTIFF(S)

Sterling Graydon Davies PO Box 12519 Columbia, SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CASE NO.: 2012-CP-46-4124
	)	
KENNETH ALLEN AS PARENT AND	)	
GUARDIAN AD LITEM FOR KENNETH	)	
JAMES ALLEN, A MINOR OVER THE	)	
AGE OF 12,	)	
Plaintiff,	)	
	)	
v,	)	
	)	
FAMILY DOLLAR STORES OF SOUTH	)	
CAROLINA, INC., AND FAMILY DOLLAR	)	
SERVICES, INC.,	)	
Defendants,	)	

ORDER

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DAVID HARRINGTON
C.C.P. & GS
YORK COUNTY, SC

This matter came before me on March 13, 2014, upon plaintiff's motion to compel the defendants to answer Plaintiff's First Set of Interrogatories, and respond to Plaintiff's First Request for Production completely and without objection. The motion was served January 21, 2014.

The plaintiff served discovery on the defendants on May 14, 2013. Defendants' original counsel requested and was granted an extension to respond to the discovery request until July 18, 2013. Present counsel for the defendants was substituted by order dated on July 17, 2013. Counsel for plaintiff wrote to the defendants' counsel and stated that if discovery responses were not received within ten days, a motion to compel would be filed. Responses to the discovery were not received within ten days, and the present motion was filed.

On February 14, 2014, the defendants filed answers to Plaintiff's First Set of Interrogatories and responses to Plaintiff's First Request for Production. The defendants' responses to the discovery in the case contained responses which state, "[d]efendants object to this Interrogatory on the grounds that it is vague, and fails to reasonably define or limit the phrase 'substantially similar product' in the context of the Interrogatory". Defendants further objected to the Interrogatory on "the grounds that it is overly broad and unduly burdensome".

The defendants objected to other requests stating "[d]efendants object to this request to the extent it seeks information that is protected by the attorney/client privilege, the doctrine of attorney work product, or prepared in anticipation of litigation". The defendants have not identified by a privilege log, or other means, any documents which have been withheld on the claim of privilege.

Other discovery requests were claimed to be objectionable because the request "seeks

EXHIBIT E

information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”

Plaintiff asserts that the defendants, by failing to file timely responses to the discovery request, have waived the right to object to the discovery requests, and that therefore, they should be required to respond fully to the interrogatories and request for production. I agree.

Regarding the interrogatories, Rule 33, SCRPC, states in pertinent part: “Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.” The Rule further requires that interrogatories be answered within thirty days of the extension granted the defendants, or in this case, by July 18, 2013. In this instance, I find and conclude that have failed to raise a timely objection, in lieu of answer, and have waived the right to object. To rule otherwise would raise impediments and delays to discovery and the orderly and timely advancement of cases, and could result in prejudice to the requesting party.

In regard to objection to production of documents, Rule 34, SCRPC, states in pertinent part:

The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

Pursuant to the Rule, documents responsive to the Plaintiff's Request for Production, or objections thereto, should have been served or produced within thirty days, or by July 18, 2013. In this instance, I find and conclude that defendants have failed to raise a timely objection, in lieu of production or other appropriate response, and have waived the right to object. As already stated, to rule otherwise would raise impediments and delays to discovery, and the orderly and timely advancement of cases, as well as possible prejudice.

The defendants failed to comply with these requirements, and did not answer the interrogatories or respond to the request for production until after the motion to compel was filed. The time for objections to the discovery had long passed by the time the defendants served their responses and objections.

In *Curtis v. Time Warner Entertainment-Advance/Newhouse Partnership*, slip opinion (2013 WL 20099496), the U.S. District Court for the District of South Carolina found that similar boiler plate objections such as the ones made in this case were meaningless, and that objections must show specifically how the request is objectionable. This characterization is appropriately applied to

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defendant's responses in this case. The responses afford no clear basis for the plaintiff to seek compliance with the requests, and further, afford no specification of impropriety upon which the court could rule.

Additionally, the court in *Curtis* further found that the practice of objecting to discovery request followed by a response is unacceptable, because it leaves the requesting party uncertain as to whether or not the question has been answered. I agree, and defendants' answers following this mode of response is stricken.

In summary, I find and conclude that the defendants have waived the right to object to the plaintiff's discovery requests, except for any legitimate claim of privilege. The defendants, if they claim privilege as to any matter, are to serve a privilege log in accordance with Rule 26, SCRPC.

Based on the discussion herein, the defendants are required to answer all interrogatories and respond fully to the request for production by April 13, 2014.

AND IT IS SO ORDERED.

April 4, 2014


S. Jackson Kimball
Special Circuit Judge
York County

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EXHIBIT C

EXHIBIT E

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

David A. Like and Mary C. Like,)

Plaintiffs,)

Vs.)

Stonehedge Construction Company, Inc.,)

Walter G. Henegar, Home Pest Control Co.,)

Inc., Eddie Alton Harmon and Eva S.)

Harmon, Coldwell Banker, Tom Jenkins)

Realty, Inc. and James Sharpe,)

Defendants.)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2002-CP-32-3562

ORDER COMPELLING DISCOVERY

03 JUN 26 PM 3:24
FILED
CLERK OF COURT
LEXINGTON SC

I. Introduction

This matter is before the Court pursuant to the filing and service of a Motion to Compel Discovery against the Defendant, Stonehedge Construction Co., Inc. ("Stonehedge"). Plaintiffs in this action have sued Stonehedge for gross negligence and breach of warranty as the result of discovering what plaintiffs allege is a long-standing termite infestation and water damage to their home, purchased on September 24th, 2001. Plaintiffs filed suit and served the defendant, Stonehedge, on October 15th, 2002 by and through their registered agent, Frederick Gertz, who is an attorney. Discovery was served with the complaint as permitted by the rules, which was to be answered within forty-five (45) days. No extension was requested or given to counsel for Stonehedge to respond to the discovery sought, which consisted of interrogatories and requests to produce. Stonehedge did not answer the discovery until January 28th, 2003 and, moreover, filed late objections. Plaintiffs assert that they are entitled by the rules to have the defendant serve sworn responses to their interrogatories and ask the Court to hold that any objections to discovery, including the request that Stonehedge produce federal and state tax returns for the last

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EXHIBIT E

five (5) years, be deemed to have been waived. The defendant asserts that there is no rule, statute or case which holds that a failure to timely object results in a waiver of the right to object. For the reasons set forth herein, the Court is persuaded that the plaintiff's motion to compel should be granted.

II. Legal Discussion

The Court will address the issues raised by the plaintiffs *seriatim*. However, some general discussion of the civil rules pertaining to discovery is in order. It cannot be seriously challenged that discovery disputes and delays are a "cog in the judicial wheel" of the efforts of litigants to obtain their day in court. Indeed, the first rule of procedure under the South Carolina Rules is that "[t]hese rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity....*They shall be construed to secure the just, speedy, and inexpensive determination of every action.*" See Rule 1 SCRPC. Delays in discovery and the disputes surrounding "discovery wars" fly in the face of this rule and impede the efforts of the judiciary to assure the just, speedy and inexpensive determination of every action. Moreover it has been often said, "justice delayed is justice denied." Discovery delays and stonewalling are *de riguer* defense tactics that should not be tolerated by the courts. This Court will not abide such in its role to see that the civil rules of procedure are justly interpreted and enforced. It has been astutely observed by one of South Carolina's esteemed federal district court judges that:

Discovery abuse continues to foment a growing distrust among litigators. Some lawyers engage in Rambo-like tactics in contravention of the spirit of the discovery rules, unmasking their disdain for our judicial system. These lawyers consider discovery an unnecessary nuisance, rebelling against the idea of assisting opposing counsel in preparing their cases. Other lawyers, however, believe that the discovery rules are the greatest legal innovation of modern times. These lawyers understand that the true purpose behind the discovery rules is to level the playing field between litigants, regardless of their financial status. The poorest

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EXHIBIT E

plaintiff can force the greatest economic enterprise to share its knowledge of the case through disclosure of documents and testimony. This system of fair play is so ingrained in our system of justice that it should need no court supervision. However, experience teaches that this is not the case. See, The Hon. G. Ross Anderson, Jr., "The Continuing Saga of Discovery Abuse: The Need for Judicial Intervention". *S.C. Trial Lawyers Bulletin*, Fall 2000, at p. 9.

What is clear from the observations of Judge Anderson and other judges, including the undersigned, is that discovery delays and non-compliance with the rules are regularly hindering the judicial process and the rights of litigants to get their cases heard in a timely manner. With this backdrop in mind, the Court now turns to the issues at bar.

1. Are the Plaintiffs Entitled to Sworn Answers to their Interrogatories?

The defendant has refused to provide sworn answers to plaintiff's interrogatories as required by Rule 33 SCRPC. The rule plainly requires that "[e]ach interrogatory shall be answered separately and fully in writing under oath..." The defendant argues that Rule 11 SCRPC permits counsel to sign the discovery responses, which in turn "constitutes a verification *as if the party has given the answers under oath.*" Defendant's Memorandum at p 2. The key, but fatal words, that the defendant uses are "as if." Clearly, Rule 11 itself answers the question plainly. Rule 11, which is addressed to the *Signing of Pleadings*, reads in pertinent part:

- (a) Signature: Every pleading, motion, or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is an active member of the South Carolina Bar, and whose address and telephone number shall be stated... *Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.*

It is obvious that interrogatory answers are not pleadings, although Rule 11 would require an attorney to sign the responses as "another paper." Moreover, even if interrogatory answers are deemed to be pleadings for purpose of the issue at bar, Rule 33 would be a specific exception,

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pointing to the requirement that "[e]ach interrogatory...be answered...under oath." Furthermore, Rule 11(c) pertaining to *Affidavits and Verifications* provides that:

Affidavits or verifications permitted or authorized under these Rules shall be written declarations by a party or his attorney of record or of a witness, *sworn to or affirmed by an officer authorized to administer oaths*, that the affiant knows the facts to be true of his own knowledge, except those matters stated on information and belief and as to those matters that he believes them to be true. (emphasis added)

Finally, Rule 33 provides that "[t]he answers are to signed by the person making them...." In this case it is the Defendant Stonehedge Construction Co., Inc that is making the answers. Rule 33 further provides that "...any party may serve upon any other party written interrogatories to be answered by the party served or if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party" (emphasis added). Clearly counsel for the defendant in this case is not the party and is not a competent person under the rules to answer interrogatories for the defendant. The federal rules also contain the oath requirement, which is not relaxed merely because of difficulties relating to the availability of the answering party. 10 Fed. Proc. L. Ed. *Discovery and Depositions* §26:311. See also, *Brennan V. Glens Falls Nat. Bank & Trust Co.* 19 Fed. Rules Serv. 2d 721 (N.D. N.Y 1974) (stating that plaintiff's answers to interrogatories did not comply with FRCP 33 in that they were signed by the plaintiff's attorney rather than the plaintiff).

In short, the attorney for the defendant may not sign "as if" the party had given the answers under oath. The oath of the party or its agent, if the party is a corporation, is required.

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2. Are Defendant's Objections to Plaintiffs' Discovery Not Timely and therefore Waived?

In the absence of a proper extension of time the failure to object to interrogatories within the time fixed by FRCP 33 generally results in a waiver of any objection, including an objection based on privilege. 10 Fed. Proc.L.Ed. *Discovery and Depositions* § 26:334. In fact, it has been held that where the defendant's counsel failed to object within the plain mandate of FRCP 33 relating to the time limit for filing objections, the Court had no alternative but to grant the plaintiff's motions to compel answers, notwithstanding that much of the information sought was totally irrelevant to the issues in the suit and notwithstanding that the interrogatories were harassing and vexatious. *Cephas v. Busch*, 47 F.R.D. 371 (E.D. Pa. 1969).

Of course in this case the Court is bound by the South Carolina Rules of Civil Procedure, but may look to the federal rules for guidance since our rules are patterned after the federal civil rules. Indeed, our Court of Appeals has held that in the absence of prior state law on the issue in question, federal cases interpreting the rule are persuasive. *Unisun v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000). The current federal rule specifically states in FRCP 33(b)(4), that late objections to interrogatories are waived. However, there is ample pre-1993 amendment case law which held to this position in the federal courts. See *Howard v. Milam*, 905 F.2d 1529 (4th Cir. W. Va.1990) UNPUBLISHED OPINION; also *Dollar v. Long Mfg.*, 561 F.2d 613 (5th Cir. Ga. 1977); and *Cephas v. Busch*, *supra*. Moreover, while there appear to be no South Carolina opinions on point, our courts have looked to sister and neighboring states and their decisions where there is an identical or similar rule. See *Unisun Insurance v. Hawkins*, *supra*. In Georgia, O.C.G.A. § 9-11-33 has virtually identical language to Rule 33 SCRPC. Section 9-11-33 in Georgia reads in pertinent part that:

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to in which event the reasons for the objection shall be stated

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in lieu of an answer. The answers are to be signed by the person making them and the objections shall be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after the service of the summons and complaint upon that defendant.

Georgia cases hold that the failure to file a timely objection to properly served interrogatories constitutes a waiver of the right to object. See *Albers v. Brown*, 177 Ga. App. 620, 340 S.E. 2d 260 (1986); *Smith v. National Bank of Georgia*, 182 Ga. App. 55, 354 S.E. 2d 678 (1987). Because of the identical language in the S.C. rule, this Court holds likewise, especially since the defendant's responses are over two (2) months late. Moreover, the language of Rule 33 SCRPC is couched in mandatory terms and requires that "[t]he party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories" (emphasis added). In this instance, since the discovery was served with the complaint, the defendant had forty-five (45) days to file answers and objections. However, there is no dispute that answers or objections were not timely served. Clearly, to allow defendants to deliver late responses and then to still file objections hinders and delays the "just, speedy and inexpensive determination of every action," which is contemplated under the South Carolina Rules of Civil Procedure. See Rule 1 SCRPC. Therefore, the Court holds that the defendant's objections have been waived and defendant shall file complete responses.

The defendant argues that Rule 81 SCRPC prohibits the Court from holding that late objections are waived because it would create a new rule of procedure that is not provided in the South Carolina Rules, case law, or statutes. Defendant's Memorandum, at p. 2. This argument is simply not supported by any reasonable construction of the rules and, in fact, Rule 81 lends support to the argument advanced by the plaintiffs where it provides that "[t]hese rules, or any of

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them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, *and the procedure therein, shall conform to these rules insofar as practicable*" (emphasis added). Clearly, it is not practicable for the courts to permit defendants to repeatedly file late objections and maintain orderly judicial supervision of the discovery process. Nor does a holding that late objections are waived require this Court to adopt a new rule of procedure. It simply requires the Court to read the plain language of the rules and enforce them. Indeed, the language of Rule 33, which in the mandatory terms requires a party to serve answers and objections within thirty (30) days after service of the interrogatories, except that a defendant may have forty-five (45) days if the discovery is served with the complaint, permits the Court to decide that late objections are waived. To hold otherwise would eviscerate the mandatory language of the rule, leaving the Court no choice but to rule on the validity of late objections and reward the offending party's dilatory tactics. This Court has broad discretion in ruling on discovery issues pursuant to Rule 37 SCRPC. Rule 37(d)(2) provides in relevant part that if a party fails "to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories...the court in which the action is pending on motion may make such orders as are just...." In this case the defendant did not serve timely answers or objections as required by the Rule 33. Therefore, Rule 37 provides specific authority for the Court to hold that late objections are waived at the Court's discretion. See *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989) (holding that a trial judge's ruling on discovery matters will not be disturbed on appeal absent a clear abuse of discretion).

In summary, this Court exercises its discretion to hold that the defendant's late objections are waived and the defendant shall provide full and complete responses to plaintiff's interrogatories and requests for production. Rule 34, while not addressed in the detail that Rule

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33 has been, also requires in mandatory terms that written responses be filed within thirty (30) days, and again provides a forty-five (45) day exception to defendants for responding when requests for production are served with the summons and complaint. Nevertheless, the same analysis applies regarding late objections.

3. Should the Defendant be Required to Produce the Financial Discovery Sought Because it is Clearly Relevant to the Issue of Punitive Damages?

The Plaintiffs have alleged and have offered substantial proof of grossly negligent conduct on the part of the defendant, including numerous building code violations. See the INSECT INFESTATION AND CONSTRUCTION DEFICIENCIES INVESTIGATION report of Robert Sisnroy, P. E., attached to plaintiffs' complaint. In South Carolina, the causative violation of a statute constitutes negligence *per se* and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury. *Daniels v. Bernard*, 270 S.C. 51, 240 S.E.2d 518 (1978); *Shearer v. DeShon*, 240 S.C. 472, 126 S.E.2d 514 (1962). Violation of a statute does not constitute recklessness, willfulness, and wantonness *per se*, but is some evidence that the defendant acted recklessly, willfully, and wantonly. *Keel v. Seaboard Air Line Ry.*, 108 S.C. 390, 95 S.E. 64 (1918) p. 277. It is always for the jury to determine whether a party has been reckless, willful, and wanton. *Ralls v. Saleeby*, 178 S.C. 431, 182 S.E. 750 (1935). Consequently, the plaintiffs are entitled to discover information relating to the defendant's ability to pay punitive damages. Moreover, our Courts of Appeal have held that a defendant's ability to pay punitive damages is an appropriate factor for the jury to consider. See *Bryant v. Waste Management, Inc.*, 342 S.C. 159, 536 S.E.2d 380 (Ct. App. 2000); *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). The Court of Appeals has also held that "we have never limited proof of a corporation's ability to pay to evidence of net worth." See *Bryant, supra*, 305 S.C. at p. 170. Defendant has said in its responses that "should punitive damages

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become a legitimate issue, defendant will respond to the best of his ability with any relevant, discoverable information within his possession, custody or control." The plaintiffs have alleged and seek punitive damages against the defendant in this case and have sufficient evidence to support a charge on punitive damages at trial. The Court hereby compels the production of the defendant's tax returns for the past five (5) years and its most recent financial statements. Clearly, the issue of punitive damages is, in the words of the defendant, "legitimate."

The Court does not ignore, however, the arguments of defense counsel that the amounts paid to each shareholder is information which is not relevant to the issue of punitive damages. Therefore, the Court holds that the defendant may redact this information from the returns or, in the alternative, submit a proposed Protective Order for the Court's consideration which shall be done in any event to protect the confidentiality of defendant's financial information from disclosure except to the parties and their counsel for use only in this litigation.

Finally, the defendant argues that the plaintiffs should only have financial information pertaining to the defendant's ability to pay punitive damages when and if it is determined that this issue will go to the jury. Ordinarily, this argument would have some appeal to the Court, but in this instance to allow the defendant's objection to be sustained would reward the defendant for non-compliance with the rules. Moreover, in this case, the plaintiff has hired an economist, with whom this Court is well acquainted and who has an excellent reputation in the Courts of this state. Dr. Wood has provided an affidavit to the Court in which he has stated that "it would be very difficult to receive this information shortly before trial and to (sic) prepare an adequate report." Therefore, the Court will require the production of this information, subject to a Protective Order to be approved by the Court.

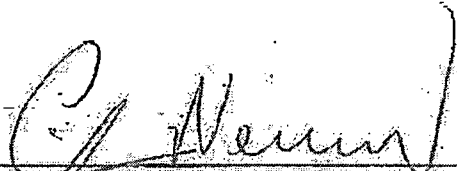
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III. Conclusion

It is, therefore Ordered that plaintiffs' motion to compel is granted in full, subject to a Protective Order to be submitted to the Court which limits the use of defendant's financial information to use in this litigation only by the parties and their counsel (including staff) and those employed by counsel to serve as experts in this case.

IT IS SO ORDERED.



THE HONORABLE CLIFTON NEWMAN
CIRCUIT COURT JUDGE
ELEVENTH JUDICIAL CIRCUIT

Lexington, South Carolina
This 27th day of May, 2003.
2312 or June

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EXHIBIT D



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

Roger M. Young, Sr.
Judge

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MEMORANDUM

To: Attorneys and Parties with Discovery motions
From: Judge Roger Young
Subject: Preparation for discovery motions
Date: August 29, 2019

The following may assist you in preparation for your hearing. If you have resolved your motions, please advise the Clerk's office.

Boilerplate or generalized objections are tantamount to no objection at all

Each discovery response, whether to an interrogatory or discovery response, whether to an interrogatory or discovery production is to be answered or objected to separately. The rule is clear that each interrogatory "shall be answered separately and fully in writing..." SCRCF, Rule 33(a). If there are objections to interrogatories or requests for interrogatories or requests for production, "the reasons for objection shall be stated..." SCRCF, Rules 33(a) and 34(b). Whether the reasons are satisfactory is to be decided on a case by case basis. However, keeping in mind the general purposes and concepts stated in the rules can help combat frivolous and obfuscatory objections.

"An affirmative duty does exist to answer interrogatories and respond to requests to produce." *CFRE, LLC v. Greenville County Assessor LLC v. Greenville County Assessor*, 395 S.C. 67, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011) 83, 716 S.E.2d 877, 885 (2011). Objections to interrogatories must be specific and supported by a detailed explanation why the interrogatories are improper or may result in waiver of the objections. *In re Folding Carton Antitrust Litigation*, 83 F.R.D. 260, 264 (N.D. Ill. 1979). The mere statement by a party that the by a party that the interrogatory was "overly broad, burdensome, oppressive and irrelevant" is not adequate to voice a successful objection to an interrogatory. *Josephs v. Harris Corp.* 677 F.2d 985, 992 (3d Cir. 1982). Parties shall not make nonspecific, boilerplate objections. **Objections that state that the discovery request is "vague, overly broad, or unduly burdensome" are, standing alone, meaningless and will be found meritless by the court.** A party objecting must explain the specific and particular way in which a given request is vague, overly broad, or unduly

burdensome.¹ *Curtis v. Time Warner Entm't-Advance/Newhouse P 'ship*, 2013 WL 2099496, at *2 (D.S.C. May 14, 2013). Parties should not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons and then state that, “notwithstanding the above,” the party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserve nothing and serves only to waste the time and resources of both the parties and the court. Such practice leaves the requesting party uncertain as to whether the question has actually been actually been fully answered or whether only a portion of the question has been answered. *Id.* citing 2004 A.B.A. Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18. One objecting to discovery must show specifically how, despite the broad and liberal construction afforded the discovery rules, each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive, by submitting affidavits or offering evidence revealing the nature of the burden. *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296 (E.D. Pa. 1980). It is not proper to object merely because answering interrogatories may require expending considerable time, effort or expense or may interfere with business operations. *Id.* at 97.

“General objections” that purportedly apply to all discovery responses are improper. These general objections do not comply with the letter or spirit of the rules as they do not provide the specificity required to each request.²

¹ *Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); see also *Steed v. EverHome Mortg. Co.*, 308 Fed. Appx. 364, 371 (11th Cir. 2009) (“[B]oilerplate objections may border on a frivolous response to discovery requests.”); *McLeod, Alexander, Powell & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (“[T]o say an interrogatory was overly broad, burdensome, oppressive and irrelevant [is] not adequate to voice a successful objection to an interrogatory.” (internal quotations omitted)); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982) (“[T]he mere statement by a party that the interrogatory was ‘overly broad, burdensome, oppressive and irrelevant’ is not adequate to voice a successful objection to an interrogatory.”); *Adelman v. Boy Scouts of Am.*, 276 F.R.D. 681, 688 (S.D. Fla. 2011) (“[B]oilerplate objections [are] legally inadequate or meaningless.”); *Nissan N. Am., Inc. v. Johnson Elec. N. Am., Inc.*, 2011 WL 669352, at *2 (E.D. Mich. Feb. 17, 2011) (“Boilerplate or generalized objections are tantamount to no objection at all”); *Hager v. Graham*, 267 F.R.D. 486, 498 (N.D. W. Va. 2010) (“The objection is only a general statement that does not specify how the [request for production] is vague, ambiguous, and overly broad. Therefore, the objection is improper.”); *Enron Corp. Sav. Plan v. Hewitt Assocs., L.L.C.*, 258 F.R.D. 149, 159 (S.D. Tex. 2009) (“Boilerplate objections are not acceptable; specific objections are required” (internal quotations omitted)); *A. Farber & P's, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006) (“[G]eneral or boilerplate objections such as ‘overly burdensome and harassing’ are improper—especially when a party fails to submit any evidentiary declarations supporting such objections.”).

² *Mills v. E. Gulf Coal Preparation Co., LLC*, 259 F.R.D. 118, 132 (S.D. W. Va. 2009) (“Failure to state objections specifically in conformity with the Rules will be regarded as a waiver of those objections.”); *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006) (“[F]ailure to make particularized objections to document requests constitutes a waiver of those objections.”); *In re Folding Carton Antitrust Litig.*, 83 F.R.D. 260, 264 (N.D. Ill. 1979) (“General objections may

For an objecting party to carry its burden, the objection must be specific, the party making it must explain why it applies on the facts of the case to the request being made, and if the party is providing information subject to the objection, the party must articulate how it is applying the objection to limit the information it is providing.³ In short, objections should be plain enough and specific enough so that the Court can understand in what way the discovery is claimed to be objectionable. See generally *Curtis v. Time Warner Entmt'-Advance/Newhouse P'ship*, 2013 WL 2099496, at *2 (D.S.C. May 14, 2013). See generally *Kosieradzki & Rahimi, supra*, at 30–31 (“Objections must be sufficiently particular to advise the requesting party and the court to what extent the discovery request is objectionable.”).

General objections to requests as excessive, overbroad, and unduly burdensome, without more detail as outlined herein, are considered by the Court as *per se* insufficient. The objecting party must show specifically how each discovery request is burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden. *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997); accord *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 29–97 (E.D. Pa. 1980) (explaining that an objecting party “must show specifically how ... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive ... by submitting affidavits or offering evidence revealing the nature of the burden” (internal citations omitted)). Responses which provide no information whatsoever in support of these assertions are very likely to be overruled and may be sanctionable if deemed to be abusive violations by the Court.

Use of Standard Interrogatories – Abusive Objections

Rule 33(b) lists specific interrogatories that are allowed “[i]n all cases...” and should be served. Attorneys responding to these standard interrogatories with paragraphs of copy and paste generic objections are engaging in dilatory conduct. Neither attorneys nor courts should tolerate such obstructive behavior.

result in waiver of the objections.”). See generally *Wise, supra*, at 569 (“[B]ecause general objections are nonspecific and ‘hide the ball’ with respect to what information or material is being provided and what information or material is being withheld and why ... [they] have been universally condemned by courts for this very reason.”); Mark Kosieradzki & Kara Rahimi, *Keep Discovery Civil: When Opposing Counsel Obstructs or Deflects Your Access to Evidence, Look to the Rules and Long-Settled Case Law for Relief. Both Are on Your Side*, Trial, June 2008, at 32 (“[C]ourts have held that asserting numerous general objections obscures any valid objections and may result in a waiver of the valid objections absent a showing of good cause.”).

³ See *Josephs*, 677 F.2d at 992 (explaining that a party's objections must “show specifically how each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive” (internal quotations and alterations omitted)); *DL v. District of Columbia*, 251 F.R.D. 38, 43 (D.D.C. 2008) (explaining that if party's objections “are not applied with sufficient specificity to enable this Court to evaluate their merits ... this Court will overrule [the party's] objections in their entirety”); *Folding Carton*, 83 F.R.D. at 264 (“Objections to interrogatories must be specific and [be] supported by a detailed explanation why the interrogatories are improper.”).

Rule 33(b) requires responding with important facts known or observed by witness so that the summary is restricted to the actual knowledge of the witness. Note to Rule 33(b). The rules make it clear that specific objections and reasons are required when responding. There can be no good reason to objecting to standard interrogatories.

Production of Documents

As to documents produced in response to discovery requests, the responding party shall produce them "as" they are kept in the usual course business or shall organize and label them to correspond with the categories in the request." SCRCF, Rule 34(b). If the form for producing the information is not specified or otherwise agreed upon, the responding party must produce the information in a form which it is ordinarily maintained that is reasonably usable. SCRCF, Rule 34(b)(1). When dealing with electronic discovery, it "must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes." Notes to 2011 Amendment, SCRCF, Rule 34.

Duty to Consult Before Moving to Compel

One submitting discovery requests may move for an order under Rule 37(a) with respect to any objection to or other failure to answer the interrogatory or request for production. SCRCF, Rule 33(a) and 34(b). If the discovery responses received are improper, consult with the other party and try to resolve the issues. Rule 11 requires that before filing a motion, one communicate with opposing counsel and attempt in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose or could not be timely held. SCRCF, Rule 11(a). After consulting, compromises may be reached so that only the actual controversies are presented to the court.

The rule requires that the movant's counsel affirm that consultation has taken place. Attaching correspondence showing the attempts to resolve the matter with the articulated reasons from both sides can help demonstrate the issues for the court.

Burden — Motion to Compel

After consulting as required, one needs to move to compel the other side to sufficiently respond to your requests. As part of the motion, provide the court with both the request and the responses at issue, and explain why the responses are deficient in the context of the case. Articulate specific reasons, not generalities as to why the discovery sought is proper. Generally, the initial burden is on the party moving to compel to inform the court (1) which discovery requests are the subject of the motion, (2) which responses are disputed, (3) why the party believes the responses are deficient, (4) why any objections are not justified, and (5) why the information sought through discovery is discoverable. After the moving party has met its burden, the party resisting discovery must show specifically how each interrogatory or request for production is not relevant or how each is overly broad, burdensome or oppressive. If claims of privilege or work product are made, the factors and facts supporting such claims should be supported with specifics, not

generalities, in the form of a privilege log that will provide enough information for you and the court to evaluate the objection.

Opinions and Contentions Proper

The rules allow one to serve discovery designed to eliminate the need for depositions or other expensive ways of establishing opinions or contentions of the parties. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law. SCRCP, Rule 33(d). Similarly, requests for admission may be served for purposes of the pending action only concerning any matters within the scope of Rule 26(b) that relate to statements or opinions of fact or of the application of law, including the genuineness of any documents described in the request. SCRCP, Rule 36(a). Further, opinions of experts are proper subjects of discovery as well. SCRCP, Rule 26(b)(4)(A).

Privilege Log - Express Claims of Privilege or Trial Preparation

A party may withhold information otherwise discoverable by expressly claiming such material is privileged or subject to protection as trial preparation material. SCRCP, Rule 26(b)(5). The claim shall be made expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. SCRCP, Rule 26(b)(5)(A-B). *See also* Note to 1996 Amendment. The Rules expressly require the disclosure of the nature of evidence prior to any claim of privilege so other parties may assess the applicability of the privilege or protection. *Samples v. Mitchell*, 329 S.C. 105, 111, 495 S.E.2d 213, 216 n.5 (Cl. App. 1997). The obligation to describe what is being withheld and why also applies to non-parties when responding to a subpoena, under SCRCP, Rule 45(d)(2). SCRCP, Rule 26(b)(5) Note to 1996 Amendment.

For, example, the work product rule would not excuse the failure to disclose the existence of a surveillance video tape pursuant to the standard interrogatories. If an attorney believed the other side had no right to this evidence, either because of relevancy or because of the work product rule, she should have either objected to the interrogatory or disclosed the existence, but not the content, of the evidence and moved for a protective order. *Samples v. Mitchell*, 329 S.C. 105, 111, 495 S.E.2d 213, 216 (Cl. App. 1997). The decision whether a document is privileged is for the court, not the party. *Privileged Matter—Assertion of Privilege*, 8 Fed. Prac. & Proc. Civ. § 2016.1 (3d ed.). In making determinations as to the adequacy of the privilege log, the court should be guided by a sense of reasonableness in deciding what should be required. *Id.*

The use of a "privilege log" by party withholding the material is designed to satisfy the requirement that the claim to be made expressly and provide the other party with an opportunity to assess the applicability of the claimed privilege or protection. The description should provide a feasible means of understanding why each document is privileged or protected. Depending on the case, a privilege log may consist of details like a description and date of the document along with who created and received it. The required detail of the privilege log should be decided on a

case by case basis. However, the log should not generically assert privilege or simply use words like "privileged document."

Attorney-Client Privilege

Generally, the party asserting the privilege must establish the confidential nature of the communication. *State v. Doster*, 276 S.C. 647, 653, 284 S.E.2d 218, 220 (1981). To establish an attorney-client privilege, the person asserting the privilege must show that the relationship between the parties was that of attorney and client and that the communications were confidential in nature for the purpose of obtaining legal advice. *Crawford v. Henderson*, 356 S.C. 389, 395, 589 S.E.2d 204, 207-08 (Ct. App. App. 2003). The essential elements giving rise to the privilege were stated by Wigmore to be: "(1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived." *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 219-20 (1981).

The privilege must be tailored to protect only confidences disclosed within the relationship. And the court must determine the question of privilege without first requiring disclosure of the substance of the communication. *Id.* Not every communication within the attorney and client relationship is privileged. The privilege does not extend to communications in furtherance of criminal, tortious or fraudulent conduct. *Id.*

Attorney Work Product and Limitations

"The attorney work product doctrine protects discovery documents prepared in anticipation of litigation, unless a substantial need can be shown by the requesting party." *Stokes Craven—Holding Corp. v. Robinson*, 416 S.C. 517, 537, 787 S.E.2d 485, 495 (2016). "Generally, in determining whether a document has been prepared 'in anticipation of litigation,' most courts look to whether or not the document was prepared because of the prospect of litigation." *Id.*

"The document must be prepared *because* of the prospect of litigation when the preparer faces an actual claim or a potential claim following an actual event or series of events that reasonably could result in litigation." *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992). Thus, materials prepared in the ordinary course of business or pursuant to regulatory requirements or for other non-litigation purposes are not documents prepared in anticipation of litigation within the meaning of Rule 26(b)(3). *Id.* See also, *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010). A party must show more than a statute governing the party's actions considers the possibility of future litigation or concerns litigation. *Id.*

Motion for Protection

If the discovery process threatens to become abusive or create a particularized harm to a litigant or third party, the trial judge may issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense." *Hollman v. Woolfson*, 384 S.C. 571,

578, 683 S.E.2d, 495, 498(2009). "The person requesting protection from the court or Commission must initially show good cause by alleging a particularized harm which will result if the challenged discovery is had...Once the party seeking the protective order has met its burden of showing good cause by alleging a particularized harm, the party seeking the discovery must come forward and show that the information that is sought 'is both relevant and necessary to the case. When both parties meet their burden of proof, the court must weigh the opposing factors.'" *Hamm v. SCPSC*, 312 S.C. 238, 439 S.E.2d 852, 854 (1994); *see also, Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009).

Duty To Supplement

A party who has responded to a discovery request under Rules 31, 33, 34 and 36 with a response that was complete when made is under a duty to promptly transmit to the other party information sought which comes to the knowledge of a party, his representative or attorney after the original answers have been submitted. SCRCP, Rule 26(e). "This duty to supplement does not apply to discovery under Rule 30 Depositions Upon Oral Examination."

"[T]here is an additional duty to provide supplemental information on expert witnesses and witnesses with knowledge of the facts of the case regardless of the form of the discovery request. The obligation to supplement prior discovery responses includes the duty to amend or supplement answers which are found to be incorrect or misleading..." SCRCP, Rule 26(e) Note to 1996 Amendment.

Conclusion

The moving party shall provide an affidavit detailing the attempts to resolve the motion prior to the hearing shall be presented. The affidavit should list a statement of services rendered which details the time and fees generated from pursuit of the discovery sought in the Motion to Compel. **Affidavits, briefs and proposed Orders** granting the requested relief and leaving a blank for the amount of fees and costs to be awarded **shall be presented to the court at the hearing** and shall also be served on opposing counsel prior to the hearing. **Failure to comply may result in denial of the relief.**

As to any objection to discovery on the basis that the information sought is either privileged or work product, the objecting party shall prepare and present at the time of the hearing their **privilege log** detailing the basis for the claim to privilege or reason why it should be excluded from production.

At a minimum, the privilege log should detail the date of the communication/statement, who prepared or made the statement, to whom the statement was directed to and finally, the specific basis for the privilege should be included in the log. While this will necessitate much more work on the part of the party claiming the privilege, **failure to prepare and bring this log to the hearing will result in the privilege claimed considered waived** by the court and the **motion to compel shall be granted.**

The Motion to Compel hearing shall constitute a hearing under Rule 37(d) 4, SCRCP.

1 State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 2 County of Beaufort) No. 2019-CP-07-02279

3

4 Wilmington Savings Fund)
 Society, FSB,)
 5)
 Plaintiff,)
 6) HEARING
 vs.)
 7) September 29, 2020
 Rex A. Field, et al)
 8 Defendants,)
 9 _____)

10 Hearing reported by Deborah S. Thomas,
 11 Certified Verbatim Reporter and Notary Public in and
 12 for the State of South Carolina; said hearing held
 13 before Honorable Marvin H. Dukes, III, Beaufort
 14 County Master in Equity and Special Circuit Court
 15 Judge in accordance with the South Carolina Rules of
 16 Civil Procedure, at the Beaufort County Courthouse,
 17 102 Ribaut Road, Room 212, Beaufort, South Carolina
 18 on September 29, 2020, at the hour of 8:59 a.m.

19

20 _____
 Deborah S. Thomas, CVRM
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 Bluffton, South Carolina 29909
 21 (803) 206-7390
 22
 23

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Appearances

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6 * * * * *

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8 EXHIBIT INDEX

9 Exhibits: Marked at Page

10 (Exhibits retained by Clerk of Court.)

11 None proffered.

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1 This hearing is conducted in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 JUDGE DUKES: Morning. We're here in
5 2019-CP-07-02279. This is Wilmington versus Field.
6 And I had this on my calendar for all outstanding
7 motions, but I think the outstanding motion is just
8 one and that is the motion -- oh, no. That's not
9 true. Let's see. Motion for continuance of trial.
10 Do we have a trial scheduled? And also the motion
11 to vacate the reference which I'm guessing would be
12 dispositive of the other motion. That's -- I'm
13 happy to hear that one first.

14 MR. RADEKER: Thank you, Your Honor.

15 I believe there's actually like a few motions that
16 are pending, but that we had agreed that what we
17 would hear today, which was when trial was supposed
18 to be scheduled, Your Honor had essentially already
19 granted the continuance motion by having this
20 hearing instead. But that what would be heard today
21 is just the motion to vacate the order of reference
22 because if that's granted, it would mean that those
23 other motions would come up before somebody else.

24 JUDGE DUKES: Exactly. Okay. Makes
25 sense.

5

1 MR. RADEKER: Drew Radeker here for
2 Defendants Rex and Tracy Field for the record. Yes,
3 this is my clients' motion to vacate the order of
4 reference in this case.

5 The order of reference is actually avoid
6 for a few reasons. One of those reasons is that it
7 was proposed and filed before this case was ever
8 commenced. Rule 3(a) establishes that a case is
9 commenced upon service of the summons and complaint.

10 In this case, the Plaintiff filed the

11 complaint on October 11th. On October 16th, the
12 Plaintiff submitted a proposed order of reference
13 through the e-filing system. The next day, on
14 October 17th, the clerk of court signed and filed
15 the order of reference.

16 None of the Defendants, not my client or
17 the homeowners association had been served with the
18 summons and complaint at that time. My clients were
19 not served with the summons and complaint until
20 October 22nd, 2019, at which time the order of
21 reference had already been filed.

22 There's actually a case in which the Court
23 of Appeals in 1990 addressed that particular issue.
24 And it's cited in the memorandum we -- Chabek versus
25 Nationwide Mutual Fire Insurance Company. And in

6

1 that case, it essentially says just what I said that
2 in South Carolina a civil action is commenced by
3 filing and serving the summons and complaint, citing
4 Rule 3(a) for that.

5 And it said until an action is commenced,
6 there is no proceeding pending and, thus, nothing to
7 refer. Accordingly, the only thing to do with a

8 purported order of reference issued under such
9 circumstances is to recognize that it's void and
10 vacated. It is also proposed and issued without
11 notice to the defendant's. And it would be void for
12 that reason, independently. Well, the Chabek,
13 probably.

14 And we cited some cases in our memorandum
15 to that effect. The one that's most on point
16 probably is The First Palmetto State Bank and Trust
17 versus Boyles. In that case, the Supreme Court
18 vacated reference to a master where the reference
19 was made four days before the filing of the answer
20 without notice to the defendants without their
21 consent.

22 Also, here it's not as (inaudible) some
23 situation where the plaintiff might be able to
24 argue, well, it's all harmless error because it
25 would have been referred anyway. Here the issues

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1 had not been joined.

2 Under the 2011 Administrative Order, once
3 my clients timely request foreclosure intervention,

4 which they did and the record reflects, they have
5 until 30 days from service on them of a notice of
6 denial of foreclosure. No notice of denial of
7 foreclosure intervention has to-date been served.
8 And so my clients' time to answer has not run.

9 My clients went --

10 JUDGE DUKES: Uh, oh. Drew we lost
11 the last -- reset for the sentence. You froze for a
12 second.

13 MR. RADEKER: Okay. I'm sorry. It's
14 probably by Internet connection. In any event, what
15 I was saying is that my clients went ahead and put
16 in a jury demand way ahead of schedule, like long
17 before they needed to because they got until ten
18 days from the last pleading directed at the
19 particular claim to put that in.

20 Here, you know, their 30 days to put their
21 pleading in hasn't even started. And only once the
22 pleadings are joined either by the Defendant's
23 default, meaning there's only one pleading, the
24 Plaintiff's complaint, or by determining what's in
25 the answer and counterclaim. Only then would a

1 determination of whether the case could properly be
2 referred be ripe to be made.

3 And so on the substance, the clerk didn't
4 have the authority to do that. I point the court --
5 the case isn't exactly on all fours to this, but
6 general principles to South Carolina Community Bank
7 versus Salon Proz because of 2017 Court of Appeals
8 decision where the clerk of court -- the plaintiff
9 made and filed a motion for an order of reference
10 and sent up proposed order of reference on the
11 second day.

12 Defendant had all the pleadings served and
13 filed and answer and counterclaim with a jury demand
14 and the Court of Appeals (inaudible) issued the
15 order of reference under those circumstances. Also,
16 I'd (inaudible) court to -- it's looks like an oldie
17 but a goodie in 1887 Supreme Court case Holiday
18 versus Holiday where the Supreme Court set aside
19 reference to the master where the defendants had not
20 consented to it, holding that the reference couldn't
21 properly be made until the defendants had answered
22 the claim.

23 And so, for any one of these reasons, the
24 order of reference would need to be set aside. And
25 so we would ask for the court to set this one aside.

1 JUDGE DUKES: All right. Thank you
2 so much, Sir.

3 MR. RADEKER: Thank you.

4 JUDGE DUKES: Happy to hear from you.

5 MR. PAGE: Thank you, Your Honor.
6 Martin Page for the Plaintiff. I kind of, you know,
7 in the past talked about the background of the case,
8 how it's really more or less dropped upon my client
9 when Mr. Fields kind of strategically defaulted and
10 attempted through a bankruptcy proceeding to
11 invalidate our lien. And then that resulted in
12 substantial delinquency that we now have to
13 foreclose on.

14 So, we don't really want to be here. We
15 would have preferred just to collect payments and
16 gone along with it. So in terms of the 2011 order,
17 it's pretty unique in this circumstance where, you
18 know, we didn't really want to foreclose.

19 But, you know -- and I know he requested
20 intervention after we had filed the order of
21 reference which I don't think that's -- you know, I

22 think Rule 53(b) allows for the referral of a
23 foreclosure. It doesn't really put any caveat for
24 that. It just says an action for a foreclosure can
25 be -- you know, may be referred. And we entered

10

1 that. We filed an order of reference, I think, with
2 the complaint. And we had it referred shortly after
3 there. And then we served all of it on the
4 Defendant.

5 I've done that a lot and never had an
6 issue with -- you know, obviously, if later their
7 answers or claims that are brought that would
8 require a jury trial, then it could be referred back
9 at that time. But currently, it seems premature
10 until the claims are filed to send it back, instead
11 of just see if those actually are filed or not.
12 That's kind of my position on it.

13 We, you know, would ask the court deny the
14 order to vacate the reference. And I think,
15 ultimately, with the postures of the parties, we'll
16 just be back in the same situation in three months
17 or so once we go through the circuit courts. I
18 don't know if it -- if it will just delay the

19 inevitable by vacating it at this point.

20 JUDGE DUKES: Let me ask you this.

21 If I vacated it, then don't we have the same
22 three-month delay? I mean, is it -- isn't it six of
23 one, half dozen of the other with sort of a -- sort
24 of referring to the possible technicalities here. I
25 mean, if I vacate the order of reference, it goes

11

1 back across the hall. The answer and counterclaim
2 gets filed. Then the circuit court decides whether
3 it comes back here after sorting out the jury
4 issues. Aren't we on the same timeline?

5 MR. PAGE: Yeah. The only difference
6 is the motion roster in Beaufort County is very
7 backed up. Have a cased down there that I'm working
8 on. It'll -- it's taking a lot longer to get heard
9 on motions in common pleas than it would be in front
10 of you. So that's why we prefer to keep it in front
11 of you.

12 JUDGE DUKES: Well, I hear --

13 MR. PAGE: You know --

14 JUDGE DUKES: -- those, too, though

15 as special circuit court judge. So, is it backed up
16 still because I was of the impression that Judge
17 Jefferson had sliced and diced it and we were right
18 back where we needed to be. Is it still a big
19 delay? I guess it is it sounds like.

20 MR. PAGE: We just -- last one --
21 last week we had a hearing on some motions that were
22 filed in April. So, I know, Judge, that's obviously
23 the Corona virus backed everything up. So it may be
24 moving through now, but we had some -- we're seeing
25 a little bit of a backup.

12

1 JUDGE DUKES: Gotcha. Okay. All
2 right. But other than that potential possible delay
3 associated with the fact that those motions would --
4 and by the way, sometimes those motions get sent
5 over here anyway on preferred case. In fact, we
6 used to do a week of motions per month from the
7 circuit court under the special circuit court judge
8 order. But due to the pandemic and a variety of
9 things, we don't have that going on right now. But
10 certainly if there's ever a delay, this case or
11 others, you can always ask the chief admin judge,

12 Judge Jefferson right now, and we can schedule
13 stuff. That's not a problem.

14 Okay. Anything else, Mr. Page?

15 MR. PAGE: No, Your Honor.

16 JUDGE DUKES: Okay. Mr. Radeker,
17 anything else, Sir?

18 MR. RADEKER: Just briefly. My
19 clients -- well, my clients do not agree with the
20 Plaintiff's recitation of facts or anything that
21 have anything to do with the case. More to the
22 point for this motion is that really doesn't matter
23 to the outcome of this motion. The case law makes
24 clear that this order of is void. And that what
25 ultimately happened, because that once the pleadings

13

1 are joined, if someone seeks a reference at that
2 time that that issue come up and be heard before a
3 circuit judge, not determined by, basically, not the
4 undetermined rubber stamped by the clerk of court.

5 And that's just -- that's what the law is.
6 As a matter of law this order of references is void.
7 Whatever delay may be occasioned by that,

8 (inaudible) that.

9 JUDGE DUKES: I think what I'm going
10 to do is this. You know, if I denied the motion,
11 Mr. Radeker would have no choice but to go ahead and
12 file an appeal and this case would drag on forever.
13 I think I'm actually doing both parties a favor by
14 granting the motion. And you all would go across
15 the hall, and then there'll be a decision to refer
16 or not to refer. And then, you know, it could be
17 under the various case law. As you all know, parts
18 of it get referred, parts of it stay there, the
19 whole thing. It all depends. I don't know what the
20 counterclaim's going to be.

21 But I think that's probably in the
22 interest of justice for both parties to do it that
23 way rather than get tangled up in technicalities
24 that really aren't going to benefit anyone.

25 So I think what I am going to do is grant

14

1 the motion. I'm happy to let Heather or Jackie.
2 Jackie, you're with us. Do a Form 4 just stating --
3 it doesn't say a whole lot, that we heard this
4 motion, whatever this date is, the 29th, and I'm

5 granting the motion, and the order of reference is
6 vacated.

7 Does that suit everybody?

8 MR. RADEKER: Works for me, Your
9 Honor.

10 JUDGE DUKES: And it may end up right
11 back over here. The motions may end up right back
12 over here or at least this technical issue that I
13 can see could be an appealable issue if I denied it.

14 And I don't think that would be in anyone's. I
15 think it's the right thing to do to vacate it.

16 So, Jackie can knock that out for me and
17 put it in my queue? Okay. All right. Thank you
18 all so much. You all have a great Tuesday.
19 Everybody stay safe and healthy.

20 (Whereupon, the hearing was concluded
21 at 9:15 a.m.)

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Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of 2019-CP-07-02279, Wilmington Savings Fund Society, FSB v. Rex A. Field, et al, on the 29th day of September, 2020: and that the foregoing pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Rex A. Field, Post Office Box 975, St. Helena, South Carolina 29920.

In witness whereof, I set my hand and sealed this 9th day of June, 2021.

My Commission expires 2/7/28	Deborah S. Thomas, CVRM and Notary Public for the State of South Carolina

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2019-CP-07-022279

COUNTY OF BEAUFORT

-----)
Wilmington Savings)
Fund Society, FSB, not)
In its individual)
Capacity, but solely as)
Owner trustee for CSMC)
2018-RPL6 Trust,)

Plaintiff,)

vs.)

TRANSCRIPT OF HEARING

Rex A. Field and)
Tracy L. Field,)

Defendants.)

January 13, 2021
Beaufort, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge Presiding

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THE COURT: All right. And it's Wilmington Savings Fund versus Rex Field. All right. I'll be happy to hear from you.

MR. RADEKER: Thank you, Your Honor. Drew Radeker here for the Fields. I was thinking as I got ready for this ready for this, what is a good analogy for the situation that gives rise to this motion, and I thought of one that I think is a good one, it's not a perfect one. And it's a football analogy. What's brought us here is the Plaintiffs fourth violation of the foreclosure administrative order of the Chief Justice in this case. To make that football analogy, it's kind of like this -- it's like, we are in a timeout. Everyone understands that we are in a timeout because we're under the stay of the administrative order. Yet, the Plaintiff keeps lining up their players and snapping the ball and trying to run for a touchdown play while we're on the sidelines in timeout, like we're supposed to be. And so, how the stay under the administrative order works during a foreclosure case is like this: The case starts out, it's commenced by serving the summons and complaint along with the notice of right to foreclosure intervention, and the case is stayed at that point.

If the Defendant or Defendants don't respond and say they want foreclosure intervention, thirty days after the service of that notice along with the other documents, the Plaintiff through Counsel can submit a certificate saying, "Hey, they have either chosen not to respond or just haven't done it," and, you know, they can default them and the case can just proceed normally, assuming that they have not pled at that point. But if they request foreclosure intervention like my clients, did -- they requested a mediation, which is one of the avenues contemplated by the order for foreclosure intervention. Their request for foreclosure intervention and for whatever reason that request does not result in a resolution of the case, then what the foreclosure Plaintiff is to do then is to serve a notice of denial of foreclosure intervention, saying either you didn't give us the documents we wanted to look at, or we looked at them and you're not eligible, or we just don't want to do what it is that you propose. Those are all appropriate responses, but what that notice must say is, "Now you've got thirty days to plead responsibly to the complaint." So, the Fields requested foreclosure intervention and they asked

for a mediation. Now, the Plaintiff, I think, main argument in response to this motion is the Fields didn't send out these -- their modification evaluation packages that we sent you. Well, the Fields didn't say they wanted to engage in a modification. That's apples and oranges. The Plaintiff has never said yes or no to whether they would participate in a mediation, which is the foreclosure intervention that the Fields wanted to do. So, the Plaintiff, in an effort to move the case along but also prevent the Fields from pleading in response to the complaint, and Your Honor doesn't need to take my word for that, you can just look at the email that is attached to our motion that was sent by Plaintiff's Counsel in an effort to say, "Ah ha! We're going to play a little procedural game, even though it's against the rules, and default the Fields so that issues never get joined in this case and we can just proceed to a foreclosure judgment." We're going to file the kind of certification that you file when people don't respond to the notice of right to foreclosure intervention at all. And it says that the Fields have refused to participate in it. We haven't refused to participate in it. We said,

"This is the kind of foreclosure intervention we want," and who has failed to give us an answer on that is the Plaintiff. It's clear that this is done for the purpose of depriving the Fields of their procedural rights, and it's against the law. It violates the Chief Justice's administrative order. Now, as a circuit judge, issues about this administrative order probably don't come before you very often. This may be the first. But in the world of the South Carolina Foreclosure Bar, this order and the requirements of it are widely understood. Everyone knows this and knows what it means. So, it's not like we're talking about some esoteric, accidental violation that the Plaintiff couldn't have understood. They understood very well what they were doing, and it's not the first one either. This is the fourth violation of the administrative order that the Plaintiff has done in this case. The first violation was before the case was even commenced, before it had even been served, and before it was proper to do so, they send up a proposed order of reference and got it sent over to the master in equity. And the purpose for doing that is pretty clear because it wasn't long after that, that they started scheduling a final hearing,

even though plainly they were within the foreclosure intervention stay period under the administrative order, and it was not proper for them to have one. That hearing got cancelled and then they contacted the Master's office to schedule another one. So, we got in it, got the order of reference vacated as improper, and that's brought us to where we are now, but they didn't stop then. Then they went and did what they've done now, which is file this certification in an effort to quote -- to quote them, "To proceed with default paperwork." My clients are not in default. This case is stayed because no notice of denial of foreclosure intervention has ever been served. What's going on here is that these violations, they are knowing, they are purposeful, they are blatant, and I don't mean to be hyperbolic when I say that. It's just that they are obvious. Looking at what I've seen other courts do in the past, there are no reported cases about sanctions under this administrative for violations the administrative order is, I've seen a court dismiss a case with prejudice. That's what we want first. That's what we would like for the Court to do is to send a message to these people that they'll hear, that speaks to them in the

language that's their language, the language of money. This is a financial institution -- that says, "If you're going to play fast and loose with people's procedural rights and try to stomp all over them like this, there are real consequences for that, because it's not one, not two, not three, but four times that they've done that in this case. This Court could dismiss the case without prejudice and make them pay our attorneys' fees. I've seen a court to that for a violation of the administrative. In each of those cases, there was only one violation of the administrative. Here, we've got four. Or the Court could strike their certification, make them pay our attorneys fees, and I'd be happy to submit an affidavit about that if Your Honor goes that route, so you can evaluate the reasonableness of them, and order them to have a mediation and for them to pay for it, because there has to be some meaningful consequence to the Plaintiff's violation of the Chief Justice's order. Because they are not thumbing their nose just at the Fields, they are thumbing their nose at the whole South Carolina Judicial System. They are saying, "Chief Justice, Chief Shmustice. We do what we want," and we can't allow that, frankly,

Your Honor.

THE COURT: All right. Give me one second. Well, my confusion comes in, Mr. Radeker, after you allege that this is their fifth violation, but I'm looking, -- as you were talking, I'm looking at the dates of these emails sent over by the Plaintiff and they are fairly extensive, and they are not really open to a whole lot of disagreement as to what they are asking for. I mean, the initial letter sent over is very clear. It says, "Drew" -- it goes through the whole thing about introducing themselves, it looks like from Mr. Page to you. Apparently, your clients indicated that they weren't acknowledging the fact that the loan had been bought out of, I guess, bankruptcy of sorts. But anyway, the last sentence simply -- so the last sentence says, "As discussed previously, this is a purchased money mortgage and my client is not willing to walk away from it, but if your clients want to consider other lost mitigation options -- there's number one they've asked for it in September of 2020 -- by assuming he agrees that we actually hold the mortgage, I might be able to get my clients on board with that. Looks like you've got another one that says, "Drew, hope you are

well. Attached are payoff and reinstatement letters on this matter. I'm waiting for confirmation, but I believe these are the only lost mitigation options," then he mentions again, "my client will consider, because of the nature of this case." Sends another one. "Attached is a lost mitigation review package if your client would like to be reviewed. Not sure if this will jive with his position that my clients don't own the loan, but they are willing to review them. Have a great weekend." That was sent on the 25th. So, it looks like three in a row, and then Mr. Page submits over what your clients will need to provide to participate in this lost mitigation. "Drew, I hope you're doing well. Does your client want to engage in the lost mitigation review?" That was sent about two weeks later on October 8th of 2020. No response. "Drew, hope you are well. I have certified compliance with the 2011 order based on the Defendant's non-response to our repeated attempts. It is my client's position that your client is in default for failure to answer the complaint as the 2011 order doesn't allow a party that refuses to participate in lost mitigation the additional 30 days to answer. The order

specifically says, 'Reviewed and denied.' I am sending you all this email as a professional courtesy as my client has instructed me to proceed with the default paperwork." I don't know how much more clear Mr. Page can be. I do not --

MR. RADEKER: I understand Mr. Page is being clear. Where the violation on this latest one, the most egregious one is this, is what the order requires them to do is to say, "Okay, we're denying you -- for whatever reason, we're denying you for lost mitigation of whatever sort, for foreclosure intervention as the order phrases it. Now you have 30 days to respond, but that's not what they sent in. They sent in the same kind of certification that you'd put in if nobody had ever requested foreclosure intervention at all.

THE COURT: I mean, he can't be any more clear. The fact that it may be on a different form of sorts, if he sends over four different emails saying, "Do you want to participate? This is what I'm willing to do or to speak to my clients concerning," I don't know what more else do you want? You're whole position is that there was a form or a document that was, I guess, not filed or filed in error, I mean, I don't understand what the

-- I have dealt with these and I understand what Justice Toal's order is designed for, which is to give someone the opportunity to participate in some type of mitigation if they are having mortgage issues or problems, because in 2011 everybody was having mortgage issues or problems. But the fact that your client's going to hide behind some document that they alleged that wasn't filed appropriately after he sent four or five emails, that's going nowhere with this Court at all. You can argue it and continue to argue it, but I may -- it's clear as day to me that he offered on several different attempts to have his clients participate, and he even offered it in his memorandum saying that they may still be willing to participate in mediation, but apparently your clients are hiding behind some either document that wasn't assigned appropriately or that they weren't afforded their 30 days to respond or they don't believe that he owns the loan out of bankruptcy, but that argument is -- I'm not buying one single bit of that. So, Mr. --

MR. RADEKER: Your Honor, --

THE COURT: Well, hold on. I'm going to let Mr. Page talk now. Mr. Page what would you like to

tell me?

MR. PAGE: Thank you, Your Honor. As you pointed out, we're just trying to get this case to some resolution and to move it along, not just -- the bank's goal is to not take the house. What we really want to do is just get the other side to come to the table and let's engage in some type of loss mitigation to try and resolve these issues. But, you know, just as some background, we've been involved in substantial litigation at the bankruptcy court prior to even filing this action in common pleas. It's just gone on for so long, and then now to have this thrown at us, we're just not really sure, you know, the other side doesn't appear to be acting in good faith in all of this, so that's really -- I won't go into all of my points, but really, that's what we're trying to do is just get the other side to come to the table and let's have a conversation about how to resolve this default on this mortgage.

THE COURT: Mr. Page, I couldn't agree, I mean, Mr. Radeker, I couldn't agree with him more. It seems like your clients are hiding behind this document that wasn't filed to just toll the time and basically simply giving the baseless claims

that they won't have a mediation, when Mr. Page has said, "We'll have the mediation." It doesn't seem like anything is happening apart from, well, let's just delay, delay, delay. I mean, what's going on?

MR. RADEKER: Your Honor, I'm happy to have the mediation. I guess, like, what I'm seeing here when I see these emails is to say the only loss mitigation options my client will consider are payoff and reinstatement, which is not what my clients said that they were interested in, but here's the rub, is they are trying to say that my clients are in default now. That's not true. That's where the egregious violation of the administrative order comes in. If this Court wants to say that their certificate is the functional equivalent of a notice of denial of foreclosure intervention, then, Your Honor, at that point you'd order we have 30 days to answer the complaint. What they're trying to do is to say you --

THE COURT: But, my point is that -- that's just delaying the inevitable, I mean, I think you could have considered that months and months ago, that essentially, that was a denial that they were going to participate because your clients didn't ever answer back saying that they wanted to

participate in some type of loss mitigation. They gave options. Your clients simply could have said, "No. We're not going to participate in any of those options," but they didn't. They just stayed deaf as to what they wanted to do other than to say that they wanted a mediation, which Mr. Page is saying his clients are willing to participate in. So, the 30-day notice to answer the complaint and me, -- or Mr. Page trying to get them in default, I disagree. I don't see Mr. Page jumping up and down saying, "They're in default. We need to move on to damages." He's saying let's try to keep this case moved along and quit the delay on behalf of your clients.

MR. RADEKER: I guess, Your Honor, I hear you that you're probably going to deny my motion, but --

THE COURT: I'm thinking about going the other way. I mean, this is -- after I've read everything and still making the arguments on behalf of your clients, I'm almost tempted to put them in default and say, "Well, you lost out. He asked you four times to participate. You're not participating. You're utilizing this delay tactic by filing the motions to dismiss because you allege that there's

some document that had been filed in error." I'm tempted just to put them in default and say, "Move on. Case is over."

MR. RADEKER: I guess, Your Honor, that will be an error, you know == if we had sent the notice that says we're denying you foreclosure intervention, we wouldn't be here.

THE COURT: All right. Here's the question. Mr. Page, are you denying them foreclosure intervention? The answer is no.

MR. PAGE: Yes, Your Honor. We're not denying, I mean, if they want to come to the table, we will negotiate with them, but in terms of the 2011 order, that's, I mean, I don't know how many more times we can reach out on that, and I filed the certificate to try and get some movement on it because I hadn't received any response to it.

THE COURT: I agree with you one hundred percent. I agree. I mean I think you've complied with it as fully as I think that the order would have contemplated. I think just because the clients are alleging that there's some deficiency, that certainly does not go against what the intent of the order -- Chief Justice Toal's order is, which is to give someone the opportunity to

participate in it. But you can't, I mean, you can lead that horse to water only so many times, Mr. Page, until you've just got to walk away and let the horse, you know, thirst to death, which is what I think you're doing now, saying, "I can only take it there so many times." So, I don't know. What do you all want to -- what do y'all propose that we do to try to get this case moved along?

MR. RADEKER: I guess, Your Honor, if you're -- you're going to be denying this motion, you've made that pretty clear, and that is to say, I'm not going to issue any sanctions, you know, here's how long the Fields have to put in a responsive pleading, and let us just handle any attempts to resolve it just as we would in any other case.

THE COURT: I'm scared to do that. I have a feeling we're going to be right back here in five months and they are still going to be alleging that any type of foreclosure proceedings are stayed, therefore I assume they're not making any payments on the house currently, and so we're going to be right back to where they're not making any payments, they're not making any good faith effort to try to resolve this with the bank, and they certainly don't want to give up their house and I

don't want to take it away from them, but that's not going to resolve the case. So, if I give you 30 days to respond to the complaint, then what's the next step after that?

MR. RADEKER: Well, the next step after that is we litigate the case or we work it out. It's just like any other case at that time. But you would be ruling that it's no longer stayed, if you were to do that, which you could do. I guess, Your Honor, if you rule that my clients are in default, then the Plaintiff's attempt to make an end run around the order will have worked.

THE COURT: I don't think that's what they tried to do. That's what you keep alleging that they were trying to do. I think your clients just keep saying that that's what they're attempting to do. I think Mr. Page has done everything he could do to attempt to try to make them come to the table with something, I mean, he's made some offers. Certainly, they can reject those. He's reached out on several occasions, in September, later in October, then obviously he had to file this at a later date. But my concern is that I give them the 30 days to answer and, then, you know, they tie it up for the next two years in litigation to not even

show up to the mediation or to not do, you know, not to participate in the case. So, I mean, they've done a great job to this point of doing it. I'm just afraid that that would be a continuation of it, so I'm just trying to contemplate what we need to try to do. We're all fully aware of what is the issue in the case, the amount of money that's in the case, all those type of things that -- I assume the discovery in this would be minimal at best, if any at all at this point in time, simply to show the clients that they own the loan and this is what they owe on it, I mean, there's two pieces of paper. But here's what I'm going to do. I'm going to allow your clients the 30 days to answer from today's date, and then I'm going to order a mediation within 60 days of that date and if it's not resolved at mediation at the close of those 60 days, then Mr. Page can file a motion for a default.

MR. RADEKER: Thank you, Your Honor.

THE COURT: All right. If you'll just prepare the order, Mr. Page, I'd appreciate it.

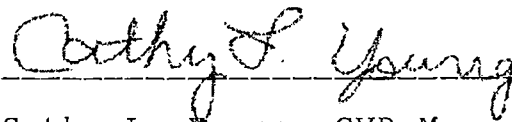
(Whereupon, the hearing was adjourned at 11:17 a.m.).

--- -END OF TRANSCRIPT- - -

CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth 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 evidence introduced in the
trial of the captioned case, relative to appear, in
the Circuit Court for Beaufort County, South
Carolina, on the 13th day of January, 2021.

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



Cathy L. Young, CVR-M

Court Reporter and Notary

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Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
) COURT OF COMMON PLEAS
)
) NO. 2019CP0702279

WILMINGTON SAVINGS FUND SOCIETY,)
et al.)

VS.)

) TRANSCRIPT OF RECORD
)

REX A. FIELD and TRACY FIELD,)
et al.)

Thursday, April 15, 2021

Courtroom No. 1
Beaufort County
Fourteenth Judicial Circuit
102 Ribaut Road
Beaufort, South Carolina

B E F O R E:

The Honorable Bentley D. Price

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

George Benjamin Milam, Esquire
Attorney for the Plaintiff

REX A. FIELD and TRACY FIELD

Defendants, pro se

Reported by: Cathy J. Provost, RPR/RMR

Official Circuit Court Reporter

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none

-- P R O C E E D I N G S --

(WHEREUPON, court commenced at 10:30 a.m.)

THE COURT: We have a couple motions this morning; is that correct? All right. And there is, I believe, two by the plaintiff, correct, two by the defendant? All right. Who would like to go first?

MR. MILAM: Your Honor, I'll say I believe one of the motions by the plaintiff is moot, the motion for extension. I believe the Court actually -- there were two separate motions for extension filed.

When I was retained in this case I was originally retained for the plaintiff and all but one of the third-party defendants. And then later on I was retained to represent the other third-party defendant, DLJ. So that was the reason for two separate motions for extension, to file a responsive pleading.

Mr. and Mrs. Field filed amended counterclaims and third-party claims. And we filed a motion to dismiss on behalf of the plaintiff and all the third-party defendants within 15 days of that amended pleading, so we believe the motions for extension are moot.

However, I also believe that the Court entered an order that granted both motions for extension. But either way, I don't believe that we have to hear that motion today.

THE COURT: All right. Yes, sir.

MR. FIELD: Your Honor, we filed a motion to oppose the -- I

1 mean, in opposition of that motion, and we'd like for the motion
2 to be heard.

3 THE COURT: All right. Who wants to go first?

4 MR. MILAM: Well, Your Honor, since it's our motion, I'll go
5 first.

6 THE COURT: All right.

7 MR. MILAM: We filed the motion for extension because under
8 the original answer, counterclaims and third-party claims, they
9 would have been due within a few days of us being retained as
10 counsel. So we filed the motion for extension to have some
11 additional time to review the allegations.

12 The Fields' pleading was, I think the original pleading was,
13 around 80 pages and more than 400 paragraphs, so we moved for a
14 relatively short extension, I believe about 15 days, and we
15 believe that we were entitled to it. The Fields subsequently
16 filed an amended answer, counterclaims and third-party claims
17 that was 149 pages.

18 And based on Rule 15, I believe the rule provides 15 days,
19 at least from the time of the amended pleading, to file a
20 response. The motion to dismiss was filed on April 9th, which is
21 within 15 days of the March 25th amended answer, counterclaims
22 and third-party claims.

23 So again, we believe that, as it was filed within the
24 timeline provided by Rule 15, no extension is needed. However,
25 if an extension is needed, then we think we're entitled to one

1 given the volume of the allegations in the Fields' pleadings.

2 Thank you.

3 THE COURT: All right. Thank you very much.

4 MR. FIELD: Your Honor, we filed our first amended answer,
5 affirmative defenses, counterclaims and third-party counterclaims
6 on March 25th. That automatically gave the plaintiff 15-days
7 extension by virtue of our amendment, plus 5 days mail time.

8 So he would have had -- the plaintiff would have had until
9 the 14th to file a response to our amended answer. He asked for
10 an extension to the 12th, so he was actually shortening the time
11 that he would have otherwise had to answer, basically prejudicing
12 his own client based on his extension.

13 Now, where the problem's coming in is, he's filing these
14 pleadings without filing a notice of appearance for DLJ Mortgage
15 Capital. So that the filings, the e-filings, are going in under
16 Fannie Mae, because the e-filing system is set up and will reject
17 an e-filing if you don't file a notice of appearance.

18 So for the last two filings that he's done, they've gone in
19 under Fannie Mae. The extension of time, motion for extension of
20 time. But he also filed a motion to dismiss our answer,
21 counterclaim and third-party claim through Fannie Mae. So he had
22 to file a notice of appearance for DLJ.

23 So that's the main reason why we're objecting to this
24 motion, is because he's not filing the motion properly within the
25 system. It's showing up under Fannie Mae. Every filing he's

1 doing now is showing up under Fannie Mae.

2 Now, he claims that he represents, he's co-counsel for the
3 plaintiff and co-counsel for three of the four third-party
4 defendants. So in his pleadings he's claiming that he represents
5 DLJ, but has not filed a notice of appearance.

6 And so that's why we're objecting to these two motions that
7 he's filed, because he has not filed a notice of appearance for
8 DLJ.

9 THE COURT: All right.

10 MR. MILAM: Your Honor, the motion to dismiss was filed for
11 all the parties I represent on April 9th.

12 THE COURT: All right. So this is a foreclosure action,
13 correct, from 2019?

14 MR. MILAM: Yes, sir.

15 THE COURT: All right. And do the Fields still reside in
16 the residence?

17 MR. MILAM: That's my understanding, Your Honor.

18 THE COURT: And what was the counterclaim?

19 MR. MILAM: The counterclaim is that, as I understand it,
20 the Fields contend that there are a number defects associated
21 with the securitization of their mortgage loan; that there are
22 questions about who ultimately owns the loan and, as a result of
23 all of this, that Wilmington may or may not be the owner of the
24 loan.

25 They also no contend that there is a conspiracy by the

1 plaintiff and the third-party defendants to deprive them of their
2 home by pursuing the foreclosure in this case despite all of
3 these alleged defects in the securitization process.

4 THE COURT: When was the last time they made a payment on
5 the home?

6 MR. MILAM: So there was a modification in 2014. I believe
7 the Fields paid on that until the end of 2017. And I believe
8 it's currently due for January 2018.

9 THE COURT: There's 163 filings in this case.

10 MR. MILAM: Let me correct that, Your Honor, I think it's
11 due for January 2019. I believe I may have misstated saying it
12 was 2018.

13 THE COURT: I'll take the plaintiff's motion to extend time
14 under advisement. But the first one up is plaintiff's motion to
15 strike defendant's demand for a jury trial. Then we have two
16 defendants' motion for sanctions for failure to comply with South
17 Carolina Rule 11 and defendants' motion to dismiss complaint
18 pursuant to Rule 12(b)(7). All right.

19 You want to argue your motion to strike defendants' demand
20 for jury trial first?

21 MR. MILAM: Yes, Your Honor. So at the time the motion to
22 strike was originally filed, the only claim that had been pled at
23 that point was the foreclosure claim because the defendants had
24 not yet filed an answer. Now, foreclosure is a claim in equity,
25 and there's no right to a jury trial.

1 The Fields subsequently filed counterclaims, a third-party
2 claim. By bringing those claims in a foreclosure action, they
3 are only entitled to a jury if the claims are both legal and
4 compulsory. They have to be compulsory counterclaims, which
5 means they have to be logically related to the transaction or
6 occurrence, the same as the foreclosure action.

7 Mr. and Mrs. Field have attached to their opposition
8 memorandum a copy of the Salon Proz case. And I agree that the
9 Salon Proz case, which is a 2017 case from the court of appeals,
10 accurately states the law in South Carolina on when a
11 counterclaim brought in a foreclosure action is compulsory versus
12 permissive. And that what Salon Proz says is, that to be
13 logically related to the foreclosure and, therefore, compulsory,
14 the counterclaim must affect the enforceability of the loan. And
15 in Salon Proz the Court found that at least one of the
16 counterclaims was compulsory because the defendants in that case
17 claimed that the plaintiff had agreed to enter a loan
18 modification.

19 Salon Proz talks about another case, Carolina First Bank v.
20 BADD, which found that counterclaims were not compulsory. And
21 that case involved a breach of a guarantee agreement. The
22 defendants alleged some counterclaims that included conspiracy
23 against the plaintiff. And the Court in that case found that the
24 defendant wasn't challenging, wasn't disputing his entry into the
25 loan transaction; he was disputing some events that happened

1 afterwards; and, if proven, would not affect the enforceability
2 of the loan. So the Court found that the counterclaim was
3 permissive and that the defendant was not entitled to a jury
4 trial.

5 So in this case -- and again, there are, I believe, eight,
6 eight or nine, counterclaims, several of which are, in fact,
7 claims at law. So if they are compulsory, then that the Fields
8 would be entitled to a jury trial.

9 We believe they are not compulsory because if proven they
10 would not affect the enforceability of the loan. What the Fields
11 are alleging is that all these entities have conspired to deprive
12 them of their home despite defects in the securitization process.

13 That's a separate thing from what the plaintiff has to prove
14 in this case. In this case the plaintiff has to show that the
15 Fields signed the note and mortgage; that they entered into a
16 valid transaction; they have to show that the loan is in default,
17 that the Fields haven't made all their payments; and they will
18 have to show that plaintiff has standing to enforce the note.

19 The way that the plaintiff will do that is by coming into
20 court with the Fields' original note showing that it's been
21 endorsed in blank and that Wilmington Savings Fund Society is,
22 therefore, the holder.

23 There is nothing in the long list, the 149 pages of
24 allegations, that would, if proven would, prevent the
25 enforceability of the loan. Therefore, we think that the

1 counterclaims and third-party claims are permissive and not
2 compulsory.

3 We, of course, have a pending motion to dismiss those, which
4 we had hoped to be heard at the same time, because the motion to
5 dismiss may clarify which of those claims will be viable.

6 But as it stands, we do believe that we are entitled to an
7 order striking the jury demand. Thank you, Your Honor.

8 THE COURT: All right.

9 MR. FIELD: Your Honor, the plaintiff filed a motion to
10 strike defendants' demand for jury trial over 15 months ago.
11 There was a stay on the case.

12 It was filed by the counsel of record, which is Mr. Martin
13 Page, which is not here today. He litigated this case for a year
14 and a half, and then on March 15th he just basically has
15 abandoned this case. He doesn't respond to any correspondence.
16 He hasn't responded to any of these filings. He doesn't respond
17 to emails. Nothing. So that he's not the one that filed this
18 motion.

19 Now, in their motion they don't -- we have not answered our
20 complaint yet. So they have already answered their complaint.
21 They had already tried -- they were prematurely filing a motion
22 to strike the demand for a jury trial at a time when there was a
23 stay on the case, we had not answered, and there was a stay under
24 the administrative order pursuant to foreclosure intervention.
25 And then we went into a moratorium due to COVID.

1 So that there's absolutely nothing in this motion that gives
2 a reason why they should strike a jury trial demand. There's
3 nothing in here. The only thing they say is that the foreclosure
4 action is equitable in nature, the defendant's claims are not
5 compulsory in nature. We had not made any claims yet. So that
6 they wanted to strike everything, the words jury trial demand,
7 from everything, every pleading, including the jury demand
8 itself. So that's their motion.

9 Now, we filed a supplemental in opposition to this motion.
10 And we did cite the South Carolina Community Bank v. Salon Proz.
11 And this is quite a breakthrough in foreclosure cases. This was
12 an appellate court ruling, or circuit court of appeals ruling in
13 2017.

14 They ruled that a Uniform Trade Practices Act claim was
15 legal and compulsory and entitles the foreclosure to a jury
16 trial. And they said only one of your claims has to be legal and
17 compulsory to qualify for a jury trial. We have at least nine
18 counterclaims. Most of them are legal, or at law.

19 So the Salon Proz case is kind of a landmark case here
20 relating to foreclosures because they ruled -- and this was
21 appealed in the court of appeals, they ruled -- that a Uniform
22 Trade Practices Act claim was entitled to a jury trial. And we
23 have included that in our memorandum and their opinion.

24 So we believe that our claims are legal and compulsory.

25 THE COURT: All right. So the next motion is defendants'

1 motion for sanctions for failure to comply with South Carolina
2 Rules of Civil Procedure 11(b).

3 While he's looking at that, Mr. Milam, how did this get to
4 circuit court? How did it get out of the master's court?

5 MR. MILAM: The Fields were, at one point, represented by
6 Attorney Drew Radeker. And Mr. Radeker had, I believe, filed a
7 motion to remand to the circuit court, and Judge Dukes granted
8 that motion.

9 Because I was not the attorney at the time, I don't know
10 exactly what Judge Duke's reasons were. I assume it was because
11 Mr. Radeker said that they intended to file an answer and claims
12 that would require the circuit court to determine what was
13 triable by a jury and what was not.

14 THE COURT: All right. Thank you, sir. Yes, sir.

15 MR. FIELD: Your Honor, I'd like to respond to that. The
16 case was filed October, I believe, 11th. Is that right?

17 MS. FIELD: Uh-huh (yes).

18 MR. FIELD: Plaintiff's counsel filed an order of reference
19 on the 16th, and it was with the clerk of court, and it was with
20 a proposed order. That order was signed on the 17th of October.

21 We were never -- and we were not -- the case had not yet
22 commenced. We were served on October 22nd, and that's when the
23 case commences pursuant to rule 3. So that order was a void
24 order of reference because the case had not commenced and the
25 Court did not have jurisdiction to sign that order.

1 And so the case was in a stay status due to the plaintiff
2 was not participating in foreclosure intervention. So there was
3 a stay on the case. That's why this case has drug on for so
4 long.

5 Then it went into, during that stay, the plaintiff's
6 counsel, Mr. Page, kept scheduling final hearing based on this
7 void order. He filed for two final hearings based on this void
8 order. Then what happened is, the moratorium went in place in
9 South Carolina through the end of August of 2020, right, of 2020.

10 So then when the case came out of the foreclosure
11 moratorium, the plaintiff's counsel came back at us again,
12 certified the foreclosure intervention improperly. They never
13 served us a denial letter of foreclosure intervention. The
14 order, the administrative order, clearly states that they have to
15 serve us a denial letter, in writing, in mail. They never did
16 that. So they start pushing.

17 So what we did was, we hired Drew Radeker in Columbia to
18 represent us. And he looked at the case and he said what we need
19 to do is we need to get that order vacated. So he filed a motion
20 to vacate the order of reference. He went before Judge Dukes.
21 Dukes, Judge Dukes, signed an order to vacate the order of
22 reference.

23 And the entries on the online system, it looks like it says
24 motion to strike the jury trial demand was also resolved at that
25 time, too. It had an entry around that time, the same time,

1 where it looked like the motion had been resolved.

2 So, therefore, Judge Dukes put on his system that the case
3 was dismissed as far as master in equity was concerned, and the
4 case just reverted back to common pleas because there was nowhere
5 to go.

6 THE COURT: Okay. Well, let's get to your motion for
7 sanctions and your motion to dismiss the complaint, please.

8 MR. FIELD: Okay. The issue we're having with Rule 11(b) is
9 -- is it Milam?

10 MR. MILAM: Milam.

11 MR. FIELD: Milam, okay. Mr. Milam has kind of piecemeal
12 come into this case. And the way that this case is being
13 handled, it's impossible to know who's responsible for it.

14 We were communicating with Mr. Page relating to mediation
15 because we were ordered, on January 20th, we had 60 days from our
16 answer to participate in mediation which would be, the deadline
17 would be, April 20th.

18 So we were engaged in communications with Mr. Page relating
19 to mediation. He wouldn't commit that he would have anyone with
20 full authority to settle at the mediation. So we filed a motion
21 to compel mediation, which was denied.

22 So we reached out to him and we said, Okay, let's mediate
23 before the deadline, because we're under court order to mediate,
24 let's immediate before the deadline. He said, Fine, we'll do it.

25 I have an email here -- is it all right if we submit this?

1 THE COURT: Sure.

2 MR. FIELD: It's the very last one, page, it's exhibit B.
3 We reached out to Mr. Page, and he said, The plaintiff is willing
4 to attend mediation. Attached is schedule E, a schedule for
5 Mitchell Griffith in Beaufort. We would prefer to taken via Zoom
6 or Webex, with the dates of April 2nd, 6th, 13th, 14th, and 16th.

7 So this is the last communication that I've had with
8 Mr. Page. This is dated March 15. He didn't respond to any
9 other further correspondence; didn't respond to any of our
10 emails, any of the filings. He's dropped off the face of the
11 earth in this case. And so we believe that he's abandoned his
12 client.

13 And the purpose here of 11(b), if someone comes in, they
14 should be substituted because that way the person coming in has
15 responsibility. Because counsel, co-counsel here, has, is acting
16 like the case file really hasn't been transferred to him. He has
17 denied liability on past litigation; he has denied liability on
18 this case here because it was litigated by different counsel for
19 18 months. He disappeared in the case this month.

20 And so we're asking the Court either to require substitution
21 of counsel, order substitution of counsel or -- and what's also
22 interesting is, is that Mr. Page is not here, he's not defending
23 this motion. He's not defending the sanctions motion that was
24 filed against him, and he is counsel of record for the plaintiff.

25 We have present here co-counsel for the plaintiff, which

1 does not have direct responsibility for this case for the last 18
2 months. There's a conflict of interest between co-counsel and
3 other third-party defendants in this case. And so we don't
4 think it's -- we believe it's a violation to just quit, okay.
5 You can't just quit in the middle of mediation, quit with your
6 client, quit mediation, stop communicating.

7 And I'm really having a hard time with your last name. Can
8 you tell me how to pronounce it again.

9 MR. FIELD: Milam.

10 MR. FIELD: Milam, okay. Mr. Milam has showed up, he's
11 appeared. He has the right to appear, but he doesn't have -- if
12 he appears properly and files a notice of appearance, we believe
13 that he would have the right to do that. But counsel for the
14 plaintiff does not have the right to abandon their client and
15 drop the case.

16 So either he needs to -- I believe that Mr. Page either
17 needs to withdraw, the Court needs to order substitution. But
18 this is really causing a lot of problems in the case.

19 THE COURT: All right. Let me let Mr. Milam speak to what's
20 going on.

21 MR. MILAM: Your Honor, we were retained as additional
22 counsel in the case after the counterclaims and third-party
23 claims were filed. Mr. Page is still counsel in this case. He
24 has not abandoned his client. I have spoken to him about this
25 case. I spoke to him yesterday about it. I told Mr. Page that I

1 would run point on this case with the hearings, attend the
2 mediation, which we did mediate the case on Tuesday in front of
3 ---

4 THE COURT: They left that part out.

5 MR. MILAM: I'm sorry, Your Honor?

6 THE COURT: They left that part out of the argument, that
7 the guy abandoned the case. But y'all just mediated on Tuesday?

8 MR. MILAM: We mediated on Tuesday. I attended with a
9 representative for the plaintiff. We impasse. Ben McCoy
10 ultimately was the mediator. We had a change of mediator at
11 the -- the Fields objected to the previous mediator scheduled,
12 Mr. Griffith, as having a conflict of interest. But we did
13 mediate the case.

14 I'm aware of no rule that requires, when a party is
15 represented by two attorneys, both admitted attorneys in South
16 Carolina, that requires them both to taken mediation or any other
17 appearance. And again, Mr. Page is certainly available to appear
18 for anything that the Court requires.

19 And I think that's one other point I'll make, is I disagree
20 that the motion for sanctions is directed against him personally.
21 It does say that, asks the Court to order sanctions against
22 Mr. Page as an individual. If it had, I'm sure he would be here
23 today, Your Honor.

24 THE COURT: Thank you very much. Madam court reporter -- I
25 looked at you and said, I apologize. Madam clerk, on the online

1 public index it says Court Roster CP Jury, McCoy, May 11th, 2011.
2 Does that mean it's on her jury trial roster?

3 CLERK OF COURT: (Karen Johnson) Yes.

4 THE COURT: That's what that means on there?

5 CLERK OF COURT: Yes.

6 THE COURT: So this is on the docket for May 11th?

7 CLERK OF COURT: Correct.

8 THE COURT: For a jury trial. Okay, all right. Mr. Field,
9 I'll be happy to hear from you as to your motion to dismiss.

10 MR. FIELD: I would like to respond to what he said about
11 mediation.

12 THE COURT: It's okay, don't worry about that. That's not
13 part of the issue today. I just want to hear the motions. So
14 I'll be happy to hear your motion to dismiss.

15 MR. FIELD: Okay.

16 THE COURT: Is there a pending motion to dismiss the
17 counterclaims?

18 MR. MILAM: Yes, Your Honor. The motion to dismiss is as to
19 both the counterclaims and the third-party claims.

20 MR. FIELD: Your Honor, before the Court is defendant's
21 motion to dismiss complaint pursuant to Rule 12(b)(7). There's
22 been five filings in this case. The initial motion, defendants'
23 memorandum in support, supplemental memorandum in support. And
24 we amended the supplemental memorandum for just a couple of typos
25 on the dates, so that we amended that. We put in the filing this

1 morning on the dates. And then there's their opposition.

2 So as stated earlier, they filed a complaint on
3 October 11th, 2019. In paragraph 9 of that complaint they -- by
4 the way, this complaint contains no documents whatsoever.
5 There's no loan documents, there's no exhibits, there's nothing
6 backing up this pleading.

7 They do reference, they said in paragraph 9 that the
8 mortgage was assigned to Wilmington Savings Fund Society, FSB,
9 not in its individual capacity but solely as owner trustee for
10 CSMC 2018-RPL6 Trust by assignment of mortgage recorded
11 December 18th, 2018, in book 3722 at page 1349.

12 So that brings us to this filing, this exhibit A that you
13 have, Your Honor, it's the mortgage assignment. The mortgage
14 assignment says Wilmington Savings Fund Society, FSB, doing
15 business as Christiana Trust as owner trustee on behalf of
16 CSMC 2018-RPL6 Trust. So the assignment says that Christiana
17 Trust is the owner trustee.

18 The pleading, the caption on the pleading, says Wilmington
19 Savings Fund Society, FSB, not in its individual capacity but
20 solely as owner trustee for CSMC 2018-RPL6 Trust. Now, between
21 the pleading and the mortgage assignment, invokes three separate
22 legal entities. You have Wilmington Savings Fund Society, not in
23 its individual capacity; you have Christiana Trust as an owner
24 trustee; and you have CSMC Trust, which is a Delaware statutory
25 trust. It's only recognized in the state of Delaware under the

1 laws of Delaware. So the Christiana Trust is not a named
2 plaintiff in this case. Now, but they are listed as owner
3 trustee in the mortgage assignment.

4 So we, in our, also in our exhibits here, exhibit B, which
5 is what we printed off this morning from the state of Delaware,
6 it says Christiana -- this is a corporate filing, by the way,
7 they're registered as a corporation in the state of Delaware.
8 This says Christiana Trust Company of Delaware, corporation,
9 state, Delaware.

10 So they're a corporation, but they're formed as a limited
11 purpose trust, which is a statutory scheme relating to -- they're
12 not a regular corporation; they're a limited purpose trust
13 corporation. But they are a corporation, and a separate
14 corporation.

15 Now, C-1 is, we printed off, is a report that the Delaware
16 bank commissioner puts out every year. And C-2 shows Christiana
17 Trust Company of Delaware as a limited purpose trust. And C-3 of
18 that same report shows their address, which is different than
19 Wilmington Bank. They have a chairman of the board; they have a
20 president; they have a CEO, secretary, trust of the compliance,
21 they have a treasurer, a vice-president, they have directors,
22 they have one, two, three, four, five, six, about six, directors.

23 Now, co-counsel wants to, in their opposition, they're
24 claiming, Oh, Christiana's just a trade name. That what they're
25 saying in their opposition, It's just a tradename. Well, if it

1 was just a tradename, they wouldn't put in the mortgage
2 assignment Christiana Trust, owner trustee. So the assignment of
3 mortgage says Christiana Trust, owner trustee.

4 So our position is that the fact that they were not included
5 in the caption of the complaint, they don't have standing. They
6 can't establish standing after the case has been filed.

7 So normally if you had an indispensable party, you would
8 just join the party. In this case they can't join the party
9 because they can't establish standing after the case commences.

10 We do have a pending motion for joining indispensable
11 parties. If the Court wants to order of them to be a forced
12 plaintiff, that's an option under Rule 19. However, it flies in
13 the face of the standing argument, which is they can't establish
14 standing after the case commences.

15 So that's really the root of our motion.

16 THE COURT: All right.

17 MR. MILLAM: Your Honor, the assignment is to Wilmington
18 Savings Fund Society, FSB, d/b/a Christiana Trust as owner
19 trustee. The d/b/a stands for doing business as, which is the
20 way commonly used to indicate that a tradename is being
21 acknowledged. Christiana Trust is a tradename that has been used
22 by Wilmington Savings Fund Society.

23 There is also a company, Christiana Trust Company of
24 Delaware, that exists and is an affiliate of Wilmington Savings
25 Fund Society. They are both under one common corporate parent.

1 This is, in my view, emblematic of the type of issues that the
2 Fields have raised in this case and illustrates why these do not
3 go to the enforceability of the note and mortgage.

4 As Judge Waites acknowledged in the bankruptcy, under South
5 Carolina law, the mortgage follows the note. So if Wilmington
6 Savings Funding Society, at an appropriate hearing in this case,
7 comes forward and shows that it has the original note endorsed in
8 blank, which it will do, that is all it needs to show to prove
9 standing.

10 And all these other issues about these other entities and
11 their corporate structure has nothing to do with Wilmington's
12 standing.

13 Finally, Your Honor, Christiana Trust Company of Delaware
14 has never claimed to have the right to enforce the note and
15 mortgage. The Fields have not provided anything to indicate that
16 it or anyone else other than the current plaintiff is trying to
17 enforce the loan against them.

18 And we've cited to the Mosley (phonetic sp) case within
19 which the court determined that a party was not an indispensable
20 party where it was claiming no interest in the action. So we
21 believe that Christiana Trust has, in fact, been joined in this
22 case as a third-party defendant, but there's no need to realign
23 it when it's not claiming an interest or a right to enforce
24 against the Fields. Thank you, Your Honor.

25 MR. FIELD: Your Honor, may I respond?

1 THE COURT: Briefly.

2 MR. FIELD: Wilmington Savings Fund Society is saying that
3 they are acting not in their individual capacity. That's a
4 unique phrase, to say to Delaware, it's a unique phrase to the
5 Delaware statutory trust.

6 What they're really saying is, what Wilmington Savings Fund
7 Society is saying is, when they say it's not in an individual
8 capacity, what they're saying is, It's not me. That's what
9 they're saying, is Wilmington Savings Fund Society, not me,
10 Christiana Trust, owner trustee. That's really what that means
11 in the state of Delaware.

12 But there are three claims, three separate legal entities,
13 in this assignment. And Christiana is not a trademark; it is a
14 separate legal corporation. In this assignment, it says they are
15 the owner trustee of this trust. And with CSMC Trust, it's
16 claimed that no one else is claiming ownership of this loan,
17 which is not true.

18 If you look at the mortgage assignment, at the very bottom
19 of the mortgage assignment it says Fannie Mae, 2018 RPL-PL3 sale.
20 That sale, this mortgage assignment was requested, at the top, it
21 says Fannie Mae. When you research that sale, it was a bulk
22 transaction of six billion dollars worth of loans to DLJ Mortgage
23 Capital. What DLJ Mortgage Capital did, is they securitized with
24 CSMC 2018-RPL6 Trust seven months after this foreclosure filing.

25 In their FCC filings, their filings say that DLJ Mortgage

1 Capital acquired all the loans from Fannie Mae, so that someone
2 else is claiming ownership to these loans. And all of the loan
3 numbers are in that FCC filing.

4 So at the top of this mortgage assignment, it has a Fannie
5 Mae loan number, it says 1700119966. All of the loans that are
6 in that securitized trust that was securitized seven months after
7 they filed the foreclosure complaint start with 1700. We've done
8 a computer scan, we've researched over 20,000 loans, and they
9 have every loan number in that FCC filing, every single Fannie
10 Mae loan number. That loan number right there is not in that
11 trust.

12 So if we can prove that, that even though Fannie Mae has
13 claimed to sell the loan to DLJ Mortgage Capital, DLJ Mortgage
14 Capital does not have it in their trust.

15 Also, Fannie Mae, pursuant to the trust indenture, it would
16 be a violation of their trust indenture that they use with all
17 their securitizations for approximately 2002 to 2007. It states
18 in there that they cannot sell or hypothecate the loan. So it
19 would be illegal, it would be against their trust indenture, to
20 sell the loan to anybody. So the chain of title most likely
21 ended with Fannie Mae. We believe it did.

22 And in that trust indenture, which we filed with our
23 complaint, it says in there that they cannot modify the loan,
24 they can not extend the maturity of the loan, and they cannot
25 change the interest rate. So the modification that they're

1 speaking of is completely against Fannie Mae's trust indenture.

2 So, but the main thing is, is Christiana Trust either needs
3 to, they are a claimed owner trustee, claimed owner trustee in
4 this assignment. They are a separate legal corporation. And
5 they either need to be a plaintiff, or this case needs to be
6 dismissed, because the problem is, if the indispensable party
7 is -- you can't go back and retroactively establish standing.
8 They missed the boat here because they didn't include Christiana
9 Trust in their pleading. So they cannot now establish standing
10 after the fact.

11 THE COURT: All right. The motion to join the third-party
12 defendants is denied. Motion to dismiss the counterclaims is
13 granted. Motion to dismiss the complaint is denied. Motion to
14 enforce sanctions is denied. And motion to strike the jury trial
15 is granted.

16 And I'm referring this to the master for foreclosure. All
17 right.

18 MR. FIELD: Your Honor, we didn't catch all that. Can
19 we ---

20 THE COURT: I'll put it in a form for you, and I'll make
21 sure you have a copy of it. All right. I'll do it myself.

22 MR. FIELD: Okay.

23 THE COURT: Thank y'all very much. Have a wonderful day.

24 (WHEREUPON, an off-the-record discussion was held)

25 MR. MILAM: Your Honor, was the motion granted as to the

1 third-party claims, as well?

2 THE COURT: Yes.

3 MR. FIELD: Your Honor, there are two pending motions in
4 this case that were not heard today.

5 THE COURT: No, they were all heard. Motion to join
6 third-party defendants, you just argued that a second ago.
7 Motion to dismiss counterclaims, he argued it, that's the first
8 thing he did and he said, I think there's a pending motion, and I
9 heard him out. Motion to dismiss the complaint, you just argued
10 that. Motion for sanctions for failure to comply, you argued
11 that about Mr. Page not being here. And motion to strike the
12 demand for jury trial was the first one we heard.

13 MR. MILAM: Your Honor, the Fields objected to hearing the
14 motion to dismiss the counterclaims and third-party claims on the
15 grounds that it was filed less than 10 days ago.

16 THE COURT: When was the filing date?

17 MR. FIELD: We have a pending joinder motion, also.

18 MR. MILAM: It was filed on April the 9th. We had requested
19 that the Court exercise its discretion to hear all the pending
20 motions today. However, the Fields did object to hearing the
21 motion to dismiss, less than 10 days since the filing date.

22 MR. FIELD: There are two joinder motions. There was a
23 joinder motion that was filed recently that was not agreed to be
24 heard today. And his motion to dismiss was not agreed to be
25 heard today.

1 THE COURT: Did you agree not to hear them today?

2 MR. MILAM: Your Honor, we wanted all the motions to be
3 heard today. The Fields did not ---

4 THE COURT: Madam clerk, did they want to hear all the
5 motions today?

6 CLERK OF COURT: Yes, sir, he did.

7 MR. FIELD: But he agreed to not hear that motion today.
8 And he agreed to not hear the other one today, too.

9 THE COURT: We're going to let the master handle those.

10 MR. MILAM: Okay. Thank you, Your Honor.

11 THE COURT: So I'll withdraw both of those and allow the
12 master to handle it.

13 MR. MILAM: All right. Yes, Your Honor.

14 MR. FIELD: Well, but, Your Honor ---

15 THE COURT: Mr. Field, I've heard enough, okay. I've made
16 my ruling, and my order will be submitted to you, and she'll give
17 you a copy of it, okay. Yes, sir.

18 MR. FIELD: I just -- but I'm not sure if the master can
19 handle the joinder motion because that's a Circuit Court motion.

20 THE COURT: The master will handle everything that will be
21 in my order. All right.

22 (WHEREUPON, court adjourned at 11:28 a.m.)

23 (End of Transcript of Record)

24

25

CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth 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 evidence introduced in the proceedings of the captioned case in the Court of Common Pleas for Beaufort County, South Carolina, on the 15th day of April, 2021.

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

Date: April 17, 2021

Cathy J. Provost_____

Cathy J. Provost, RPR/RMR

Official Circuit Reporter

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2019-CP-07-02279

COUNTY OF BEAUFORT

-----)
Wilmington Savings)
Fund Society, FSB, not)
In its individual)
Capacity, but solely as)
Owner trustee for CSMC)
2018-RPL6 Trust,)

Plaintiff,)

vs.)

TRANSCRIPT OF HEARING

-----)
Rex A. Field and -)
Tracy L. Field,)

Defendants.)

July 2, 2021

Beaufort, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge Presiding

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

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1 THE COURT: Mr. Field, just so I know, what
2 motions did you choose? I told you it was your
3 choice when we had the status conference yesterday,
4 which motions of yours that you wanted heard and I
5 told you I'd be happy to hear any of them that you
6 would like to have heard.

7 Mr. FIELD: Your Honor, we have a pending motion
8 to recuse, and we have a reconsideration of the
9 order, to the June 22nd order.

10 THE COURT: Correct.

11 MR. FIELD: We'd like for you to either rule on
12 those motions or hear them. We'd prefer for you to
13 just recuse and then we'd have another judge look at
14 it or if you want to go ahead and hear the motions,
15 then we can present our motion, but if you would
16 prefer to just rule in advance of that, then I'd
17 prefer that.

18 THE COURT: Right. So, what are the two motions
19 to reconsider? Because there were like five
20 motions, and then I continued three of them for you
21 and then I ruled on two. Correct?

22 MR. PAGE: I believe that's correct, Your Honor.

23 THE COURT: All right. What are the two
24 motions?

25 MR. FIELD: I am not aware of any of the

1 continuances. There's -- We'd have to clarify
2 which motions you're talking about that were the
3 continuance motions, because I'm not aware of
4 that.

5 THE COURT: I'm not sure what you're
6 talking about with the continuance motions. I
7 said reconsideration.

8 MR. FIELD: Okay. There's just one.

9 THE COURT: Okay. And that's the
10 reconsideration of your order on June 22nd
11 relating to our motion to recuse.

12 THE COURT: No.

13 MR. FIELD: Well, it was late to the order. It
14 was late to the order. There was an order that you

15 THE COURT: I have it.

16 MR. FIELD: Would you like to see it, Your
17 Honor?

18 THE COURT: Sure. Okay. I understand what
19 you're saying now. All right. So, what was your
20 basis for the recusal. You just didn't like what I
21 ordered, so you appealed it and you asked me to
22 recuse myself and I said, "No, I'm not going to
23 recuse myself. I've done nothing wrong and I've
24 ordered the Clerk to place it on the next available
25 roster, which she did. Just because you don't like

1 my order, doesn't mean that you get to go to another
2 judge and say, "Well, I think maybe they should take
3 a look at it", which is what you just said. That's
4 not how that works.

5 BY MR. FIELD: Well, we filed a fifteen-page
6 memorandum.

7 THE COURT: I know that.

8 BY MR. FIELD: With the supporting
9 documentation, and that order resulted from it but
10 the order says that you didn't have to rule on it
11 because you were not the assigned judge, so we
12 really didn't get a ruling on an actual motion.
13 That was an order that didn't admit or deny our
14 motion.

15 THE COURT: Oh, I see what you're saying. Okay.
16 I'll deny your motion for a recusal. So, I now need
17 to hear --

18 BY MR. FIELD: Well, I'd like to present my
19 motion. I'd like to argue my motion.

20 THE COURT: Okay. This is just a motion to
21 reconsider though?

22 BY MR. FIELD: This is the -- we're arguing our
23 motion to recuse.

24 THE COURT: I understand that but I'm trying to
25 keep the record clean, Mr. Field.

1 BY MR. FIELD: Okay. I'm sorry. Attached to
2 our motion is the transcripts from the three
3 hearings that had been held in this case with Your
4 Honor. There's been actually five hearings
5 scheduled. Three of them were heard. The case was
6 in Master in Equity for eleven months prior to
7 coming to this Court. It was an order to vacate,
8 order of reference that was filed before the case
9 commenced, so the case was pretty much -- it was in
10 Master in Equity for the void order, and there was
11 also a stay on the case relating to foreclosure
12 intervention that we requested that we never
13 received a response from the Plaintiff on.

14 We requested mediation and filed a motion for
15 mediation, and we didn't hear from them on that.
16 They ignored our request for foreclosure
17 intervention, and they filed for a final hearing in
18 April of 2020. Right after they filed for that
19 final hearing, the Chief Justice ordered a
20 moratorium on foreclosures from April through the
21 end of August.

22 They lifted the moratorium and Mr. Page filed --
23 what he did is he scheduled another final hearing
24 with Judge Dukes. It was an eight-hour hearing.
25 There was one-sided communication with the Court, so

1 what happened was, it was like mid-July or something
2 that he got the hearing scheduled but then we
3 weren't notified until right around Labor Day.

4 So, we didn't even know about the hearing until,
5 like, three weeks before this final hearing, an
6 eight-hour hearing. So, I contacted Drew Radeker,
7 hired an attorney, and he contacted Judge Dukes and
8 yet he -- I'll get to the refusal, I just want to
9 set this -- just to understand the procedural
10 history.

11 So my attorney determined that that order needed
12 to be vacated. There was a hearing on September
13 29th with Judge Dukes and he vacated to order. They
14 put on the case -- there were several motions
15 pending, but they seemed to just like all of a
16 sudden be resolved, but with them never heard or
17 ruled on.

18 So, the case, I guess it really didn't have
19 anywhere to go at that point and so what
20 happened was, Mr. Page all of a sudden was now -
21 - because the order was vacated, he was now all
22 of a sudden interested in foreclosure
23 intervention. So, now we're a year into the
24 case, he didn't contact me, didn't do anything,
25 didn't answer any of my motions. I didn't talk

1 to him for the entire time for a year.

2 He didn't, you know, there was no
3 communication back and forth with Mr. Page.
4 Okay? So, during that time, Mr. Page decided,
5 "Well, I'm going to certify a foreclosure
6 intervention". So, he files a certification for
7 foreclosure intervention but doesn't meet any of
8 the requirements of the order to certify,
9 because you have to -- there's a check list you
10 have to go through and then you have to send a
11 denial letter through the mail to us and deny
12 it. He never did that.

13 What he did was, it was on a Friday during
14 that month. I think it was October. He sent
15 Drew an email and said, "We're putting you in
16 default". That's what he said. So, it was not
17 a good weekend. And again, we hadn't been
18 certified or anything. So, the following
19 Monday, Mr. Radeker filed a motion to dismiss
20 and sanctions. That following Monday. Now, it
21 was pretty upsetting to my attorney what Mr.
22 Page did, and how he handled it and Mr. Radeker
23 identified at least four violations of that
24 administrative order. So, that led us to the
25 next hearing that was put on Carmen Mullen's

1 roster. That was back still in -- so December
2 20 was on Carmen Mullen's roster.

3 Like, a few days before the hearing, the
4 computer system goes down in the Court, they --
5 somehow it was sent back to Judge Dukes. Judge
6 Dukes says, "No, I vacated it". Then it went
7 back to Carmen Mullen and then Carmen Mullen's
8 clerk said, "It's going on the next roster".
9 So, it was just never heard in December of 2020.

10 So, then that's when it was put on your
11 roster, on January 13th of 2021, it was put on
12 your roster. So, we feel like that from a
13 procedural standpoint, up to that point, we --
14 we don't know of any case in the history in
15 South Carolina or even in the country, where
16 there's been an order of reference signed before
17 a case commences. Can't find a case anywhere
18 about it. I don't think it's ever happened.
19 It's just truly astonishing that that even
20 happened. So, the --

21 THE COURT: You're talking about an order of
22 reference from Master in Equity to circuit court?

23 MR. FIELD: No, no. He filed this complaint
24 October 11th of 2019. He filed an order of
25 reference, he didn't know this, before the case --

1 before the summons and complaint was filed, they
2 filed an order of reference, a proposed order, the
3 Clerk of Court signed it, before we were served a
4 summons and complaint and pursuant to Rule 3 --

5 THE COURT: Oh, I thought you were talking about
6 something else. All right. Go ahead.

7 MR. FIELD: So, that put us on -- that put us in
8 bad shape right out of the gate because, you-know,
9 normally they'd file the complaint and we'd answer
10 it or something like along those lines.

11 So, I just wanted to take the highlights of the
12 Dukes hearing, and then we'll go to the next
13 hearing.

14 THE COURT: Well, Mr. Field, we have another
15 hearing at 11:00 and thus far you haven't argued any
16 or your motions yet, so if you've got some motions
17 you'd like for me to hear, order, and rule on, I'm
18 happy to do it. I'm here for you, but I don't know
19 the procedural posture from 2019.

20 MR. FIELD: Okay. We're going to go to January
21 now.

22 THE COURT: January? No, no. Why don't we
23 fast-forward to June 22nd of 2021. That was the
24 last time we had a hearing. I made some rulings,
25 you appealed those and then filed a motion for me to

1 recuse and asked that another judge hear or take a
2 look at those.

3 MR. FIELD: What's the date on that?

4 THE COURT: You told me June 22nd. That's the
5 date I wrote down.

6 MR. FIELD: No, that's just the day you signed
7 the order. There was --

8 THE COURT: Well, I don't know what the hearing
9 date was. You just said June 22nd, so that's the
10 date I wrote down.

11 MR. FIELD: No, I filed the motion to recuse on
12 June 21st.

13 THE COURT: Okay.

14 MR. FIELD: You signed an order on June 22nd.

15 THE COURT: Oh, you're talking about this one?
16 Right, so I'm talking about let's get to that, where
17 you want me to reconsider. That's the motion to
18 reconsider.

19 MR. FIELD: Yes, and I'm going to give you the
20 reasons why I want you to reconsider.

21 THE COURT: That's what I'm trying to get to.

22 MR. FIELD: Okay. There are two hearings that
23 you presided over. One was January the 13th and the
24 other one was April 15th.

25 THE COURT: All right. January 13th, April

1 15th. All right. Yes, sir.

2 MR. FIELD: Okay, so the January 13th, it was a
3 motion to dismiss and sanctions. Okay? This was --
4 Drew Radeker represented me in this hearing and Mark
5 Page was the attorney for the other side.

6 Now, this motion is seventeen pages, the
7 transcript is seventeen pages. Okay? Drew speaks
8 for the first seven pages of the transcript and then
9 The Court comes in and talks for two more pages --
10 excuse me, three.

11 Drew comes in for half a page, The Court comes
12 back in for a page and a half. Drew comes back in
13 and then you said, "Hold on". Okay. Now, the point
14 here is, this was a sanctions motion against Mr.
15 Page. Now, we're already on page 11 and Mr. Page
16 hasn't spoken.

17 So, then we go -- so, out of the 17 pages of
18 this transcript, this back and forth between the
19 Court and Mr. Radeker and the, you know, and then on
20 page 15, he has a quarter of a page. So, there's
21 literally -- he spoke twice, but the thing is, is
22 that the Court was speaking on his behalf and
23 there's a lot of points in this hearing that are not
24 consistent with the facts. So, we feel like we have
25 -- the Court has been an advocate for Mr. Page in

1 this hearing and --

2 THE COURT: I can tell you this, Mr. Field, if I
3 ask questions that I need to know the answers to
4 that are going to assist the Court in making a
5 decision, that would be more than likely exactly
6 what I was doing, because I don't know anything
7 about these cases when you all bring them to me. I
8 read the memorandums if I have them. Oftentimes I
9 don't have the memorandums so I'm trying to ask
10 questions to get caught up to speed. To be honest
11 with you, I've never seen Mr. Page other than the
12 other time. Do you know who I am? Have we ever
13 spoken outside of any of these hearings?

14 MR. PAGE: I've never --

15 THE COURT: I even got the wrong person and that
16 shows you I have no earthly idea about -- so, I'm
17 not advocating for him in the slightest.

18 MR. FIELD: I'm not suggesting that, Your Honor.
19 I'm not suggesting that, Your Honor. What happened
20 was, when Mr. Page got -- after a year into the
21 case, got all of a sudden about -- interested in
22 foreclosure intervention after he has ordered them
23 vacated, he starts sending -- he sent Drew a series
24 of emails and all those emails were quoted by the
25 Court in this transcript and not by Mr. Page, but by

1 the Court and --

2 THE COURT: So, I read the correspondence
3 between the parties?

4 MR. FIELD: Well, there's --

5 THE COURT: Is that what happened, Mr. Page? I
6 was reading the correspondence?

7 MR. PAGE: Yes, Your Honor, and they were
8 actually attached to their motions.

9 THE COURT: Oh, gotcha. Gotcha.

10 MR. FIELD: Okay, so the -- here's -- you're
11 quoting Mr. Page, "It is my client's position --

12 THE COURT: I'm reading an email that you
13 attached to your motion. That's what I'm doing.
14 Correct?

15 MR. PAGE: Yes, Your Honor.

16 MR. FIELD: My wife wants to speak and I --

17 THE COURT: Your name for the record, ma'am?

18 MS. FIELD: Tracy Field.

19 THE COURT: Yes, ma'am.

20 MS. FIELD: On the April 15th transcript, there
21 were four motions scheduled that day.

22 THE COURT: Okay.

23 MS. FIELD: At the beginning of the hearing, you
24 said that there was four motions scheduled that day.
25 We heard four motions. At the end, you ruled on six

1 and the two that were not heard or scheduled, you
2 ruled against us on those two.

3 THE COURT: What were those two? What were
4 they?

5 MS. FIELD: It was the motion to dismiss the
6 counterclaims. Motion to dismiss Plaintiff's
7 counterclaims was granted and --

8 MR. FIELD: Motions to dismiss -- Plaintiff's
9 motion to dismiss --

10 MS. FIELD: Our counterclaims, our answer and
11 counterclaims. All that. You granted that. That
12 was not heard, that was not scheduled. You were
13 aware of that at the beginning of the hearing.

14 THE COURT: Okay.

15 MS. FIELD: Then it was the joiner, there was
16 our motion to join the third-party defendants
17 together.

18 MS. FIELD: You ruled on that and you denied
19 that. Those two were not heard.

20 THE COURT: All right. Did you all file motions
21 to reconsider those two?

22 MS. FIELD: No. When your order came out --

23 THE COURT: Hold on. Let me --

24 MS. FIELD: It did not include those two.

25 THE COURT: That's correct, because Mr. Field

1 had gotten upset about it and contacted the Court
2 and said that wasn't fair and I said, "I agree.
3 It's not fair". So, I continued them and said put
4 them off until the next roster.

5 MS. FIELD: No, we talked about it right here.

6 MR. MILAM: That's correct. Mr. Field objected
7 to a ruling on those motions.

8 THE COURT: And I said, "I agree".

9 MR. MILAN: Right, and they were not included in
10 the order.

11 THE COURT: That's right. They were just
12 continued and I instructed the Clerk to place them
13 on the next roster.

14 MS. FIELD: That's correct.

15 THE COURT: So, I agreed with you and asked --

16 MR. FIELD: Mr. Milam contacted the Court? Is
17 that what you're saying?

18 THE COURT: That you contacted the Court saying
19 that you were upset about it.

20 MR. MILAM: We were all -- this was all in the
21 hearing.

22 THE COURT: Right.

23 MR. MILAM: The last hearing we were all
24 together.

25 THE COURT: Oh, and that's right. He objected

1 to it and then Aimee and I discussed it and I said
2 the best thing I think to do is to just continue
3 those two and then rule on the four that were argued
4 and heard in court and so that's what I did and then
5 I said, "That's fine. I'll just continue them and
6 place them on the next roster". So, they're still
7 pending.

8 MS. FIELD: That's correct, but you pre-judged
9 those.

10 THE COURT: Okay.

11 MS. FIELD: One of those is being -- actually
12 both of those are going to be heard today.

13 THE COURT: I had already heard argument about
14 it, but that's fine. I thought out of an abundance
15 of caution I would give you all the opportunity to
16 file whatever you would like in response to that,
17 and I'll be happy to hear from you and this is your
18 what? Motion for what?

19 MR. MILAM: We have a pending motion to dismiss
20 the counterclaims and third-party claims.

21 THE COURT: That's correct

22 MR. MILAM: And we have a motion for summary
23 judgment as to the foreclosure action.

24 THE COURT: All right. Well, out of an
25 abundance of caution, let's do this, because those

1 motions are still pending. If you want to have
2 another judge hear those, I don't -- that doesn't
3 have a problem, but I do want to hear from Mr. Page
4 concerning his position. I want to figure out
5 what's going on. Just procedural posture, what's
6 going on with all of it because I'm a little lost,
7 to be honest with you.

8 MR. PAGE: Thank you, Your Honor. Martin Page
9 for the Plaintiff. This is a foreclosure action, as
10 you know. We filed a complaint and before this we
11 were actually in bankruptcy court for -- it started
12 in 2019 and we were there for a year and then it
13 spilled into this court and we actually filed the
14 complaint. Right now, what we would like to do is,
15 we've moved for summary judgment as to our
16 foreclosure cause of action and that's what we'd
17 like to argue today.

18 MS. FIELD: Your Honor, what he said was not
19 true.

20 THE COURT: Please let him speak.

21 MR. FIELD: Mr. Page is really loose with the
22 truth here. We were not in bankruptcy for a year.
23 Okay? You know what -- you were there.

24 MR. PAGE: Yeah, I have the order from 2019 for
25 the bankruptcy.

1 MR. FIELD: It's not a year.

2 MS. FIELD: It was eight months and when we came
3 out of bankruptcy, at the end --

4 THE COURT: Mr. Page, be careful now. I mean,
5 it was either eight months or a year.

6 MR. PAGE: Okay.

7 MR. FIELD: Well, he's bringing it in irrelevant
8 -- he's disparaging us with irrelevant information.
9 In the hearing on April 15, you had asked Mr. Milam,
10 "When did they make their last payment?". Mr. Milam
11 said, "Let's see, 2017 -- maybe 2018 -- no, maybe
12 2019". They're just like disparaging us
13 unbelievably in the record. They're not accurate
14 with what they're saying on the record.

15 THE COURT: All right. I'll keep Mr. Page
16 pretty tight on his accuracy. So, go right ahead,
17 sir. I'd be happy to hear from you.

18 MR. PAGE: Yes, Your Honor. Well, going
19 towards, Your Honor, the motion for summary
20 judgment, in a foreclosure it's pretty simple in
21 South Carolina. You just have to show the existence
22 of a debt, that the mortgage was in default on the
23 debt and that the party seeking foreclosure is
24 entitled to enforce the mortgage.

25 So, in the present action, we have filed an

1 affidavit in support of a motion for summary
2 judgment on June 3rd and that is a motion of -- or
3 an affidavit of the servicer who manages the
4 collection and payment on the loan. The servicer
5 has put in the affidavit that the loan is in default
6 and that as of July 1, the total amount due is
7 \$38,728.46.

8 The servicer's records indicate that the loan is
9 in default from January 1 of 2019. We also have --
10 I have the original note with me if the Court would
11 like to inspect it, showing -- and it's endorsed --
12 showing that we are the party entitled to enforce
13 this and we also have a chain of assignments
14 establishing custody of the mortgage into the
15 current Plaintiff. So, we think we're entitled to
16 foreclose, and I can give you some more information
17 about the procedural background with the debt if
18 you'd like me to.

19 MR. FIELD: Your Honor, we haven't finished
20 arguing our recusal motion.

21 THE COURT: I understand that. I just wanted to
22 get some procedural background from Mr. Page as to
23 where everything kind of one in underlying action.
24 All right.

25 MR. FIELD: May I finish our motion?

1 THE COURT: Yeah, but then I'm -- unfortunately,
2 we're going to have to take a break. You're more
3 than welcome to stick around and stay, but I'm going
4 to have to take up some other matters that I've
5 requested here today. I didn't realize that this
6 was going to take so long. We haven't even gotten
7 through one motion yet. But what is the concern
8 that you have?

9 MR. FIELD: Okay. We're back to the January
10 13th, 2021 motion to dismiss and sanctions hearing.
11 At the end of the transcript, the Court says, "I'm
12 scared to do that. I have a feeling we're going to
13 be right back here in five months, and they are
14 still going to be alleging that any type of
15 foreclosure proceedings are stayed, therefore I
16 assume they're not making their payments on the
17 house currently and so we're going to be right back
18 where we were, not making any payments". Now,
19 that's an assumption that --

20 THE COURT: No, you had said that. We talked
21 about it at the hearing. I said, "When was the last
22 time they made a payment?", and they said that. You
23 never corrected them.

24 MR. FIELD: No, this was the hearing before
25 that. This is the January hearing.

1 THE COURT: Well, okay.

2 MR. FIELD: That was the April hearing.

3 THE COURT: Okay.

4 MR. FIELD: Then, the issue was that the Court
5 was concerned, "Yes, I'll give them 30 days to
6 answer, you know, and then they tied it up for the
7 next two years in litigation, not even to show up to
8 the mediation or not-to do, you know, to participate
9 in the case. They've done a great job of doing that
10 at this point".

11 THE COURT: Correct.

12 MR. FIELD: That's not true.

13 THE COURT: Okay.

14 MR. FIELD: There was a moratorium. There was a
15 stay. There was an avoid order going on. There was
16 -- they had to certify the COVID virus thing, all
17 that had to be cleared up before the case could move
18 forward.

19 Now, the Court says, "We are fully aware of what
20 is the issue in this case, the amount of money
21 that's in the case, all those types of things. I
22 assume the discovery in this case will be minimal at
23 best, if any. I mean, it's just two pieces of
24 paper. I'm going to allow your clients the 30 days
25 to answer from today, today's date, and then I'm

1 going to order mediation within 60 days of that date
2 and if it's not resolved at mediation at the close
3 of those 60 days, then Mr. Page can file a motion
4 for default".

5 THE COURT: Okay.

6 MR. FIELD: So, what we did -- now, I just
7 recently got a copy of this transcript. I was not
8 at the hearing and so this is new information for
9 me. But I tell you, it really upset my attorney
10 beyond belief. Now --

11 THE COURT: Where is he?

12 MR. FIELD: The -- he's not on the case anymore.

13 THE COURT: Okay.

14 MR. FIELD: So, what that did, with that
15 statement, when you said that --

16 THE COURT: That's not a statement, that's an
17 order.

18 MR. FIELD: Well, the order was not -- that was
19 not in the order, that you were going to default us
20 after 60 days. The default part was not in the
21 order.

22 THE COURT: Okay.

23 MR. FIELD: In the order it said that if we
24 don't participate in mediation we would have our
25 affirmative defenses and our counterclaims stricken.

1 THE COURT: That's correct.

2 MR. FIELD: But we didn't have anything pending
3 at that point. We hadn't answered but that's fine.
4 That was the order. We lived with it.

5 So, we started the mediation process and I
6 contacted -- by the way, Drew Radeker had set up an
7 appointment for us before he was relieved from the
8 case. It was with a mediator in Florence.

9 The mediator in Florence told me, a really good
10 one, said, "Make sure that you have someone that is
11 from the plaintiff that will be at the mediation
12 that has full authority to settle.

13 So, for a month -- now, remember, I only had 60
14 days. So, we were back and forth in emails about
15 this, and Mr. Page would never commit to having
16 someone with full authority to settle. He said, "A
17 plaintiff would be there, the plaintiffs will be
18 there, the plaintiffs will be there", but he would
19 never say, "Someone with full authority to settle".

20 So, when Mr. Milam came on the scene, Mr. Page
21 disappeared, but right before he did, he had agreed
22 -- we had agreed on a mediator in Beaufort. Okay --
23 go ahead.

24 MS. FIELD: Okay, I'm sorry. What my husband is
25 failing to communicate, is that Mr. Page is painting

1 the bankruptcy as if we're dragging our feet. We
2 wanted them to prove up that they owned our loan,
3 that our loan was in this trust, and they owned it.
4 The bankruptcy judge, Judge Waits, at some point
5 towards the end, determined that this was much more
6 complicated than he wanted to get into and suggested
7 we go back to State court, we go with State court,
8 take it up in State court, which we did.

9 What happened was, our bankruptcy ended in
10 August. We got a letter from Shellpoint saying,
11 "You send us \$12,000. You will be back on track and
12 we'll get -- you can continue your payments". We
13 made that \$12,000 payment. They returned the check
14 and Mr. Page started foreclosure proceedings before
15 we got the check back.

16 MR. FIELD: Before the end of the right to cure.

17 MS. FIELD: So, when Mr. Milam says that their
18 last payment was so-and-so, that is not true. We
19 paid in full and so when we read in this transcript
20 and we hear Your Honor saying, "Well, when was their
21 last payment? Are they still in the house?", you're
22 painting us as some sort of deadbeats when we paid
23 them completely, but you never asked them, "Well,
24 what goods have you got on them? What have you got
25 on them?". They have to prove their case against us

1 and so, that's where we're coming up with the bias
2 here, along with that you pre-judged those two
3 motions.

4 THE COURT: All right.

5 MR. FIELD: And, Your Honor, I'd like to finish
6 with my part about the mediation.

7 THE COURT: I'm good. So, I understand Ms.
8 Field. Thank you very much for clarifying. No, I
9 have not pre-judged anything. I was attempting to
10 try to resolve some motions to try to see if we
11 could get this case moving forward, but me simply
12 asking two questions does not show bias whatsoever.
13 It's just me trying to ascertain and gain
14 information so I can make it clear consensually on a
15 motion that was before me.

16 So, I apologize if you felt that was painting
17 you in some off-light or something like that. I
18 would apologize. I certainly didn't mean it in any
19 derogatory fashion. I don't anything about y'all.
20 I don't know what your financial status is. I don't
21 know anything about it. I just know this is a
22 foreclosure action and so, I thought it was very
23 appropriate to ask the questions. So I did, and I
24 got the answers and moved on and that's it. All
25 right.

1 So, I'll deny the motion to recuse. I'm not
2 saying that I'm going to keep the case or whatever,
3 but I do need to hear -- because I know Mr. Page is
4 here as well, but I do need to hear one other
5 motion, so -- is that everything you need to put on
6 the record, Mr. Page?

7 MR. PAGE: Yes, Your Honor. I believe that's
8 all. If you'd like to inspect the original note,
9 I've got it with me.

10 THE COURT: All right. I don't. It's part of
11 the record, I assume.

12 MR. PAGE: Yes, Your Honor. It's attached to
13 the exhibit -- the affidavit in support of the
14 motion for summary judgment.

15 THE COURT: All right. Thank you very much.
16 You have a motion as well, sir? Correct?

17 MR. MILAM: That's correct, Your Honor. We have
18 a motion to dismiss the counterclaims and third-
19 party claims in this case. There are nine
20 counterclaims and third-party claims under the
21 Unfair Trade Practices Act. Civil conspiracy, fraud
22 and misrepresentation, slander of title, libel and
23 slander, Fair Debt Collection Practices Act, unjust
24 enrichment and quiet title. I don't know if I
25 stated for the record, I'm Ben Milam, on behalf of

1 the client for the third-party defendants.

2 Your Honor, each of these claims is based on the
3 allegation that Wilmington Savings Fund Society is
4 not entitled to enforce the note and that the
5 mortgage has somehow been impaired or rendered
6 ineffective during the securitization process and
7 transfers between financial entities.

8 Under South Carolina law, as Mr. Page said, the
9 person who holds a note, as this one that's endorsed
10 in blank, is entitled to enforce it. If you have
11 possession of a valid note with the proper
12 endorsements, then you're entitled to enforce it and
13 there is no need to go into all of these issues that
14 the Fields want to raise about the securitization
15 process in transfers as long as we hold a valid
16 note.

17 So, there were two prior proceedings. One,
18 CitiMortgage filed a foreclosure action in 2012.
19 The foreclosure was resolved through a modification
20 ultimately, but in that case, the Fields also filed
21 counterclaims, including some of the same
22 counterclaims that they've filed in this action.
23 Judge Dukes dismissed those claims with prejudice
24 for the reason that I've stated, because what the
25 lender needs to show is that it is the holder of the

1 note.

2 Subsequently, Judge Waites issues a ruling in the
3 bankruptcy case on their challenge to the proof of
4 claim that Wilmington filed a bankruptcy and Judge
5 Waites determined that Wilmington was entitled to
6 enforce the note. So, this claim and the issues that
7 have been raised, have been twice adjudicated and the
8 claims are now barred by collateral estoppel and the
9 specific issue of whether Wilmington is entitled to
10 enforce the note is barred by collateral estoppel.

11 We've raised some other issues in our brief, but
12 those are the principle ones, is that all of these
13 claims do not have merit and have been previously
14 twice adjudicated and we're asking the Court to
15 dismiss both the counterclaims and third-part claims
16 with prejudice.

17 THE COURT: All right. Thank you, sir.
18 Anything you'd like to say in response briefly, sir?

19 MR. FIELD: I have more than a brief response,
20 Your Honor.

21 THE COURT: Well, how long do you think you
22 need? You filed your motion in opposition, correct?
23 That's the 106-page document that was filed that I
24 looked at. Correct?

25 MR. FIELD: Yes.

1 THE COURT: Yeah, I've seen it. 127 pages.

2 MR. FIELD: Well, I have some documents here I'd
3 like to go through in response to them. Now, if you
4 want to take a break so I can hear these other
5 people and we can come back.

6 THE COURT: All right. That will be fine.
7 Let's just take a quick break.

8 (Interruption in the proceedings.)

9 THE COURT: Okay, back on the record. So, you
10 all sufficiently argued your positions and it's just
11 Mr. Field's turn to respond.

12 MR. MILAM: Yes, Your Honor. If I could just
13 briefly, because there was a motion to stay filed
14 and more than one motion for a continuance, I would
15 just add that we would object to any further delay
16 of the proceedings. We had a hearing set in May,
17 but the Fields said they needed a continuance so
18 they could get counsel and we again consider the
19 pending motions for continuance as an effort just to
20 delay the proceedings further and would object to
21 that. Unless Your Honor has any questions on the
22 two motions, nothing further right now, Your Honor.

23 THE COURT: Thank you very much.

24 MR. FIELD: Your Honor, as per our status call
25 yesterday, we talked about there is at least between

1 11 and 14 motions. As you are aware, this case is
2 on appeal and there are a couple of controlling
3 cases that I'd like to introduce into the record
4 that --

5 THE COURT: What's the issue up on appeal?

6 MR. MILAM: The ordered strike and the jury
7 demand, Your Honor. That's the only order that has
8 been appealed. Mr. Field says he intends the appeal
9 to be all-encompassing, but the only order that has
10 been appealed from is the order to strike and the
11 jury demand.

12 THE COURT: And we had some pretty extensive
13 argument over that.

14 MR. MILAM: At the April hearing.

15 THE COURT: At the April hearing. Yeah, this is
16 a foreclosure action.

17 MR. MILAM: A foreclosure action with
18 counterclaims and third-party claims. Mr. Field
19 says that a number of his claims are claims at law,
20 which is a true statement. What we disagreed with
21 at the April hearing was whether they were
22 compulsory or permissive.

23 THE COURT: I remember that.

24 MR. FIELD: Your Honor, the case that -- one of
25 the cases that I'm referring to is Johnson v. South

1 Carolina National Bank.

2 THE COURT: And this is a response to which
3 motion? The motion for summary judgment or the
4 motion to dismiss?

5 MR. FIELD: This is -- it's really relating to
6 the global issue of this case.

7 THE COURT: I want to stick to the arguments
8 made by Counsel, please. This is on appeal. They
9 are going to make this decision.

10 It says, "Where the plaintiff's complaint is
11 equitable and the defendant's counter claim is legal
12 and compulsory, does the Plaintiff have a right to a
13 jury trial on the counter claim"? All right. The
14 Court issued an order clarifying the procedure to be
15 followed under Rule 13-38-42, "When a complaint is
16 equitable and a counterclaim is legal and
17 compulsory, if the complainant is equitable and the
18 counterclaim is legal and compulsory, the defendant
19 has the right to a jury trial on the counter claim.
20 In that case, the proper procedure is as follows:
21 The trial judge should, pursuant to Rule 42, order
22 separate trials of the legal and equitable claims."
23 All right.

24 Your issue that you're going to run into, Mr.
25 Field, is this. Those counterclaims and third-party

1 claims have been dismissed not once, but twice and
2 now you're attempting to bring them for a third
3 time.

4 MR. FIELD: I haven't heard a ruling on the
5 second dismissal. There was no order for the first
6 one. It was not -- the motion was not heard and it
7 was not ruled on.

8 THE COURT: How did Judge Dukes handle that?

9 MR. MILAM: There was an order from Judge Dukes,
10 which dismissed the counterclaims in the -- this was
11 the 2012 foreclosure by CitiMortgage.

12 THE COURT: Correct.

13 MR. MILAM: And he dismissed the counterclaims
14 with prejudice and I believe we've attached that
15 order to our motion.

16 THE COURT: I would usually look it up, but my
17 computer is somewhere sitting in my driveway.

18 MR. MILAM: I believe this is it, Your Honor.
19 Let's see, the date of the order is July -- looks
20 like the 19th day of July, 2013 by Judge Dukes and
21 it says, "The City's motion to strike affirmative
22 defenses dismissed counterclaims and/or grant judge
23 on the pleadings as granted in its entirety,
24 resulting in the dismissal with prejudice of the ten
25 counterclaims asserted by defendants and striking of

1 various affirmative defenses". I'm happy to hand it
2 up.

3 THE COURT: We'll have it in the record, I just
4 -- again, I usually follow along with my computer,
5 but I can't find it.

6 MR. FIELD: Your Honor, there has been no
7 rulings on our counterclaims in this case. He's
8 arguing res judicata on a case that, seven years
9 ago, that was settled with the -- it was not ruled
10 on the merits. We have defenses of fraud and
11 collusion in that case but CitiMortgage was just, at
12 best, the servicer. Okay?
13 They were never -- the plaintiff in this case is
14 CSMC Trust that didn't come into existence until
15 2018. 2018 they came into existence. For \$200,
16 they filed a Delaware statutory trust, in the state
17 of Delaware for \$200. It's a Shell Corporation.
18 It's a Shell entity. We have documentation here
19 that shows that in that res judicata case, Citi pled
20 that Fanny Mae owned the loan. Fanny Mae is not
21 anywhere in the title, not anywhere in the
22 assignments. We've got documentation that shows
23 that they are claiming that the mortgage assignment
24 that they're using to claim that they have some
25 attachment to the mortgage has a Fanny Mae loan

1 number on it, was assigned by Fanny Mae. I've
2 actually launched a fraud investigation with Fanny
3 Mae. That's ongoing and I talked to the title
4 company twice, about 45 minutes each call. On that
5 mortgage assignment, the title company is telling me
6 -- now, this is from Nationstar to CSMC Trust. But,
7 by the way, that mortgage assignment, the title on
8 that mortgage assignment does not match the
9 plaintiff. The mortgage assignment that's in the
10 courthouse is Wilmington, in its individual
11 capacity.

12 The plaintiff is Wilmington, not in its
13 individual capacity. They also talk about
14 Christiana (phonetic) Trust on the mortgage
15 assignment and so forth. But, if we -- we have
16 every single loan number that was filed with the
17 Securities Exchange Commission, Fanny Mae loan
18 number, okay? There's 20,125 loan numbers in here.
19 This is just the first ten pages.

20 Now, they have deficiency reports on every
21 single loan number in here, then they talk about --
22 by the way, the loan number that's on the mortgage
23 assignment is not in this trust. Now, this is, like
24 I said, this is just the first ten pages of the
25 filing and if you look at the first one, where it's

1 highlighted, every one of these loans are defective.
2 Okay? The missing document note, subsequently not
3 provided. Missing document note, subsequently not
4 provided". Okay?

5 These are the most toxic mortgages that are
6 probably just about in existence and our loan number
7 is not in there. So, we've done a computer scan of
8 every -- you notice that the loan numbers start with
9 1700 on every single loan number on the sheet there.
10 That's in chronological order. That's 2005, and our
11 mortgage assignment, right here, has the Fanny Mae
12 loan number on it, 1700-119966. Fanny Mae loan
13 number.

14 Now, we have and we submitted it as exhibits,
15 the full transaction that Fanny Mae sold to DLJ
16 Mortgage Capitol. Now, this SEC filing that's part
17 of that documentation I gave you, DLJ Mortgage
18 Capitol is claiming that they acquired Nationstar --

19 THE COURT: Mr. Field, you've moved into a whole
20 other realm again. The only thing I asked you, that
21 I needed a response about, was from those two
22 gentlemen's arguments. The argument has already
23 been -- the issue has already been resolved about
24 who owns the mortgage now. Okay?

25 MR. FIELD: That hasn't been resolved.

1 THE COURT: That document right there?

2 MR. PAGE: Yes, this is the original note
3 endorsing the claim, which under South Carolina law
4 is who would own the mortgage.

5 MR. FIELD: That's -- Your Honor, there's a
6 difference between possession, if that is a true
7 document, and ownership. We sent them admissions,
8 okay? They didn't answer most of them.

9 THE COURT: What do you consider the difference
10 between possession and ownership is?

11 MR. FIELD: Okay. In order to be a holder in
12 due course, you have to pay value, which they
13 haven't. They have no injury. They won't even
14 identify where they got it from. The best guess is,
15 they got it in a dark alley.

16 So, you have to pay value. You have to
17 purchase it in good faith and you have to, without
18 any knowledge of any defects on it. And so, the --
19 they would -- I disputed this whole ownership issue
20 back in 2018. They wouldn't tell me where they got
21 it. They won't say if they paid any value for it
22 and Nationstar sent us a letter that's in the file
23 there. Okay, so Nationstar, they've got the
24 assignment of the mortgage. It says Nationstar to
25 CSMC trust. The title company says that Nationstar

1 specifically rejected that assignment. They did not
2 assign it. Every person that's on this mortgage
3 assignment here, is an employee of the title
4 company, but they swore in the affidavit that this
5 Patrick McCabe, he's claiming in a sworn affidavit
6 that he's the Vice President of Nationstar.

7 This mortgage assignment right here. The title
8 company, and I've got it on a recorded line and I'd
9 be happy to submit an affidavit, that the title
10 company told me that Patrick McCabe is an employee
11 of Nationwide Title Clearing Company.

12 THE COURT: All right. We're getting off track
13 again and I've got -- I've got to give this
14 courtroom up to another judge that needed to have
15 some hearings, so -- have you all mediated this case
16 before?

17 MR. MILAM: Yes, Your Honor, and actually
18 participated and did it and it obviously was an
19 impasse.

20 MR. PAGE: Yes, Your Honor, we mediated it.

21 MR. FIELD: No, Your Honor.

22 THE COURT: You didn't go to mediation?

23 MR. FIELD: They didn't.

24 THE COURT: What do you mean they didn't?

25 MR. FIELD: Okay.

1 THE COURT: Oh, no, no. What do you mean by
2 they didn't?

3 MR. FIELD: Mr. Page -- part of that hearing
4 that we had in January, the 13th, you ordered Mr.
5 Page to mediation.

6 THE COURT: Okay.

7 MR. FIELD: But what happened was, is I was the
8 only one that was going to get penalized with the 60
9 days and if I didn't go, I would get my
10 counterclaims and defenses dismissed. What he did
11 is, I asked him to confirm that there was going to
12 be someone with authority to settle on this case.

13 THE COURT: All right. Stop there. Mr. Page,
14 were you at the mediation?

15 MR. PAGE: No, Your Honor, I was not, but the
16 plaintiff was represented by Mr. Milam.

17 THE COURT: Did you have full authority to full
18 authority to settle the case?

19 MR. MILAM: Yes, Your Honor. Britney Gomez from
20 Newrez, LLC, which is the servicer for this account,
21 attended as a representative for the plaintiff. She
22 came with full authority to settle. We mediated the
23 case. We did not reach an agreement because the
24 parties were too far apart on what they wanted and
25 the mediator impassed and I believe submitted proof

1 of ADR compliance.

2 MR. FIELD: That's not true, Your Honor. Not
3 true, Your Honor. This Britney Gomez.

4 THE COURT: Okay. Hold on. Who do you want
5 there?

6 MR. FIELD: I want the -- okay, first of all,
7 Britney Gomez did not -- I'll answer your question,
8 Your Honor. I'll get to -- I'd like to add to-it.
9 Mr. Page in email after email after email, told me,
10 "The plaintiff will be there. The plaintiff will be
11 there". That's Wilmington. That means someone from
12 Wilmington, an officer, employee or director of
13 Wilmington.

14 When he was pressed on that issue, he would not
15 answer me. I filed a motion to compel mediation and
16 you denied the motion and then what happened is, Mr.
17 Milam came on the scene and said -- and I filed a
18 notice and I said, "If you send someone from
19 Shellpoint, I'm not going to accept it", but I went
20 to mediation anyway. They set me up with a mediator
21 that had conflict with Fanny Mae and so I had to --
22 I had to change -- I want Wilmington to be there.
23 Wilmington. An employee, officer, director of
24 Wilmington.

25 MR. MILAM: Your Honor, we did not pick the

1 mediator. It was a mediator already proposed. We
2 were ready to go with that mediator. Mr. Field
3 objected because the mediator disclosed that he had
4 represented Fanny Mae at some point in the past.
5 Mr. Field objected to it, so we said, "Okay, we're
6 okay with a new mediator that Mr. Field selected.
7 That was Mr. McCoy in Columbia.

8 MR. FIELD: That's not true, Your Honor. Mr.
9 Page selected mediator.

10 THE COURT: You can't talk over because she
11 can't take it down.

12 MR. FIELD: I'm sorry.

13 MR. MILAM: All right. So, we mediated before
14 Mr. McCoy. Prior to the mediation, Mr. Field said
15 that he objected to having somebody from the loan
16 servicer there as the representative for Wilmington
17 and we asked for a status conference with the Court
18 to resolve that issue and Mr. -- I believe we -- I
19 can't remember whether we got a status conference or
20 not, but Mr. Field said that he would go ahead and
21 mediate as is, so we did not, you know, so we did
22 not resolve that issue since he withdrew his
23 objection, but we believe that Ms. Gomez was the
24 proper party there as a representative for the
25 plaintiff and she had full authority and the

1 mediator confirmed that.

2 MR. FIELD: Your Honor, we have too many chefs
3 in the kitchen here because --

4 THE COURT: Did you go to mediation in Columbia
5 with Mr. McCoy?

6 MR. FIELD: I did.

7 THE COURT: Then stop misrepresenting things to
8 the Court. You just now said, "That's not true".
9 It is true. There was in mediation in Columbia with
10 Mr. McCoy.

11 MR. FIELD: He made multiple points and the part
12 that I'm saying that's not true, is that -- and he
13 just said another untruth, is that Mr. Page selected
14 the mediator. Mr. Griffith, here in Beaufort.
15 Okay? I asked him, I said, "Who do you prefer"?
16 "Mr. Griffith".

17 I believe that's his name, right? So, we
18 were in a dialogue with this mediator in Beaufort
19 for like 30 days. And I kept emailing them, "Who
20 are you going to have -- so, what happened was,
21 their staff at the law firm said that they
22 represented Fanny Mae in -- back in the past in
23 cases and they identified a conflict --

24 THE COURT: That's exactly what he just said.
25 Those were his exact words just a second ago. So,

1 he agreed to have you pick another one. You picked
2 one and they went.

3 MR. FIELD: Right, but the problem is that what
4 happened was, in the mediation I asked this Brittany
5 -- by the way, she didn't talk at all, but I asked
6 her a question. I said, "Do you have authority to
7 release the lien?". Mr. Milam instructed her not to
8 answer.

9 THE COURT: Okay.

10 MR. FIELD: Okay? And so the problem is, is
11 that for one, there's a real issue about -- between
12 Shellpoint and the plaintiff. Okay? And they are -
13 - under the rules of ADR, Rule 6-B2, they are
14 required to bring somebody, an officer, director or
15 an employee of the plaintiff.

16 THE COURT: What was her role? What was her
17 job, her status with the company?

18 MR. MILAM: She is an authorized representative
19 for Shellpoint Mortgage Servicing and when
20 Shellpoint is servicing a loan, they have a limited
21 power of attorney for Wilmington, so they -- if
22 Wilmington is involved in litigation, Newrez,
23 Shellpoint, will send one of its representatives to
24 appear as the representative for Wilmington based on
25 that limited power of attorney.

1 THE COURT: All right. I've heard enough.
2 We're not going to be able to get anything resolved
3 here today, unfortunately, so I'm just going to
4 continue the motions and I'm just going to make
5 another order potentially resolved by another
6 mediation, but we just can't keep going around and
7 around and around like this.

8 Mr. Field, you've got to understand that every
9 single issue is not an attack on you. They simply
10 are just doing their jobs. I'm simply just doing my
11 job and I want you to -- I would love more than
12 anything to see you get out from up under all of
13 this.

14 I mean, Mr. Field, I spoke to you on the phone
15 yesterday and I understand that some of the staff
16 here says that you can get a little animated and get
17 excited, but you seem like the nicest guy and you're
18 extremely smart but you're wasting so much time on
19 this case. I mean, you had a 127-page file that
20 Kristen had to scan in the other day. I mean, it
21 just seems like it's just -- it's just too much for
22 you.

23 MR. FIELD: I appreciate the comments and I just
24 want to point out here that they sent -- okay, they
25 basically have extorted money from me.

1 THE COURT: I understand your position.

2 MR. FIELD: Okay. We paid them -- what happened
3 was, is they sent me a right to cure notice of
4 default. It was for a little over \$10,000. My wife
5 said 12, but what happened was, they said, "Call for
6 the exact amount due". So, what I did is, they sent
7 me a right to cure, a notice of default.

8 I call them up. I say, "How much is it?", I
9 sent them more money than they were asking for
10 because I had some fees that they had added on.
11 What we did is, we sent it to them certified mail,
12 before the 45 days. Okay? What happened was, Mr.
13 Page -- they sent the check back. It took --

14 THE COURT: I remember you arguing that and I
15 understand what their position on that was.

16 MR. FIELD: And so, I'll tell you, I don't want
17 to be here. They are the ones that are running over
18 me.

19 THE COURT: All right.

20 MR. FIELD: They are the ones that created this
21 whole --

22 THE COURT: I just don't want to see this go on
23 any longer. Something is going to have to be
24 resolved. All right? I'll see what I can do.

25 MR. FIELD: Okay.

1 THE COURT: All right. Y'all enjoy the rest of
2 your 4th of July.

3 (Whereupon, at 12:37 p.m. the proceedings were
4 concluded.)

5 ***
6
7

CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina on the 2nd Day of July, 2021.

I do further certify that I am neither of kin, counsel, or interest to any party hereto.

This, the 19th day of July, 2021.

Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2019-CP-07-02279

COUNTY OF BEAUFORT

-----)
Wilmington Savings)
Fund Society, FSB, not)
In its individual)
Capacity, but solely as)
Owner trustee for CSMC)
2018-RPL6 Trust,)

Plaintiff,)

vs.)

TRANSCRIPT OF HEARING

Rex A. Field and -)
Tracy L. Field,)

Defendants.)

August 12, 2021
Beaufort, South Carolina

B E F O R E:

The Honorable W. Robert J. Bonds, Judge Presiding

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

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1 THE COURT: The Fields?

2 MR. FIELDS: Yes, Your Honor.

3 THE COURT: Great. Nice to see you. So what
4 was your name again, I'm sorry? It escapes me.

5 MR. PAGE: Martin Page for the Defendant, Your
6 Honor.

7 THE COURT: All right. Well, I see that there
8 are a lot of motions that are on here.

9 MR. MILAM: Yes, sir. Do you want me to
10 introduce them?

11 THE COURT: Yes, sir. I sure do. I'm sorry. I
12 didn't mean to cut you off.

13 MR. MILAM: Ben Milam, on behalf of the
14 Plaintiff as well as all the third-party defendants,
15 Your Honor.

16 THE COURT: Thank you, sir. What I wanted to
17 do, first off, is I would like to have the Plaintiff
18 tell me what his/their understanding is as it
19 relates to what motions we're supposed to be hearing
20 this morning. That is, really, I guess what I'm
21 talking about now is what are your motions, and when
22 you've finished I want to go and get your motions,
23 Mr. Fields, so I can make --

24 MR. MILAM: Thank you, Your Honor. The
25 Plaintiff would like to argue its motion for summary

1 judgment as to the claimant's foreclosure cause of
2 action. That is Number 6, it appears, on the
3 roster, and then --

4 THE COURT: Hold on. I'm writing.

5 MR. MILAM: Sure.

6 THE COURT: Just give me one second.

7 Okay, go ahead.

8 MR. MILAM: The other -- the second motion we
9 would like to argue is the motion to dismiss the
10 amended answer and counterclaims and third-party
11 complaint, and that's Number 2 on the roster.

12 Those are our only two motions.

13 THE COURT: All right.

14 MR. FIELDS: And, Your Honor, the --

15 THE COURT: Mr. and Mrs. Fields?

16 MR. FIELDS: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. FIELDS: I'd like to make one point about
19 what they just said. Mr. Page represents the
20 Plaintiff. Mr. Milam represents the third-party
21 defendants, but Mr. Page is from Bell Carrington Law
22 Firm. Mr. Milam is from the Bradley Law Firm.

23 So there's two different law firms represented
24 here, and while Mr. Page is saying, "Well, we want
25 to hear the motions for the motion to dismiss", he

1 doesn't represent those clients. So I just want to
2 make that clear, that there's multiple parties here,
3 multiple law firms here and Mr. Page only represents
4 the Plaintiff, not the third-party defendants, but
5 he's advocating a motion to dismiss, which would
6 dismiss our counterclaims, but it would also dismiss
7 our third-party complaint. I just want to make that
8 clear. The dispositive motions -- well, first, Your
9 Honor, the case is on appeal.

10 THE COURT: Okay.

11 MR. FIELD: And it's on appeal from Judge
12 Price's order that granted their motion to strike my
13 jury trial, and that deprives us of a substantial
14 right and if we don't immediately appeal that order,
15 we lose that right. So we had to file an appeal
16 within 30 days to preserve that right. So we're on
17 appeal right now.

18 THE COURT: That's the jury trial issued?

19 MR. FIELD: That's the one that -- the order
20 that we appealed from was also the other issues --
21 we haven't filed our brief yet in an appeals court
22 yet. There's going to be other issues that we have
23 in that appeal.

24 THE COURT: Okay. Yes, sir.

25 MR. FIELD: Okay. So we have a motion to

1 dismiss for lack of subject matter jurisdiction. We
2 also have a motion to dismiss for lack of personal
3 jurisdiction, which is not on the roster, but we
4 just agreed that I filed that in time --

5 THE COURT: Mr. Field, let me ask you this
6 before you go on to the subject matter of
7 jurisdiction, motion to dismiss.

8 As a result of the appeal, are you taking any
9 position as to whether this Court can move forward
10 today, sir? That's what I want to know.

11 MR. FIELD: Yes, Your Honor.

12 THE COURT: All right. Then what I want to do
13 now is I want to hear you -- because it seems to me
14 that's the initial matter that we need to make a
15 determination on because there's no need, if that is
16 granted, there's no need for me to hear anything
17 else today.

18 Would you agree with that, sir?

19 MR. FIELD: I agree with that.

20 THE COURT: Okay. So let me ask you, is
21 something on appeal? And I know -- let me hear from
22 you, Mr. Field, on why -- I'm assuming that you
23 would be arguing that this case -- that this Court
24 doesn't have jurisdiction to hear this matter or
25 these matters today.

1 Well, let me ask you this. Let me ask you this.
2 Are there any matters that you feel, sir, that this
3 Court can entertain today despite the case or part
4 of this case or perhaps all of this case, whatever
5 your contention is, being on appeal?

6 MR. FIELD: I believe that if the subject matter
7 jurisdiction is granted, there's nowhere to go.
8 It's over.

9 THE COURT: Okay. Other than the subject matter
10 jurisdiction, you believe that everything else would
11 be stayed via the appeal?

12 MR. FIELD: Yes, Your Honor.

13 THE COURT: All right. Well, let me hear you on
14 that. Let's just go ahead and deal with that.

15 MR. FIELD: Just one caveat is, we have some
16 pending discovery motions that might -- could
17 potentially live on. I'm not sure about that, but
18 that's something you could maybe weigh in on.

19 THE COURT: All right. Go ahead.

20 MR. FIELD: This case -- Your Honor, they filed
21 this complaint October 11th, of 2019. On October
22 16th, before we were served the summons and
23 complaint, they filed a proposed order with the
24 Court for an order of reference, which was signed on
25 the following day and the case was referred to a

1 master in equity. On October 22nd, we were served a
2 summons and complaint.

3 So the case had not yet commenced when they
4 filed their order, their order of reference, which
5 was signed by the Clerk of Court and then the case
6 went to the master in equity. It causes a lot of
7 problems other than jurisdictional issues.

8 For one, a case cannot commence to the master in
9 equity. The master in equity is a court of referral
10 only. The Court did not have jurisdiction when that
11 order was signed in the sense of master in equity.

12 So when we were finally served the summons and
13 complaint, attached to that was a -- there's a --
14 you have a right to foreclosure intervention
15 pursuant to the South Carolina Supreme Court
16 Administrative Order, which we requested a jury
17 trial demand the day we were served.

18 We also requested within 30 days foreclosure
19 intervention pursuant to the administrative order,
20 so we were -- there was a stay on the case because
21 of that. They had to do all the checked boxes, you
22 have to certify that they complied with the order,
23 so forth. So about three or four months go by and
24 there's still a stay on the case. There's a really
25 not a lot happening and the counsel for the

1 Plaintiff contacted Judge Dukes' office and
2 scheduled a final hearing. Eight days, eight hours,
3 final hearing.

4 So we went from being -- from being served -- we
5 hadn't answered yet -- we hadn't answered their
6 complaint yet, because we didn't have to because
7 there was a stay.

8 So the -- they were having one-sided
9 communication with the Court. We found out about
10 this final hearing at the last minute. Of course,
11 we objected to it because there's a stay on the case
12 relating to foreclosure intervention. Then the
13 foreclosure moratorium hit.

14 So there was a moratorium that -- really within
15 a day of that happening, there was a moratorium from
16 April through the end of August. So nothing is
17 happening there because they, you know, they just
18 shut them down. Okay.

19 So moratorium is lifted. Mr. Page contacts
20 Judge Dukes' office again, files an eight-hour final
21 hearing again. We're just like, you know, in shock.
22 Okay? Because we still hadn't answered the
23 complaint yet. So we hired an attorney and the --
24 our attorney said that what you need to do is you
25 need to get that order vacated. So he contacts

1 Judge Dukes' office, he schedules a hearing and they
2 vacate the order.

3 Now on the system there, it said the case was
4 dismissed. Now, there was a lot, in my opinion back
5 then, I believe that there was no subject matter
6 jurisdiction and so really, the case should have
7 just been dismissed at that point.

8 -- So now that the--- we're back and we're -----
9 basically -- the case really had nowhere to go at
10 that point, because Judge Dukes did not have the
11 authority, in my opinion, to send it anywhere.

12 He didn't have the authority to send it back to
13 circuit court. So some more time went on and so
14 what happened was, counsel decided that they're
15 going to certify foreclosure intervention.

16 They didn't certify foreclosure intervention
17 properly, so my attorney filed a motion for
18 sanctions and to dismiss the case, because you have
19 to -- you have to certify that you've complied with
20 the administrative order and you have to certify --
21 you have to mail a letter, a denial letter, which
22 they didn't do.

23 Went before Judge Price or Judge -- well, they
24 were threatening a default. Again, we didn't have
25 to answer yet because they didn't certify it

1 properly, so we went in front of Judge Price. He
2 signed an order on January 20th of this year that
3 said we have to answer within 30 days and you have
4 to do a mediation within 60 days after your answer.

5 THE COURT: Okay.

6 MR. FIELDS: Okay. Now, I'll get to the reason
7 why kind of this was a procedural history, but it's
8 not directly on point as to the jurisdictional
9 issues.

10 So we answered within 30 days. We filed an
11 answer, a counterclaim and added some third-party
12 defendants.

13 They filed for a motion -- they filed a motion
14 for an extension of time to answer and then they
15 filed a motion to dismiss. So then we went back in
16 front of Judge Price and that's when he struck the
17 jury trial demand that we had, and that's when we
18 filed the appeal.

19 Right after we notified them that we were filing
20 an appeal, they come in and filed a motion for
21 summary judgment. Now, again, we hadn't had any
22 discovery, they haven't answered any of our
23 counterclaims, they haven't answered any of our
24 third-party claims. But here's the part where the
25 jurisdictional issue comes into play.

1 There's a case -- if I may present to the Court?
2 Okay. This is Chabek versus Nationwide Mutual Fire
3 Insurance Company, and they rule that in South
4 Carolina a civil action is commenced by filing and
5 serving a summons and complaint. Until the action
6 is commenced, there is no proceeding pending and
7 thus there's nothing to refer. Before there can be
8 a reference, there must be an action pending.

9 THE COURT: Right.

10 MR. FIELDS: Also it says, "absent the reference
11 of any and all issues and action, the master in
12 equity's jurisdiction enters judgment since nothing
13 can originate before the master".

14 So basically what happened in this case is the
15 Chabeks prevailed in this case and they got final
16 judgment in their favor, but Nationwide Mutual Fire
17 Insurance Company got overturned because they
18 referred it before the case commenced.

19 So what they're saying is that -- basically,
20 every order in this case is going to be void, even
21 the final judgment, even if it's in our favor or if
22 it's in their favor. So we can't prevail in this
23 case. They can't prevail. They can prevail, but
24 they're going to get it overturned because a case
25 does not commence until your summons and complaint

1 is served.

2 So they sent it over to the master in equity.
3 They didn't have jurisdiction to send it master in
4 equity. Right? In fact, the -- even if you were to
5 rule that they somehow established jurisdiction,
6 they have lost it. They have lost the jurisdiction.

7 There's several ways you can lose jurisdiction,
8 so either way, there's no jurisdiction. Whether
9 they established it and they lost it or they never
10 established it at all.

11 So the -- one of the ways to lose jurisdiction
12 is not to follow the procedures of the Court.
13 Another way is to void an order on top of a voided
14 order.

15 One is due process. If someone's not given due
16 process, because from the time this was filed in
17 October of 2019 through September when the order was
18 vacated in 20 (sic), there was no jurisdiction. We
19 were not -- we were not afforded due process and
20 there was no jurisdiction during that time because
21 the order that went to master in equity was vacated
22 by Judge Dukes.

23 So it almost has the flavor that they created a
24 dispute by not certifying the foreclosure
25 intervention properly to bring us in to file a

1 motion for sanctions.

2 So then we were ordered to answer, right? And
3 the foreclosure --

4 THE COURT: Judge Price --

5 MR. FIELDS: Right.

6 THE COURT: Ordered you to do?

7 MR. FIELDS: Yes.

8 THE COURT: And mediate within 60 days or
9 whatever?

10 MR. FIELDS: That's correct. And they never --
11 they didn't participate properly in mediation,
12 that's another motion we have or a rule to show
13 cause. They -- there's -- excuse me, Your Honor.
14 I've got all these notes here.

15 THE COURT: Take your time.

16 MR. FIELD: Basically, procedurally they -- if
17 we add it all up, it all starts to -- you get a
18 clearer picture. They didn't file the order of
19 reference properly. They have not responded to our
20 counterclaims. They have not participated in
21 discovery. They did not participate properly in
22 mediation.

23 They literally -- we're two years down the road
24 -- we're not any further along than we were two
25 years ago and the foundation of all of this is that

1 this Chabek case -- even if we win, we're going to -
2 - they have a put on us and if they win, we've got a
3 put on them, because this case never commenced
4 properly, they never established jurisdiction and
5 even if they did, they lost it.

6 So that's our position on the subject matter
7 jurisdiction and we -- that's been in the record for
8 some time, we've just never gotten it from the
9 judge.

10 THE COURT: Okay. So are you -- and that's
11 fine, I just want to make sure you and I are on the
12 same page. I wanted to address the appeal issue
13 moving forward. You indicated, however, perhaps
14 that having the subject matter jurisdiction argument
15 first, I guess, maybe would be best because if
16 that's in or that's out, then there's nothing.

17 MR. FIELD: That's correct.

18 THE COURT: So the argument you just presented
19 to me, is that the subject matter jurisdiction
20 argument? I just want to confirm that.

21 MR. FIELD: Yes.

22 THE COURT: Okay.

23 FIELD: Yes, and I just want to -- pardon?
24 Well, what's the other one? Well, that's the
25 subject matter jurisdiction. We have another issue

1 about jurisdiction, but it's not subject matter.

2 THE COURT: Right. I remember I was writing
3 that down and then what I said is -- I interrupted
4 you because what I wanted to say was about your
5 position concerning the appeal because you brought
6 up that there was an appeal and a lot of times if
7 something is on appeal, then this Court may or may
8 not have jurisdiction moving forward.

9 MR. FIELD: We haven't filed our brief yet.

10 THE COURT: Okay.

11 MR. FIELD: So it hasn't been brought up on
12 appeal yet.

13 THE COURT: Well, let me ask you this, sir.

14 Is there anything else that you want to tell me
15 about your subject matter jurisdiction argument? I
16 think I certainly understand.

17 Is there anything else that you wanted to tell
18 me about that before I let him respond? And I'll
19 give you a chance to respond once he talks to me.

20 MR. FIELD: Okay. Well, I'll let him go ahead
21 first and then --

22 THE COURT: Okay.

23 Yes, sir.

24 MR. MILAM: Thank you, Your Honor.

25 Yes, we believe the Court does have subject

1 matter jurisdiction. We referred the case -- some
2 additional background, I guess, is this case spilled
3 out of a bankruptcy petition that was filed in the
4 District of South Carolina where Mr. Field had filed
5 bankruptcy in 2018. That had run until August of
6 2019 and then we, going into the foreclosure, were
7 aware of some of the background we were going to
8 have in this case.

9 So we filed the complaint, and pursuant to Rule
10 53B, which allows -- and our complaint also is
11 solely a foreclosure of a residential mortgage on
12 their residence and pursuant to Rule 53B, a
13 foreclosure action is referable and the clerk of
14 court signed the order of reference the day after it
15 was received and it was all served on the defendant,
16 So you know, I don't see any subject matter
17 jurisdiction issue that they're presenting here and
18 we think this Court has jurisdiction to hear this
19 matter.

20 THE COURT: All right. Anything in response?

21 MR. FIELD: Your Honor, it's not referable
22 without jurisdiction. The Chabek case clearly
23 points out that there's nothing to refer unless you
24 have a pending action. A pending action does not --
25 the case does not commence until the summons and

1 complaint is served.

2 Now, in the other cases though, what they did is
3 they actually could have -- this is -- basically
4 what's happened here has never happened in the State
5 of South Carolina. I don't think it's even happened
6 in the country. This is so egregious, what's
7 happened here.

8 The Chabek case, they kicked it out because it
9 was four days before the other party had time to
10 answer. There's never been a case where there's
11 been a referral to the master in equity, an order, a
12 court order to the master in equity before a case
13 commences and it would even get kicked out if there
14 is a referral, an order of reference before the
15 other side has an opportunity to answer. In our
16 case, we hadn't been answered, we hadn't been
17 served.

18 They're literally generating orders, court
19 orders, before we're even served a summons and
20 complaint. I mean, this is -- it's an outrage. It
21 really is. It's unbelievable. It's frightening
22 what happened and so for him to say that it's
23 referrable? It's not referrable and the other thing
24 is, we cannot consent to jurisdiction.

25 So the -- I'm getting really tired of him

1 mentioning the bankruptcy case because we filed a
2 voluntary Chapter 13. We were not in default with
3 them. We weren't in default to anybody.

4 We had an adversary proceeding to challenge the
5 validity of their lien, and they did the same thing
6 in bankruptcy court that they did here.

7 What they did is, they came in and -- first of
8 all, they were in default. They didn't even answer.
9 They filed for a motion for extension of time,
10 right? And then they filed a motion to dismiss and
11 then the judge was like, this is better -- this is a
12 complicated case.

13 This is going to be better heard in state court
14 and the adversary proceeding was dismissed without
15 prejudice, so he's trying to, you know, smear me
16 about this whole bankruptcy thing. I was not in
17 default before or after bankruptcy, but the
18 jurisdictional issue is that there was nothing
19 referable.

20 THE COURT: And I understand that. I understand
21 your argument. But allow me to ask you this. What
22 you're asking is for this Court to determine that
23 they don't have subject matter jurisdiction, or the
24 Court doesn't have subject matter jurisdiction.
25 Correct?

1 MR. FIELD: That's correct.

2 THE COURT: All right. So what's their remedy
3 if the Court decides that they don't have -- the
4 Court doesn't have subject matter jurisdiction?
5 What's their remedy at this point, I'm asking you.

6 MR. FIELD: Sure. It depends on how you rule,
7 because if you rule with prejudice, they have very
8 little. If you rule without prejudice, then they
9 can refile. So that's their remedy, is to refile.
10 But if you view that what they've done is so
11 egregious, which it is in my opinion, then you can
12 rule without -- you can rule with prejudice.

13 THE COURT: So that wouldn't affect all your
14 causes of action against them, though? That would
15 still remain?

16 MR. FIELD: If it -- we've been -- well, the
17 problem is, it depends as to the -- okay, our third-
18 party claims have not been joined to this suit yet.
19 That's one of our motions.

20 So it depends on whether you rule that there's
21 two different causes of action here, there's two
22 lawsuits. There's two different lawsuits going, if
23 you join them. If they were joined and then
24 dismissed, then I would -- that would probably go
25 away. So it depends on how -- if our third-party

1 claims are joined or not.

2 THE COURT: All right. Anything else you want
3 to tell me about this argument, sir?

4 MR. FIELD: The only thing I would say is that
5 the -- that it's something that can be raised the
6 first time on appeal and So it's just something that
7 we would appeal it if we -- if that's what we have
8 to do, so that's -- but I think that the Chabek case
9 is very clear on when a case commences. It's very
10 clear on referrals. It's very clear and what's
11 actually is a little frightening, is that the
12 Chabeks won. They won their -- they got judgment in
13 their favor and because of this, it was overturned
14 because the Court did not have jurisdiction.

15 So there's not going to be any order going
16 forward. In this case, it's going to be battle.
17 Every order in this case going forward is going to
18 be void.

19 THE COURT: All right. Thank you. Anything
20 else?

21 MR. MILAM: One difference between the Chabek
22 case and the present case, the Chabek case, from my
23 brief reading of it, it appears to be an insurance,
24 an insurance dispute, reforming an insurance policy,
25 whereas, Rule 53B specifically says an action for

1 foreclosure is referable. So I think that would
2 probably be a major difference between these two
3 cases.

4 THE COURT: All right.

5 MR. FIELD: Your Honor, it's not referable
6 without jurisdiction and plus, it's not referable
7 before you file an answer. There's all of these
8 check boxes and for Rule 53 order of reference,
9 which they violated Rule 53.

10 There either has to be a default, there has to
11 be -- there was no default in this case. I've got -
12 - I put it in my file, but there's all these check
13 boxes you have to go through to make it referable,
14 but the most obvious one is that the case had not
15 yet commenced and so there was nothing to refer, but
16 even if the case had commenced, they still couldn't
17 refer it because there was -- they had no basis to
18 refer it because the -- we had not answered the
19 complaint and we had not consented -- we hadn't done
20 anything.

21 There are about four different prongs that you
22 have to satisfy for it to be referred to master in
23 equity, none of those had been satisfied and even --
24 it was not referable.

25 THE COURT: All right. We will be at ease for

1 five minutes.

2 (Recess)

3 Mr. Field, were you served with the summons and
4 complaint?

5 MR. FIELD: On October 22nd, yes.

6 THE COURT: Is that within the Statute of
7 Limitations?

8 MR. FIELD: That's -- I would say no, because
9 the true -- they're not the real party.

10 THE COURT: I understand.

11 MR. FIELD: So I would say it was not.

12 THE COURT: Do you contend, sir, that he was
13 served within the Statute of Limitations?

14 MR. MILAM: Yes, Your Honor.

15 THE COURT: All right. Then, I'm going to deny
16 your motion.

17 "An action is commenced upon filing the summons
18 and complaint". That's what it says. "If service
19 is made within the Statute of Limitations", and I'm
20 reading Mims v Badcock 399 SC 341, and so what I
21 read is that when you are served within the Statute
22 of Limitations, that basically it's going to relate
23 back to the actual commence, the day you filed.
24 Because it goes on to state and ask you if you're
25 served outside of that, you've got 120 days, but the

1 way that that case rules it, an action is commenced
2 upon filing the summons and complaint and the
3 action, you've got to commence.

4 MR FIELD: Your Honor, Rule 3 -- Rule 3
5 specifically says the opposite. Rule 3 --

6 THE COURT: No, sir. It doesn't.

7 MR. FIELD: It does.

8 THE COURT: Allow me to read it.

9 MR. FIELD: Okay.

10 THE COURT: Rule 3A, Commencement of Action. "A
11 civil action is commenced -- is commenced, when the
12 summons and complaint are filed with the clerk of
13 court --

14 MR. FIELD: If --

15 THE COURT: Hold on. Sir?

16 MR. FIELD: It says "and served".

17 THE COURT; I'm reading right here. 3A.

18 MR. FIELD: I know, the way it's written it's
19 confusing, but it says in there, "and served".

20 THE COURT: No need to hear any more on that.
21 I've made my ruling on that.

22 MR. PAGE: I think I could clear this up, Your
23 Honor.

24 THE COURT: Nope, nope. I don't need to be made
25 clear on that. I've made my ruling on the subject

1 matter. On the subject matter argument, I've made
2 my ruling pursuant -- I believe that commencement
3 is, in fact, as I read the rule and as I look at the
4 case and I've quoted the case that I'm referring to.
5 I'm going to deny your motion there, sir. All
6 right?

7 MR. FIELD: Okay.

8 THE COURT: So what's your next motion?

9 MR. FIELD: The next motion is a motion to
10 dismiss for lack of --

11 THE COURT: Let me just ask you this.

12 Do we need to address anything about your
13 appellate argument today?

14 MR. FIELD: Yes. Well, there are certain
15 conditions -- there's two pending motions right now,
16 if denied, are immediately appealable.

17 THE COURT: Okay.

18 MR. FIELD: One of them is lack of personal
19 jurisdiction, based on the minimal contacts argument
20 and the other one is the right to amend compulsory
21 counterclaims. If we're denied our right to amend
22 our compulsory counterclaims, which we have, that's
23 the pending motion, that a substantial right would
24 be denied is immediately appealable.

25 So those two, under the Bateman v Rauch case

1 (phonetic) before you can deny, this hearing needs
2 to stop, and we need to have time to appeal those
3 two issues. So that's relating to the appeal.

4 THE COURT: All right. Well, I can tell you. I
5 want to entertain all the motions today and you can
6 -- as it relates to that. You know, in other words,
7 I'm not going to hear this motion, so then basically
8 we don't hear any other motions so that you can go
9 file an appeal.

10 MR. FIELD: Well, the first one I mentioned, the
11 motion to be dismissed, would obviously end it
12 for --

13 THE COURT: Right.

14 MR. FIELD: -- more than one reason.

15 THE COURT: All right, so what - what motion do
16 you believe we need to have next, sir?

17 MR. FIELD: The motion to dismiss for lack of
18 personal jurisdiction.

19 THE COURT: Any objection to that?

20 MR. PAGE: No, Your Honor.

21 THE COURT: Any objection to having that motion
22 heard next, sir?

23 MR. MILAM: No, Your Honor.

24 THE COURT: All right. Go ahead.

25 MR. FIELD: Okay. Let me give you a little

1 background on -- on the Plaintiff in this case is
2 CSMC, 2018, RPL 6 Trust. Now, they filed a
3 complaint, they did not attach any documents to
4 their complaint. Now, they referenced this mortgage
5 assignment that you have there, it's in -- in the
6 Beaufort County ROD.

7 The first thing that pops out at you, or to me,
8 is this mortgage assignment does not match the
9 Plaintiff. Now, the Plaintiff is Wilmington Savings
10 Funds Society, FSB, not in its individual capacity,
11 but solely as owner and trustee for CSMC, 2018, RPL
12 6 Trust. Okay, the mortgage assignment says nothing
13 about not in its individual capacity, and if it
14 throws in there Christiana Trust as owner/trustee on
15 behalf of CSMC, 2018, RPL 6 Trust.

16 THE COURT: Right.

17 MR. FIELD: So this is the only -- this is the
18 only connection that they have -- their -- this is
19 their claim to fame right here.

20 THE COURT: Right.

21 MR. FIELD: This is it. Now, this was filed --
22 well, let me just talk about the -- the -- the
23 mismatch here. When you think of trusts you --
24 everyone thinks of a common law trust, it's been
25 around for 400 years. You have a trustee and you

1 have a trust, it's a common law trust. And the
2 trust is not a legal entity in and of itself, it's a
3 fiduciary relationship between the trustee and a
4 trust, that's what makes a trust. The trustee has
5 the right to sue and be sued.

6 In this particular case, CSMC 2 -- CSMC, 2018,
7 RPL 6 Trust is a Delaware statutory trust. They
8 have put trust law on its head. - What they've done
9 is, they've given -- the trust is a separate legal
10 entity, it has the capacity to sue and be sued, but
11 the owner/trustee is -- has the same rights and
12 privileges as a stockholder at let's say Exxon
13 Mobile.

14 So if you own stock in Exxon Mobile, you're --
15 you're an owner of Exxon Mobile, not in its
16 individual capacity, right? So if -- if the -- if
17 the gas -- Exxon gas station blows up down the road,
18 you're not responsible for it. You don't own the
19 gas station, and you're not responsible for whatever
20 happens at the gas station, you just own stock in
21 the company, right?

22 That's what this is, owner/trustee is unique to
23 Delaware statutory law. The -- Wilmington doesn't
24 have a horse in the race, and it's -- it's the trust
25 -- the Delaware statutory trust is the Plaintiff;

1 but what's interesting is, is for, one, the
2 Plaintiff in this case is not in its individual
3 capacity. That's just like, again, you know, a
4 shareholder of Exxon Mobile, it's -- you're just --
5 you're just -- you're not an owner of any mortgage,
6 okay? You're just an owner/trustee like any other
7 shareholder. And I have that, and this -- this is
8 the -- the -- the laws under Delaware --

9 THE COURT: Yes, sir.

10 MR. FIELD: -- that -- that spells that out.

11 THE COURT: Okay. I think I only have one copy
12 here.

13 MR. FIELD: So a Delaware statutory trust is
14 governed by a contract. So it's governed by a
15 contract, it's not a -- it's not like you have a
16 fiduciary response relationship between the trust --
17 the trustee and the trust, it's a contract. And
18 what it is, is with various parties, but it's an
19 empty shell. The trust itself is an empty shell.
20 The beneficial owner in the -- in the case of CSMC
21 Trust is PIMCO, the largest bond fund in the world,
22 and the entity that acquired the loans for the trust
23 is DLJ Mortgage Capital, but you -- and it only
24 exists in the State of Delaware, the -- the trust
25 itself. They don't -- they don't have any presence

1 outside the State of Delaware.

2 So my -- my position is, that CSMC Trust does
3 not -- the Court does not have jurisdiction over
4 CSMC Trust, nor do they have jurisdiction over me.
5 They can't -- they -- they can't -- they have no
6 contacts in this State, they don't -- they don't
7 have any, you know, any -- any physical presence at
8 all. They're not -- they're not licensed to do
9 business here. They just -- there's -- there's --
10 it's a -- it's just a -- you can set up -- this
11 trust was set up in the State of Delaware with \$200,
12 that -- that was the fee.

13 You go to Delaware, it's like an LLC, you just
14 pay your 200 bucks, you've got a Delaware Statutory
15 trust. You have to pay someone to be registered as
16 the agent of that trust, in this case it's
17 Wilmington.

18 So the -- the registered agent, and this is from
19 the State records in Delaware. In Wilmington you
20 have to have a registered agent in the State of
21 Delaware to have a Delaware Statutory trust, so
22 Wilmington is the registered agent, except service
23 of process with this. So there's no way that CSMC
24 Trust has any contacts in this State, none, and the
25 -- the -- there's also a standing issue involved

1 here, because the -- because the Plaintiff's, the
2 way they've captioned this lawsuit, has it not in
3 its individual capacity in the lawsuit. That's --
4 they're tell -- they're broadcasting it's not us,
5 okay?

6 When we say we're not in our individual
7 capacity, they don't have the right to sue me. Now,
8 the Trust has the right to sue me under Delaware
9 law, if they had contacts in this State, and that's
10 -- that's the basis of -- of -- is that they have no
11 contacts here, and the -- if you -- if you -- the
12 Delaware law kind of spells it out.

13 The -- okay, it talks about rights of beneficial
14 owners and trustees and trust property. No creditor
15 of the beneficial owner shall have any right to
16 obtain possession of, or otherwise exercise legal or
17 equitable remedies with respect to the property of
18 the trust. A beneficial owner has no interest in
19 specific statutory trust property. No creditor of
20 the trustee shall have any right to obtain
21 possession of or otherwise exercise legal or
22 equitable remedies, with respect to the property and
23 the statutory trust.

24 COURT REPORTER: Sir, please slow down when
25 you're reading.

1 MR. FIELD: Oh, I'm sorry. I'll back up, I'll
2 just -- do you want me to start over on that part?

3 No creditor of the trustee shall have any right
4 to obtain possession of or otherwise exercise legal
5 or equitable remedies, with respect to the property
6 of the statutory trust, with respect to any claim
7 against or obligation of, such as trustee in its
8 individual capacity and not related to the statutory
9 trust.

10 There's -- there's -- to just kind of boil this
11 down is, statutory trusts are used by airlines to
12 shield themselves when a plane crashes. They --
13 they -- they lease airplanes in these statutory
14 trusts, so there's -- they have no liability. Now,
15 Mark Zuckerberg with Facebook funneled 350 -- just
16 set one up just recently, funneled 350 million
17 dollars through it to fund elections in the 2020
18 election. It's a very common vehicle to put real
19 estate in, so that you can shield yourself from all
20 legal liability, so it's a -- it's a complete
21 shield.

22 Now, in this particular case, which is unique to
23 this case, is the CSMC Trust was secured in May of
24 -- of 2020, after this lawsuit was filed. What's
25 unique about it is, they posted on the -- the Secure

1 Exchange website the filing --

2 THE COURT: Right.

3 MR. FIELD: -- every single loan number that's
4 in that trust, every single one, all 20,000, 21,125
5 loan numbers. They're all Fannie Mae loan -- ex --
6 ex-Fannie Mae loan numbers, okay? We manually
7 scanned every single loan number in there, and we
8 also did a computer scan, where you can just -- you
9 can scan the document in and then type in a loan
10 number, and it will tell you if it's in there.

11 The loan number that they're referring to, not
12 in this Trust, this is -- the is the -- and what's
13 also interesting about it, this is a printout from
14 the Securities Exchange website, every one of these
15 loans that made it in there, have major defects.
16 For example, the first one, "Missing document note,
17 subject lien not provided." This is what they sold
18 to mom and pop investors. The PIMCO Bond Fund, this
19 is what they sold to them. "Missing document -- the
20 next one, missing document note, subject lien not
21 provided." This is the most toxic junk, when it
22 comes to mortgages you've ever seen.

23 THE COURT: Well, yeah, but --

24 MR. FIELD: But what I'm saying is, so -- so
25 they -- they don't -- they're suing me -- CSMC Trust

1 is suing me, it's not in the Trust. The -- the --
2 the -- their mortgage assignment does not match the
3 Plaintiff, because their -- the -- the Plaintiff is
4 not in its individual capacity.

5 The mortgage assignment says it's -- they are in
6 their individual capacity. And remember this
7 lawsuit the way it's going is, is Mr. Milam
8 represents Wilmington in their individual capacity,
9 a different law firm, Mr. Page represents the
10 Plaintiff not in its individual capacity, a
11 different law firm.

12 There are two different entities. Like I said,
13 if you have Exxon Mobile -- if you have Exxon Mobile
14 -- if you're the CEO of Exxon Mobile, then you've
15 got -- you're the real deal. If -- if I'm a
16 shareholder of Exxon Mobile, then I'm -- I'm Exxon
17 Mobile not in its individual capacity.

18 So the -- if we go back to this mortgage
19 assignment at the top, it says -- it says, "When
20 recorded, return to Fannie Mae." Do you see that,
21 Your Honor?

22 THE COURT: Yes, sir.

23 MR. FIELD: Okay, so right below that you see a
24 Fannie Mae loan number, 1700119966. All of these
25 loans in this CSMC Trust are 1,700 loan numbers.

1 They all are from the same timeframe. Now, I talked
2 to Fannie Mae, they said "Call the title company."
3 So that's exactly what I did. Boy, did I get an
4 earful talking to the title company. All of these
5 signatures on this assignment, the one, Mr. Patrick
6 McCabe, he's -- he's claiming that he is a -- under
7 a sworn affidavit he's claiming that he is --
8 Patrick McCabe is Vice-President of Loan
9 Documentation of Nationstar Mortgage.

10 Well, the title company tells me, "No, no, no,"
11 he's an employee of -- of the title company. This
12 Chelsea Lemos, Tiffany Floyd and Ashley Morrell
13 (phonetic), all employees of the title company.

14 Now, if you go down lower, it says, "Document
15 prepared by Dave Larose." (phonetic). I said -- I
16 asked her, I said, "Did -- did Dave Larose prepare
17 this?" She said, "No, no, no, no, we just have to
18 put that on there to meet the requirements of the
19 State of Florida."

20 So then you go lower and it says at -- right
21 above that bar code it says, "FMNA," and then it has
22 the account number and it has 2018 RPL 2, PL 3
23 sale." So if you go to the Fannie Mae website, and
24 by the way, what the title company also told me that
25 Nationstar rejected this assignment. They did not

1 authorize this assignment. They -- they -- it got -
2 - it got quashed in the middle of it. So you've got
3 a third party, Fannie Mae, come in and request it,
4 they were neither the assignee or the assignor.

5 Now, if you -- if you go to the Fannie Mae website
6 and you look up this RPL 2, PL 3 sale, Fannie Mae
7 put out for a bid six billion dollars worth of
8 loans, and they -- come one, come all. DLJ Mortgage
9 Capital was the winning bidder.

10 Now, they acquired -- it was a 27 -- it was over
11 a 27,000 loan, but when they -- when the
12 securitization came around, only this -- when the
13 Trust came around, only 20,000 made it into the
14 Trust, so there's 6,000 plus loans missing from the
15 time that Fannie Mae did the sale, sold it to DLJ,
16 and they securitized it, but it was still DLJ, and
17 that's the same thing that Nationstar told me.
18 'Cause I -- I said, "What did y'all do?" And they
19 said, "The last note owner was DLJ Mortgage
20 Capital." So if you, again, go back to the
21 Securities Exchange website, with this -- this --
22 their public filing, it says there the -- that DLJ,
23 even in the -- in the SCC filing -- filing required
24 a call of the loans.

25 So to go back to the jurisdictional issue, this

1 CSMC, 2018, RPL 6, and by the way they set up nine
2 of them that day. They set up RPL 1 -- I mean RPL
3 1, RPL 2, all the way through nine.

4 THE COURT: All right.

5 MR. FIELD: And the -- there's -- there's -- as
6 it's set up, the Trust has no contacts with anyone
7 in this State. There -- there -- it's limited to
8 the State of Delaware, and, you know, I really -- I
9 really do question, if I have the ability to sue
10 them, because of all the protections that they have.
11 The -- the -- the pleading -- the complaint clearly
12 states that Wilmington is not in its individual
13 capacity.

14 THE COURT: Right.

15 MR. FIELD: Okay, the only connection that they
16 -- that they can claim for this mortgage is, if this
17 mortgage assignment had said something different.
18 And to add a little bit more flavor on that is, that
19 Christiana Trust is a limited purpose trust, so it
20 gets even more complicated.

21 So you have an owner/trustee of a Delaware
22 statutory trust that's -- that's doing business as
23 a limited purpose trust, which is, as I said, a
24 whole other legal structure. For benefit of a
25 Delaware statutory trust, that -- it's -- it's just

1 a big liability shield, and -- and --

2 THE COURT: But who's supposed to be suing you?

3 MR. FIELD: The --

4 THE COURT: I mean somebody -- somebody's
5 supposed to be suing you to -- to -- for
6 foreclosure, right?

7 MR. FIELD: No.

8 THE COURT: Okay, you don't -- all right.

9 MR. FIELD: No, I -- and I can -- I can back
10 that up, yes.

11 THE COURT: No, no, I don't need -- that --
12 that's fine, that answers my question.

13 MR. FIELD: The --

14 THE COURT: That answers my question.

15 MR. FIELD: The --

16 THE COURT: But -- but you know these people
17 aren't supposed to be shown --

18 MR. FIELD: Yes, sir.

19 THE COURT: Okay.

20 MR. FIELD: The --

21 THE COURT: But that's not for the reason that
22 -- that's -- they're not supposed to be suing you,
23 because you don't think they have the ability to sue
24 you; is that accurate?

25 MR. FIELD: Okay, say that question again?

1 THE COURT: They don't have the ability to sue
2 you --

3 MR. FIELD: That's correct.

4 THE COURT: -- because -- because of the
5 arguments that you've just making?

6 MR. FIELD: That's correct, and -- and what's
7 more interesting is, that all these other players
8 don't corroborate anything.

9 THE COURT: Okay.

10 MR. FIELD: In other words -- so --

11 THE COURT: Well, hold -- hold on. Let's assume
12 that someone -- let's assume that a bank, trust,
13 someone -- if you stop making your payments, let's
14 just say you stop making it, no bankruptcy, no
15 nothing, you just stop making payments, somebody
16 would be entitled to move forward and foreclose,
17 correct? And I'm -- I'm talking hypothetical.

18 MR. FIELD: The --

19 THE COURT: You've got a house, wherever this
20 house is --

21 MR. FIELD: And, actually the --

22 THE COURT: Hold on, sir.

23 MR. FIELD: -- there's -- there's no enforceable
24 debt right now.

25 THE COURT: Sir, I'm -- I'm not asking you that.

1 I'm asking you this question, let's assume that
2 there is an enforceable debt, and --

3 MR. FIELD: And --

4 THE COURT: Hold -- hold on, just --

5 MR. FIELD: I'm with you.

6 THE COURT: I -- I have given you loads of time.

7 MR. FIELD: Yes.

8 THE COURT: And I will continue to -- to listen
9 to you, sir, you've been going for 20, and I just
10 want to ask a -- a brief question. Assume there's a
11 debt, assume that you did something wrong, someone,
12 somewhere has a right to foreclose; is that fair?

13 MR. FIELD: I -- the only way I can tell you is,
14 just to -- to tell you the facts is, the Federal
15 National Mortgage Association, okay, securitize this
16 -- this loan, okay?

17 THE COURT: Okay.

18 MR. FIELD: And in 2005 -- now, if the
19 securitization process -- the reason I know a lot
20 about this is, I was licensed in securities for 25
21 years. The -- the securitization is the process of
22 selling.

23 In order to get in into a bankruptcy remote
24 transaction, you have to have at least two
25 transactions, two arms-lengths transactions to get

1 it, and that's why in the financial crisis in 2008
2 through '10 Fannie Mae went bankrupt. They've been
3 in conservatorship since 2008 'til today. They're
4 -- the FHA, the Federal Housing finance authority,
5 is the conservator for Fannie Mae.

6 THE COURT: All right.

7 MR. FIELD: Now, there was a -- Fannie Mae has
8 been in existence since 1981. I've been selling --
9 I was selling Fannie Mae bonds from 1984 through
10 about 2009, tens of millions a year. I've read all
11 the perspectives, 'cause I know how it all works.
12 Now, what Fannie Mae did is, in order to -- to -- to
13 securitize trillions of dollars of mortgages, it has
14 to be uniform, everything has to be the same. So
15 when you -- when you figure out the corresponding
16 trust indenture for that time period, it applies to
17 all of their securitizations, in this case from 2002
18 to 2007.

19 It's market -- the financial markets crashed in
20 2008. It was because of that trust indenture, okay?
21 They couldn't sell the loans. They were prohibited
22 from selling them, they couldn't rehypothecate them,
23 they were stuck with them. So they were required to
24 pay the investors, okay? So the government came in,
25 bailed them out, 'cause they didn't have enough

1 money to pay all the investors off, they -- they
2 guaranteed -- Fannie Mae is the guarantor of the
3 loan.

4 So the Treasury and the FDIC and -- and the Feds
5 all came in, paid all these investors off. Now,
6 what Fannie Mae did, is they had recourse on their
7 servicers.

8 THE COURT: Right.

9 MR. FIELD: In this case with CitiMortgage.

10 THE COURT: Okay.

11 MR. FIELD: By the way, CitiMortgage at that
12 time had been servicing four million loans. Do you
13 know how many loans they service right now? Zero.
14 All the big services are out. The only people that
15 are out servicing debt right now are debt
16 collectors, such as Shellpoint, they're just nothing
17 but a debt collector.

18 Now, the -- the servicing agreements have
19 nothing to do with me, because it's a -- it's an
20 agreement between Fannie Mae and CitiMortgage. So
21 they exercised recourse, blamed everything on
22 CitiMortgage, but in the Trust Indenture what they
23 did, is in the Trust Indenture it says if -- if --
24 if a -- if a loan is more than four months
25 delinquent, then we can -- if we can prepay that

1 loan in full, and that's exactly what Fannie Mae
2 did, that they exer- -- exercised recourse on
3 CitiMortgage. Now --

4 THE COURT: Hold -- hold on.

5 MR. FIELD: Okay.

6 THE COURT: Are you, ultimately, getting around
7 to the fact that because of all this mumbo jumbo,
8 all the stuff going on with securities, that,
9 basically, nobody really has a right to come after
10 you, because --

11 MR. FIELD: We have -- I'll say we have
12 defenses.

13 THE COURT: Right, I'm with you. So the reality
14 of it is, if I knew all the -- I mean, if I was the
15 one who just didn't make any payments, under this
16 scenario, I could certainly say I don't owe any
17 money to anybody, no one has the right to come in
18 and collect from me; is that what you're saying?
19 'Cause it sounds to me like what you're saying is,
20 listen, 'cause of all this stuff going on with
21 securities over here, the reality of it is, no one,
22 those dumb-dumbs, no one has the right to come back
23 and collect any money.

24 MR. FIELD: If they're --

25 THE COURT: Hold -- hold on, sir, just let me

1 finish.

2 MR. FIELD: All right.

3 THE COURT: That's what it sounds like to me,
4 you're, ultimately getting at; is that correct, or
5 is that not correct? Let's just keep it simple.

6 MR. FIELD: The -- there -- if -- if you come in
7 -- in a back way, I'll -- I'll explain it to you, is
8 that the -- we have asked the -- the Plaintiff --
9 we've asked the Plaintiff, this note that they're
10 claiming they have, where did you get it? What'd
11 you pay for it?

12 They -- they can't tell you where they got it.
13 They can't tell you what they paid for it. They
14 have no injury -- they have absolutely -- they have
15 zero -- these trusts -- because when I was working
16 in the securities industry --

17 THE COURT: Well, what if they just made a good
18 buy? What if they bought it for five cents?

19 MR. FIELD: Well, then tell me, what's it --

20 THE COURT: Who cares?

21 MR. FIELD: No, no, if he -- no, if they paid
22 five cents for it, I -- the -- let's see it.

23 THE COURT: Well, that's not for today. That's
24 not the issue today. I want to hear everything else
25 you've got to say concerning this personal

1 jurisdiction, so I can look at it, hear from them,
2 and then make a ruling.

3 MR. FIELD: Okay.

4 THE COURT And I tell you what I'm gonna do, I'm
5 gonna give you 13 more minutes.

6 MR. FIELD: I probably won't be that long,
7 but --

8 THE COURT: Okay, well, I --

9 MR. FIELD: Well, I'll go for it, I'll -- I'll
10 take it, if it --

11 THE COURT: That's --

12 MR. FIELD: Like I'll try.

13 THE COURT: I'll give you 13 minutes, which I
14 think with 40 plus minutes of going on this, if you
15 can't -- so I'll give you 13 minutes.

16 MR. FIELD: Okay. In a nutshell, they paid
17 \$200, they set up a Delaware statutory -- statutory
18 trust, right?

19 Now, if you look at the -- if you try to figure
20 out -- part of -- if you want to think of it in
21 terms of foreclosure, you want to -- you -- you want
22 to -- you want to try to figure out the chain of
23 title, something like that, you know, where, you
24 know, start to finish, what -- where did this come
25 from, okay? This is -- I don't -- you -- you may

1 not be familiar with what happened in the first
2 mortgage foreclosure crisis, but it was Mortgage
3 Electronic was merged, it was Mortgage Electronic
4 Registration Systems. This is the -- the scheme
5 that's replacing it is, they are, literally, setting
6 up these -- the shell Delaware statutory trust and
7 suing people.

8 And the -- they -- they don't have - I read the
9 trust agreements. Okay, the found trust agreements
10 relating to Christiana, and what it is, they say,
11 "You, Shellpoint, you go out and do all the debt
12 collection activity you want, but we're not gonna be
13 liable for it. You -- you -- we're not gonna," it's
14 like a don't ask, don't tell policy. If you look up
15 the Christiana website, they say, "We don't do
16 foreclosures, we don't initiate foreclosures, we
17 don't do anything." It's all in my complaint and
18 all in my filing is, Christiana Trust does not
19 authorize foreclosures.

20 They don't manage foreclosures, they don't do
21 foreclosures, but, yet, they -- they -- the -- they
22 recently omitted Christiana off of their -- being a
23 Plaintiff, 'cause I challenged it in bankruptcy. So
24 they said, "Oh, we," -- I caught them on that one,
25 so they changed it. So the -- there's -- this

1 Delaware statutory scheme is limited to the State of
2 Delaware. It's governed by the -- the laws of
3 Delaware, and it would be a pretty night -- a pretty
4 neat trick for me to pay \$200 to set up a Delaware -
5 - Delaware statutory trust and go sue somebody. The
6 -- I mean that's really the -- the -- the -- the
7 difference between -- they're -- they're using these
8 -- these phrases that people make assumptions out
9 of. When you think of a trustee, you -- you have an
10 image of what a trustee does. You know, there's a
11 trustee at a bank that pays the 90-year-old her
12 bills for her, takes care of her, that's not what
13 this is. This is the -- the opposite of what common
14 law trusts are.

15 THE COURT: But you knew that. I mean the
16 minute you entered into this, you -- you were smart
17 enough to know all of that.

18 MR. FIELD: I didn't enter into this.

19 THE COURT: I'm sorry?

20 MR. FIELD: I didn't enter into this.

21 THE COURT: Well, I mean you -- you knew what --

22 MR. FIELD: I never borrowed any money from
23 them.

24 THE COURT: Did you know what was going on?

25 MR. FIELD I didn't borrow any money from -- I

1 don't have -- I've never had any --

2 THE COURT: Well, I -- I --

3 MR. FIELD: This is the only --

4 THE COURT: -- understand, but I mean, as it
5 relates to the securities and everything that's
6 going on, I mean, you knew all about these things
7 beforehand, I mean, in terms of the knowledge that
8 you acquired, that predated this -- this loan,
9 right, in 2005?

10 MR. FIELD: The -- the knowledge --

11 THE COURT: Yeah, the secured -- this -- your
12 security experience in all of this, that -- that
13 goes back before 2005, right?

14 MR. FIELD: Yes.

15 THE COURT: That's what I'm trying to figure --

16 MR. FIELD: Yes.

17 THE COURT: I just want to make sure --

18 MR. FIELD: But the -- the -- but -- I'll tell
19 -- I can tell you what, I'll tell you what, MERS
20 elected its --

21 THE COURT: MERS?

22 MR. FIELD: It's MERS, which is Mortgage
23 Electronic Registration --

24 THE COURT: Yes, sir.

25 MR. FIELD: -- which they tracked 60 percent of

1 the mortgages in this country, okay?

2 THE COURT: All right.

3 MR. FIELD: I had never heard of them until
4 2010, never heard of them. They -- they track --
5 they're the ones that track mortgages for 60 percent
6 of them. It's -- it's this hidden thing, but what's
7 changed is, the financial crisis between 2008 and --
8 and beyond is what changed everything.

9 All these -- these big mortgage servicers, when
10 you think of the mortgage laws that regulate the
11 servicing industry, you think of RESPA, which is the
12 Real Estate Settlement Protections Act Truth in
13 Lending, all of these regulations that -- that
14 regulate the servicing business.

15 What they've done is, the big banks have gotten
16 out of the servicing, because they don't want to
17 comply with all those laws. So what the -- what
18 these guys did is, they went out and set up these --
19 these shell entities that are not regulated by all
20 of the mortgage servicing laws that the other
21 servicers pre-financial crisis were regulated by.
22 So they -- they skirt all regulations, they -- they
23 skirt RESPA and TILA, Truth in Lending, all those
24 things they don't do it; but the -- I have not had
25 any business dealings with the -- these people.

1 THE COURT: All right, well, let me ask you,
2 Nationstar Mortgage LLC, you did have a relationship
3 with them?

4 MR. FIELD: Well, I -- I didn't --

5 THE COURT: That --

6 MR. FIELD: -- set it up. You know, what happens
7 is, it would be another mortgage assignment, they're
8 just -- there -- there was a mortgage assignment
9 from Citi that went to Nationstar --

10 THE COURT: Who did you --

11 MR. FIELD: I never had any bus- -- I never --

12 THE COURT: Who did you originally finance it
13 with?

14 MR. FIELD: E Trade.

15 THE COURT: E Trade, and so --

16 MR. FIELD: They're --

17 THE COURT: And so -- and so -- right, but E
18 Trade, I'm assuming, there would be language that
19 they could assign.

20 MR. FIELD: That was under --

21 THE COURT: I mean --

22 MR. FIELD: That was under the MERS, which was
23 all have been challenged, because MERS, they -- MERS
24 claimed to be the mortgagee, even though E Trade was
25 on the -- the mortgage, and that's -- that's a hub-

1 -- a whole other argument.

2 THE COURT: Isn't it pretty standard in the
3 industry to have companies do multiple assignments?

4 MR. FIELD: If they're -- if they have something
5 to assign. If -- if -- you can't assign something
6 more than what you have, and so all these subsequent
7 assignments have been -- are --

8 THE COURT: Okay.

9 MR. FIELD: -- are void. You can't assign
10 something you don't have.

11 THE COURT: All right.

12 MR. FIELD: Now -- now, I want to say something
13 about E Trade.

14 THE COURT: I'm with -- I'm with you.

15 MR. FIELD: Is E Trade, I settled with E Trade,
16 and I have submitted that settlement agreement.
17 They released the note. So the -- they're not
18 recognizing that. They're not recognizing that.

19 THE COURT: All right.

20 MR. FIELD: But E Trade's out of business.
21 Citi's out of -- Citi's out of the picture.
22 Nationstar is not claiming that they signed this,
23 okay? I've talked to Nationstar, I've got the --
24 I've got the correspondence. The -- there's
25 something really strange going on, when you have

1 Fannie Mae, right --

2 THE COURT: Uh-huh.

3 MR. FIELD: -- I mean they're not the assignor or
4 the assignee, and they're the ones that -- that did
5 this. They're the ones that did this. It wasn't
6 Nationstar, Nationstar's de- -- denying this.

7 THE COURT: Okay.

8 MR. FIELD: So you can get one of these for
9 seven bucks, they -- that's -- that's what the --
10 the -- these guys pay the title company. These
11 aren't title companies anymore, these are forgery
12 factories. They, literally, do endorsements. They
13 do fake endorsements. They do fake assignments.
14 They are -- and I've talked to -- I've got a
15 recorded -- two 40-minute recording conversations
16 with this title company. You wouldn't believe
17 what's on there.

18 THE COURT: Okay.

19 MR. FIELD: Is -- this -- this is a forgery.
20 It's a flat-out forgery. It's got no re-fraud on
21 it, Nationstar's not owning up to it, and -- and,
22 again, it doesn't match the Plaintiff.

23 THE COURT: Okay.

24 MR. FIELD: And so -- and also, by the way,
25 Chris- -- Christiana Trust is claiming they don't do

1 foreclosures. It's always on their website, it's in
2 their emails. I -- I've emailed with Christiana
3 Trust, they said, "Oh, we don't do that. We don't
4 do foreclosures."

5 So the -- there's -- Christiana Trust, the
6 initial owner is PIMCO, and I -- you know what
7 happened to that is, on PIMCO, on the Securities
8 Exchange website, this portfolio dropped from 3.6
9 billion down to \$93,000. That's how toxic this
10 things is, and -- and ours is not even in there.

11 So the -- it's just that they don't have --
12 there's the -- the -- the Delaware statutory trust
13 does not have personal jurisdiction in this Court.

14 THE COURT: All right.

15 MR. FIELD: That's my position.

16 THE COURT: All right, thank you. I'm happy to
17 hear from either one of you. And, sir, I didn't
18 mean to cut you off earlier, but this -- I had made
19 my ruling, and at that point I just didn't need to
20 hear anything else, so I -- I -- I let people have
21 plenty of time to talk, and I apologize, I did not
22 mean to cut you off, but I had made my ruling on
23 that, okay?

24 MR. MILAM: I totally understood, Your Honor.

25 THE COURT: All right, thank you. And so I'm

1 happy to hear from either one or both of you
2 gentlemen.

3 MR. PAGE: As to personal jurisdiction we
4 believe the Court does have personal jurisdiction
5 over this matter. The Plaintiff has filed the
6 action. I think some of it sounds more like a
7 standing issue, then a personal jurisdiction issue,
8 but the Defendants are residents of Beaufort County,
9 and the State of South Carolina also, even if they
10 weren't, the Long-Arm Statute 362803, would provide
11 jurisdiction over people that own real property in
12 this State, so we think personal jurisdiction is
13 valid.

14 In terms of standing we -- I have the -- I'm not
15 sure about the securitization, I'm not an expert on
16 that law, but I do have the original note, which has
17 been endorsed and blank and, in my possession, and
18 I'm the attorney for the Plaintiff.

19 THE COURT: All right. Yes, sir, anything you
20 want to tell me?

21 MR. MILAM: No, Your Honor, I -- I agree with
22 all that. I want, just as a -- a clarification, I
23 -- Mr. Page -- Mr. Page represents the Plaintiff. I
24 also represent the Plaintiff and all the Third-Party
25 Defendants, but I've nothing further to add.

1 THE COURT: All right. Yes, sir?

2 MR. FIELD: The -- this -- they would have to
3 have a valid mortgage assignment to exercise the --
4 this -- this Long-Arm Statute. This -- we have --
5 we've -- we've submitted other documentation in our
6 case that shows that MERS extinguished the mortgage.
7 It's -- it's all in our -- in our exhibits. The --
8 you -- you can't foreclose without a valid mortgage.
9 Even if they were to claim -- if they were able to
10 show that the debt was valid, they cannot show that
11 they have a valid mortgage.

12 And so the, you know, it's just -- they -- this
13 -- they -- they want to -- they want this thing --
14 they're -- they're really playing both sides of the
15 fence, because they're saying on one hand we --
16 we've got the note, which has nothing to do with the
17 mortgage, but, yet, on the other hand, this is a
18 foreclosure case.

19 But the -- in their -- in their complaint they -
20 - they don't list any cause of action for
21 foreclosure. Now, they put it at the top in the
22 caption. There's no cause of action of foreclosure
23 here. If it were a foreclosure, you have to show a
24 default, you have to have a valid mortgage, they
25 have neither. They -- they --

1 THE COURT: What about that?

2 MR. PAGE: Your Honor, I -- we have, you know,
3 this kind of gets to our summary judgment motion,
4 but the mortgage has been properly recorded in the
5 County. I have a certified true copy from the
6 Beaufort County Register of Deeds. It encumbers the
7 subject collateral we describe in our complaint.
8 The note -- and under South Carolina law the -- the
9 mortgage follows the note, and I have the note and
10 it's endorsed with blanks --

11 THE COURT: Okay.

12 MR. PAGE: -- to the Plaintiff, or not -- it's in
13 blanks, so it's -- it -- the bearer is the holder.

14 THE COURT: All right.

15 MR. FIELD: Your Honor, the note -- the mortgage
16 that he's talking about is an E Trade mortgage that
17 was filed in 2005, it's not the original mortgage.

18 THE COURT: Right.

19 MR. FIELD: Okay? The settlement that I did
20 with E Trade, okay, the -- what it was is, it was
21 what they call a combo loan, it was a -- a HELOC
22 combined to a mortgage, right? And the -- it was
23 some fancy thing they were doing back in 2005, where
24 you -- it was -- they were both considered first
25 lien mortgages, and they were -- they were recorded

1 exactly the same time down to the second.

2 So the first lien is first, first, right? These
3 were equal. They gave me back the original
4 mortgage. I'm talking about the blue ink, and it
5 had a big stamp paid in full on it, okay? That's
6 the blue ink mortgage that -- that -- the HELOC that
7 was associated with the mortgage. That is not the
8 original mortgage. Anybody can go to a courthouse
9 and print something off, okay? This is not a blue
10 ink mortgage, it's not even their mortgage --

11 THE COURT: All right.

12 MR. FIELD: -- it's E Trade.

13 THE COURT: Okay.

14 MR. FIELD: 'Cause I could go print off some
15 mortgages in the Register of Deed and -- and go sue
16 everybody, and that's basically what they're doing
17 is, the -- if -- if they want to produce -- if they
18 want to produce the original mortgage -- the
19 original mortgage with the blue ink on it that's in
20 its present condition today, not in 2005, that was
21 recorded in 2005, then you -- they might have
22 something to go on.

23 That's all been destroyed. If they want to tell
24 me they know where that's at, I'd be -- I'd love to
25 hear it, but they don't have it. They don't have

1 the original mortgage, because it's been paid in
2 full, and that's why they don't have it. So they
3 run to the courthouse and they print something off,
4 and they come running into Court, "Hey, I've got the
5 mortgage."

6 No, they have the 2005 E Trade mortgage that's
7 not the original. And so they have this forgery
8 factory down in Florida that files these fake
9 mortgage assignments, and these are being requested
10 by -- they're -- they're all over the -- all over
11 the country recorded by Fannie Mae.

12 So, again, I'd like to know how you can file a
13 foreclosure action without a valid mortgage, and if
14 -- if he has the original mortgage, I'd love to see
15 it.

16 THE COURT: All right. All right, what I'm
17 gonna do now is, were gonna come back at -- it's
18 12:35, we're gonna come back at 1:45. We're gonna
19 break for lunch.

20 MR. FIELD: So the personal jurisdiction
21 issue --

22 THE COURT: I'm gonna --

23 MR. FIELD: You're gonna think about that one?

24 THE COURT: I'm gonna eat a sandwich and I'm
25 gonna think about it, and then I'm gonna come back

1 and make a ruling, and we'll decide where we go from
2 there.

3 MR. FIELD: Thank you, Your Honor.

4 THE COURT: All right? So we'll see everybody
5 back at 1:45.

6 MR. PAGE: Thank you, Your Honor.

7 (Luncheon recess)

8 PROCEEDINGS CONTINUED

9 ***

10 THE COURT: I think we're ready to go back on
11 the record. When we broke, I had heard all the
12 arguments in regard to the Defendant's motion to
13 dismiss for lack of personal jurisdiction. I
14 believe that's the motion that I just received all
15 the information on.

16 MR. FIELD: Yes, Your Honor.

17 THE COURT: All right. So what I will say is,
18 we went back, looked at my notes, looked at the
19 briefs and what I will say is this. I believe that
20 this Court does have jurisdiction over the
21 Defendants in this matter.

22 The Defendants are residents of the State of
23 South Carolina. The property in question is
24 located, more specifically, in Beaufort County,
25 South Carolina, so with that, I think this Court has

1 jurisdiction as it relates to personal jurisdiction
2 of the Defendants, so I'm denying your motion, sir.
3 All right? What motions do you have next, sir?

4 MR. FIELD: Your Honor, I'd like to bring the
5 Court's attention -- I'm not trying to challenge or
6 overturn your ruling relating to subject matter
7 jurisdiction.

8 THE COURT: Yes, sir.

9 MR. FIELD: But we have a transcript from Judge
10 Dukes' hearing. This is September 29th, 2020.

11 THE COURT: Sir? I'm not going to move
12 backwards.

13 MR. FIELD: I'm not asking you to.

14 THE COURT: Okay.

15 MR. FIELD: I just want to put this in the
16 record. Is that, the -- here's the --

17 THE COURT: No, I'll let you put -- anything you
18 want to put in the record, go right ahead.

19 MR. FIELDS: Okay. There's been a rule change,
20 when he ruled and when you ruled. So the question
21 really becomes -- and I'm talking about Rule 3. He
22 ruled on Rule 3 in this Court and that's why he
23 vacated the order.

24 Now, I went back and looked at Rule 3 and it
25 changed. So this transcript shows the -- I'll be

1 glad to give you a copy.

2 THE COURT: I'm looking at anything else. I'm
3 just letting you put this on the record.

4 MR. FIELD: That's fine. Okay. So this
5 transcript of Judge Dukes' hearing, this was my
6 attorney presenting my case to Judge Dukes. He
7 said, "Rule 3A establishes that a case is commenced
8 upon the service of the summons and complaint".
9 Now, of course, that was based on Rule 3 at the
10 time, not today, because I looked at the rule today
11 on our break. It's different than when he ruled.
12 Now, on page -- the next -- it says -- it
13 essentially says just what I said, that in South
14 Carolina, a civil action is commenced by filing and
15 serving the summons and complaint, citing Rule 3A
16 for that. Judge Dukes ruled on this. This is why
17 he vacated the order.

18 Now, I'm not challenging your order today,
19 because if you look at Rule 3A today, it's
20 completely different than what it was when he ruled
21 on it, because I remember reading it and I put it in
22 my pleadings.

23 So the question is, really, which applies. Does
24 -- when the violation occurred, does the existing
25 rule back in 2020 apply or does the existing rule

1 today apply? That's really the question now,
2 because the rule -- they changed the rules. They've
3 literally -- on the internet, the Rule 3 changed
4 completely.

5 So Judge Dukes ruled on this in 2020 and vacated
6 the order based on Rule 3A, so that's really where
7 were at here, is -- I'm sorry that this has to be
8 this way, but I can't believe -- I don't know how
9 this works, but the rules changed.

10 THE COURT: Okay.

11 MR. FIELDS: And he ruled on it back then, no --
12 that it was -- that Rule 3A was that it had to be
13 served by a summons and complaint. So --

14 THE COURT: All right. Well, I think you've
15 adequately protected the record and put whatever you
16 needed to do on the record and so we move forward.

17 MR. FIELD: Okay.

18 THE COURT: What other motions, if any, do you
19 have today, sir?

20 MR. FIELDS: Your Honor, a stay pending appeal,
21 makes a lot of sense to me right now, is -- it made
22 a lot of sense before, is -- I thought when I filed
23 the appeal that it would be an automatic stay. I
24 mean, all the other appeals cases I've seen, the
25 attorneys have been given respect and they've let

1 the appeals process play out and then come back to
2 court, because a jury trial is a substantial right
3 and all the other cases I've seen, including the
4 Chabek case, they won that case on appeal in 2017
5 and why is it that I file an appeal or I tell them
6 I'm going to file an appeal and five days later they
7 file a motion for summary judgment? And why is it -
8 - they claim that there's all these issues that are
9 not related to the appeal when, in fact, there's a
10 bunch of issues that are related to the appeal.

11 So if -- not only are there a lot of issues, but
12 they're global issues. Jurisdiction, due process,
13 jury trial, all these are -- a lot of these are
14 constitutional rights, substantial rights that I
15 have and they're depriving me of my substantial
16 rights, including -- they're depriving me of my
17 ability to amend my compulsory counterclaim, which
18 is a substantial right.

19 So why is it that we're sitting here -- I really
20 don't even know why we're here today, because once
21 they triggered by -- denied me my right for a jury
22 trial, they triggered an appeal and when they
23 trigger that appeal, they come in here and say, "You
24 know, well, that doesn't matter. We're going to
25 litigate this case". They haven't provided any

1 discovery, they haven't answered my counterclaim,
2 they haven't answered my third-party claims, they
3 haven't participated in this case at all. They
4 haven't even participated in mediation properly.
5 They haven't done anything right.

6 They filed this order of reference before the
7 case commenced, which Judge Dukes ruled on and then
8 they come in here and they want somehow to keep
9 litigating the case.

10 Why are we still litigating this case? Because
11 if you look at the Johnson versus National Bank, it
12 clearly says that the compulsory counterclaims have
13 to be tried first by a jury before they can get a
14 shot at it.

15 We have at least three compulsory counterclaims.
16 Unfair trade practices act, we have abuse of
17 process, we have breach of contract. All of those
18 have been ruled by the appeals court, that those are
19 legal and compulsory. So -- and I'd be glad to
20 provide you with that case law. By the way, this
21 case -- Judge Price ruled in the record. I mean, he
22 read it -- the whole case into the record in our
23 last hearing and that's why we're here today, is
24 because I'm not just asking for a continuance to the
25 next roster.

1 I'm asking for a continuance until we get done
2 with the appeal and so this case clearly spells it
3 out, that we should have a continuance or a stay,
4 you can call it whatever you want, until the appeals
5 process plays out.

6 So they're just gaming the system right now.
7 They're not participating in this case. They
8 haven't provided any discovery, they defaulted on
9 all the interrogatories, they -- they didn't answer
10 one single admission. Right? And So the -- and
11 many of the admissions that I sent them, they didn't
12 answer them.

13 So they haven't answered any of the
14 interrogatories and they haven't participated in
15 this case at all, and So I believe that the -- I had
16 a highlighted copy of this somewhere. It's this
17 case right here. I have not highlighted it, but
18 it's Johnson versus South Carolina National Bank.
19 Your Honor, this is a much better copy. It has the
20 highlighted areas on it.

21 (OFF RECORD)

22 THE COURT: All right. Yes, sir?

23 MR. FIELD: So that case basically says that all
24 legal and compulsory counterclaims have to be tried
25 by a jury first. Now, it's in your discretion

1 whether you want to combine the cases or try them
2 separately, but it pretty much defeats a motion for
3 summary judgment because the -- that all has to be
4 tried by a jury. So that's part of, you know, our
5 appeal, but if -- there's a lot of remedies to this.
6 One remedy would be if you grant our motion to
7 amend, which has a built-in jury trial demand -- if
8 you grant that, it defeats their motion to dismiss,
9 it defeats our appeal, essentially, and we're back
10 in Circuit Court with a -- because we were on the
11 jury roster with Judge McCoy.

12 We got ripped off that we had a legitimate jury
13 roster with Judge McCoy. But if you approve our
14 motion to amend, which is -- they're not even
15 objecting to that one. They're objecting to the
16 motion -- to our amendment before that.

17 So we've had our first answer and counterclaim
18 and third-party claims -- we had our first amended
19 one, which they're objecting to, and we have our
20 motion to amend.

21 Now, if the motion to amend is granted, then it
22 has a jury trial demand built into it. So we go
23 back to Circuit Court, we go back to a jury, we can
24 be off and running on discovery and the appeal goes
25 away. So -- but if they want to keep litigating us

1 down here, then that comes into play because now,
2 we're going to have to go up to the Appeals Court,
3 let them determine if we're entitled to a jury
4 trial, when they have several rulings right now that
5 these cases are entitled to -- legal and compulsory
6 claims are entitled to a jury trial. Right? They
7 send us back down here maybe a year or two later,
8 and then we start litigating again. So they've
9 built in, you know, it's kind of -- they've built in
10 all of these, you know, "heads I win, tails you
11 lose", kind of thing. But, the Johnson case I just
12 gave you, is that if -- there's no reason for them
13 to have summary judgment right now for that reason,
14 is that it has to be tried by a jury.

15 So if we have to the Appeals Court to do that,
16 then that's where we're at, but I really -- I think
17 it's really an inefficient way to do things.

18 THE COURT: I'm going to deny your motion.
19 We're going to move forward. Okay?

20 MR. FIELD: Okay.

21 THE COURT: We're not going to stay anything as
22 a result of any appeal. I think this Court has
23 jurisdiction to move forward today.

24 MR. FIELD: Okay.

25 THE COURT: So we're going to do that. Are

1 there any other motions that you have or want to
2 make now, sir?

3 MR. FIELD: Yes.

4 THE COURT: Go ahead. What's that?

5 (Pause in the proceedings.)

6 MR. FIELDS: It's a toss-up between two other
7 motions. We'll probably hear both of them, but --

8 THE COURT: Okay.

9 MR. FIELD: A motion to amend our complaint.

10 THE COURT: All right. Sir, as it relates to
11 their motion to amend their complaint, do you have
12 any objection about moving forward with that motion
13 now? Because I don't know what motions are filed in
14 any order and I'll be honest, I haven't been paying
15 attention to the order of these motions on the
16 roster.

17 So what I do -- and I asked you before, so I
18 just want to know, do you have any objection to
19 moving forward with that motion now? Because, for
20 instance, I'm looking at this motion to amend. I'm
21 assuming that's motion number five and then -- let's
22 see, well actually, I think all his motions are
23 before yours. Is that correct?

24 MR. PAGE: Your Honor, I believe our motion to
25 dismiss the amended answer and counterclaims is

1 number two, so I think if that one was granted, then
2 I'm not sure how that would affect the motion to
3 amend that he's filed.

4 MR. MILAM: And, Your Honor, I plan to make the
5 argument on the motion to dismiss.

6 THE COURT: Okay. Well, which motion is number
7 one? The motion for continuance objection to motion
8 for summary. Is that yours, Mr. Field?

9 MR. FIELD: Yes, Your Honor.

10 THE COURT: Well, why don't we do that. That's
11 the first one on the roster and what I would be
12 inclined to do is to hear you on that, because
13 probably what I would do then, is go to number two,
14 which is their motion for summary judgment, if I
15 don't grant your relief, which I'm assuming that's
16 what you're asking for in number one. Motion number
17 one on the roster, sir, is motion for continuance
18 objection to motion and it just says summary. I'm
19 assuming that's summary judgment.

20 Is that your motion?

21 MR. FIELD: Yes, Your Honor.

22 THE COURT: Do you want to go ahead and let's
23 hear that, please?

24 MR. FIELD: Sure.

25 THE COURT: Okay. Yes, sir.

1 MR. FIELD: This is our motion. First of all,
2 we object to their, obviously, to their motion for a
3 summary judgment. It's premature. At best, it's
4 premature. It was filed pretty much as a procedural
5 block to our appeal. Their motion for summary
6 judgment was filed, like, five or six days after we
7 filed -- we told them we were going to appeal this
8 case.

9 So this just came out of the blue. It's obvious
10 that with all of the exhibits and all of the
11 documentation and sworn affidavits we've got in
12 here, that there is material facts in dispute and we
13 have pending discovery. They have not cooperated in
14 discovery. They haven't cooperated with anything.

15 And we documented in this motion the -- we're
16 really being put at a disadvantage because they
17 haven't answered any of our claims and they didn't
18 participate in mediation. They didn't participate
19 in discovery. They're not participating in this
20 case. So --

21 THE COURT: Let me ask you, sir. You sent them
22 discovery?

23 MR. FIELD: Yes.

24 THE COURT: They sent you discovery?

25 MR. MILAM: Yes, Your Honor.

1 THE COURT: Did you answer it?

2 MR. MILAM: We answered their request for
3 admission to the Plaintiff and to Fannie Mae. We
4 then, later in June, received -- more than 50
5 interrogatories to the Plaintiff, more than 50
6 interrogatories to Fannie Mae and we moved to stay
7 discovery. All these discovery requests relate to
8 their theories about securitization, wanting
9 detailed information about mortgage assignments and
10 so we moved to stay that to have our motion to——
11 dismiss ruled on before we have to go to the expense
12 of responding to discovery and part of the reason
13 for that is that there have been two prior cases.

14 One, in a 2012 foreclosure by CitiMortgage and
15 then again by Judge Waites in the bankruptcy case,
16 in which all of these issues about the lender's
17 standing have already been litigated and decided in
18 favor of the lender.

19 So for that reason, we would -- before we go to
20 the expense of answering all these interrogatories
21 about the mortgage assignments and the
22 securitization process, we would like to have the
23 motion to dismiss heard first. As to the request
24 for admissions, we did object to many of them
25 because many of them were, in fact, objectionable.

1 That's all I have.

2 THE COURT: All right. Go ahead.

3 MR. FIELD: We sent interrogatories to the
4 Plaintiff. We sent interrogatories separately to
5 all the third-party defendants. The thirty-day time
6 period has lapsed. We've noticed them that the
7 thirty-day time period has lapsed. They didn't
8 respond at all.

9 I mean, it's not like -- they didn't -- it's not
10 like they objected or they, you know, they didn't
11 respond at all. Now, Mr. Milam --

12 THE COURT: When was their thirty-days up?

13 MR. FIELD: Well, there was two sets. The
14 Plaintiff got theirs first. The thirty days was --

15 THE COURT: Approximately. I'm not looking for
16 an exact date.

17 MR. FIELD: Around July 5th.

18 THE COURT: Of?

19 MR. FIELD: This year.

20 THE COURT: Okay. Go ahead.

21 MR. FIELD: Mr. Milam's really loose with the
22 facts here. The most obvious one is, Fannie Mae did
23 not respond to the request for admissions at all.
24 Not one. None of the third-party defendants or the
25 plaintiff responded to any of the interrogatories.

1 Now, the plaintiff brought up all these bogus
2 objections about some of them, but they didn't
3 answer -- they basically admitted several of the
4 admissions.

5 Now, it's really frustrating because, you know,
6 we've got other discovery we'd like to send them,
7 but we know what they're going to do. They're not
8 going to cooperate, they're not going to answer,
9 they're not going to do anything. So -- and then
10 they just make up stuff, because the
11 interrogatories, every single case is entitled to
12 standard interrogatories.

13 They didn't answer one single standard
14 interrogatory. They've been complaining about how
15 many there were, but Fannie Mae had about 34 general
16 interrogatories. They got six standard
17 interrogatories. Didn't respond at all. Nothing.

18 Now, we've submitted in the court record a
19 memorandum from the judge in Charleston and he says
20 that this whole general objection about burdensome,
21 over -- you know, all that stuff, is -- it's
22 tantamount to not objecting at all. They didn't
23 even object, but what they did is, they gave this,
24 "Oh, we need to stay discovery until we get our
25 motions heard". They want their motion to dismiss

1 heard. They want their motion for summary judgment
2 heard, but they don't want to provide any discovery
3 and the thing is, is that discovery does not stop, I
4 mean, motion to dismiss does not stop discovery.

5 It's pretty obvious. The discovery is a
6 substantial right, not a substantial right, but it
7 is a right in a court proceeding and he makes up all
8 -- "Oh, they asked for too many".

9 THE COURT: Have you filed a motion to compel?

10 MR. FIELD: We filed notices that they failed to
11 cooperate.

12 THE COURT: No, that's not what I'm asking.

13 MR. FIELD: No, I did not.

14 THE COURT: When you send interrogatories to
15 somebody and they don't answer them in a timely
16 fashion, sir, you file a motion to compel.

17 MR. FIELD: Right.

18 THE COURT: That's the proper -- that's the
19 proper way to then go and have that matter brought
20 before the court.

21 MR. FIELD: Right, but the thing is, is that
22 what they're doing is -- the thing was, is that he
23 didn't file his motion to stay discovery until after
24 -- we had a hearing on July 2nd. Okay? And he
25 didn't file until after the hearing with Judge Price

1 and the thing is, they're basically, what I've read,
2 is that, you know, the -- I don't have a lot of
3 faith and confidence in -- they're running a legal
4 bill on me. They're trying to run a legal bill on
5 me because if I come in and I say, "Motion to
6 compel", right out of the gate, because I'm supposed
7 to work it out with them, and they say, "Well, I'm
8 going to ask for a protective order or I'm going to
9 -- they're not going to cooperate. These people are
10 not going to cooperate with me.

11 THE COURT: Sir.

12 MR. FIELD: No, I --

13 THE COURT: Sir. Please. Don't interrupt me.
14 I mean, come on. I'm giving you plenty of
15 opportunity to talk.

16 MR. FIELD: I didn't -- okay, there's a reason
17 why I didn't file a motion to compel, is because --

18 THE COURT: Sir. All I'm asking --

19 MR. FIELD: I will.

20 THE COURT: -- Is that you don't interrupt me,
21 sir.

22 MR. FIELD: Okay. Sure.

23 THE COURT: I mean, really. Is that too much to
24 ask?

25 MR. FIELD: No, Your Honor.

1 THE COURT: I thought I -- we've been going at
2 it, and I've been letting you talk and I sit here
3 and I want to ask a question now and then and you
4 don't let me. Okay?

5 Don't interrupt me, please.

6 MR. FIELD: Your Honor, I just want to say that
7 I apologize for interrupting you. Is the -- I've
8 been frustrated over the last two years. This is --
9 they have disrupted my life for no reason.

10 THE COURT: Sir.

11 MR. FIELD: They've disparaged me, so I'm sorry
12 that I'm just a little frustrated.

13 THE COURT: Well, obviously. But what I've
14 asked you to do, sir, is to address the Court and
15 not be making comments about opposing counsel that
16 become personal in nature, the things that you're
17 addressing to them.

18 They haven't once said anything derogatory
19 during this hearing. I don't know what goes on
20 outside of court, but in this hearing, please, I
21 don't need to hear it and I don't think it's
22 appropriate. And I know it's very emotional for you
23 and it's taken a lot of your time and a lot of your
24 life, but let's not -- let's not get into personal
25 character attacks on opposing counsel. Okay?

1 That's all I'm asking. I think that's fair.

2 MR. FIELD: That's fair.

3 THE COURT: All right. So go ahead and finish
4 telling me what you want to tell me, sir.

5 MR. FIELD: So the objections to summary
6 judgment.

7 THE COURT: Yes, sir.

8 MR. FIELD: We believe that it's just a
9 procedural gamesmanship, this whole -- I mean, they
10 haven't participated in mediation properly, they
11 haven't participated in foreclosure intervention
12 properly, they haven't participated in discovery
13 properly, they filed, you know, the order of
14 reference before the case commenced, in my opinion,
15 you know, you've ruled differently, but the -- it
16 goes back to the case that I showed you earlier,
17 which is -- I don't have the copy with me, but it
18 was Johnson versus South Carolina National Bank, is
19 that these issues need to -- the legal claims and
20 the compulsory claims have to be heard first and so
21 they have -- with pending discovery that defeats
22 this motion and So they have not participated in
23 discovery.

24 We've asked for discovery, and we were more than
25 willing and if we had time to do it, we would have

1 filed a motion to compel, but they've got two law
2 firms on me, they know the chess game, they know
3 where the pieces go.

4 I'm trying to figure out where they go, but the
5 motion for summary judgment, there's obviously
6 issues of material fact that are still in dispute.
7 Not just one, not two, but hundreds. So it seems to
8 me that -- it's pretty obvious, in my opinion, that
9 this is just a -- a frivolous motion. This -- this
10 -- this motion --their motion for summary judgment
11 is abuse of process. I'm on appeal. The legal
12 claims need to be heard first.

13 THE COURT: All right.

14 MR. FIELD: So they just need to, like, accept
15 that, and the thing is, is that, literally, most
16 attorneys, in most cases, they let them play out the
17 appeal first and then come back to Court. Well,
18 they're not gonna let me do that.

19 THE COURT: All right. I'll hear from one or
20 both of you in regard to his motion for continuance
21 and his objection, to move forward on the summary
22 judgment. I'll hear from either one of you about
23 that. Yes, sir.

24 MR. MILAM: Your Honor, I'll - I'll respond to
25 that.

1 THE COURT: Uh-huh.

2 MR. MILAM: So the -- the -- the -- the issue
3 he's raising is to the claims of law are to be tried
4 before claims in equity, that this relates to the
5 order at which claims are to be tried. It does not
6 -- it does not mean that a trial has to be held
7 before we move for sum- -- for summary judgment on
8 the equitable claim, so we move to dismiss any
9 claim.

10 As far discovery, in our view, and as we've
11 argued in our motion and brief, the issues on which
12 the Fields want discovery are precluded by res
13 judicata and collateral estoppel, by having been
14 twice litigated before and decided. If --

15 THE COURT: And where were those -- remind me
16 and for the record, where were those decided? Who
17 decided that and where --

18 MR. MILAM: On the --

19 THE COURT: -- and when --

20 MR. MILAM: On the 2012 CitiMortgage filed a
21 foreclosure action, the -- in -- in the Circuit
22 Court here in Beaufort. That was referred to the
23 Master in Equity to Judge Dukes.

24 Judge -- the Fields filed counterclaims in that
25 -- that case, that are making the same arguments

1 that they are making in this case.

2 Judge Dukes entered an Order in 2015 dismissing
3 those counterclaims with prejudice.

4 So that's the -- that's the 2014 Order, and,
5 again, CitiMortgage was the mortgagee at that time.
6 The foreclosure ended up being resolved, because the
7 parties agreed to a modification in 20 -- 2014,
8 where CitiMortgage entered a modification of the
9 fees.

10 The -- then in 2018 the Fields filed a Chapter
11 13 bankruptcy action. Wilmington, by that point,
12 was the mortgagee. Wilmington filed a proof of
13 claim in the bankruptcy. The Fields objected to
14 that proof of claim, and, again, making all these
15 arguments over standing and securitization.

16 Judge Waites sent a very detailed Order, which
17 we've -- we've attached -- we've attached both of
18 these Orders to our motion to dismiss. An order on
19 August 8th, 2019, in which he found that Wilmington
20 was, in fact, entitled to enforce the note, recited
21 all of the law that -- that Mr. Page has said about
22 the -- the holder of an original mortgage note with
23 proper endorsements being entitled to enforce the
24 note and mortgage, and so decided these issues about
25 standing and whether -- whether Wilmington was

1 entitled to foreclose.

2 Again, that was on the objection to the proof of
3 claim that -- and, I'm sorry, that they had standing
4 to enforce the note, because it was -- the -- the
5 issue was over whether they had a valid proof of
6 claim of the bankruptcy. And -- and I, you know,
7 have a copy of those Orders here, but they are also
8 in the record.

9 THE COURT: Right.

10 MR. MILAM: So if -- if the Fields were seeking
11 dis- -- the -- the issues to be decided in the
12 foreclosure are, does the Plaintiff hold the valid
13 note with proper endorsements, or did the
14 Defendants, in fact, make their mortgage payments?

15 Is, you know, did they sign the note and
16 mortgage back in 2005, and did the lender comply
17 with any conditions precedent to the -- to the
18 foreclosure action. Those are the issues to be
19 decided. If they were seeking discovery on those
20 issues, then I think they would have a point, but
21 the discovery request we received are about these
22 issues, about securitization and standing that
23 really had no bearing on the foreclosure action had
24 been already litigated, so that is why we move to
25 stay the discovery, after we got the interrogatories

1 in June.

2 This was after the motion for summary judgment
3 had already been filed, and we -- both Fannie Mae
4 and Wilmington did respond to the request for
5 admissions.

6 Again, those responses included a lot of
7 objections, because a lot of the requests were as to
8 issues that we believe to be irrelevant, but I -- I
9 -- I disagree with that. I just want to say Mr.
10 Field keeps saying we didn't participate properly in
11 mediation. We had mediation on April 13th with
12 Benjamin McCoy as the mediator. Mr. McCoy filed a
13 report showing compliance with ADR, so we -- as --
14 we'll say we disagree that we did not participate
15 properly in the mediation. Thank you.

16 THE COURT: Anything else?

17 MR. PAGE: No, Your Honor.

18 THE COURT: All right, anything in reply?

19 MR. FIELD: Oh yeah. Wow, that was a mouthful.

20 THE COURT: Sir, I don't need -- again, just --
21 just keep sarcasm to a minimum, I mean, please.

22 MR. FIELD: I -- I'm trying.

23 THE COURT: Okay, sir?

24 MR. FIELD: I'm sorry.

25 THE COURT: The second warning.

1 MR. FIELD: Okay, I won't do it again.

2 THE COURT: That's -- that's a second warning.

3 MR. FIELD: All right.

4 THE COURT: Do you understand that?

5 MR. FIELD: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. FIELD: Okay.

8 THE COURT: All right, go ahead.

9 MR. FIELD: If I had -- I'm -- I'm trying -- I
10 tried to take notes of what he said.

11 THE COURT: Well, let me ask you about this, in
12 regard --

13 MR. FIELD: I --

14 THE COURT: -- in regard to the mediation, sir,
15 I did see where a mediator signed off on a
16 certificate that mediation ended at an impasse, and
17 it was signed by a certified mediator. Did I - did
18 I not see that?

19 MR. FIELD: We participated -- we -- we
20 conducted mediation --

21 THE COURT: Right.

22 MR. FIELD: -- pursuant to a Court Order --

23 THE COURT: Right.

24 MR. FIELD: -- by Judge Price --

25 THE COURT: Yes, sir.

1 MR. FIELD: -- and if we didn't participate in
2 mediation within 60 days, all of our counterclaims
3 and affirmative defenses would be stricken.

4 THE COURT: Okay.

5 MR. FIELD: That was the Order.

6 THE COURT: Yes, sir.

7 MR. FIELD: They took full -- now, on the -- if
8 you look at the flip side of that Order, they had no
9 revocations for not participating. They made my
10 life so difficult to participate in this mediation,
11 because they knew what my penalties were. They kept
12 switching the times. I -- I mean the -- the --

13 THE COURT: Well I saw that.

14 MR. FIELD: Yeah, okay, so I, in good faith,
15 participated in mediation. I'd like to respond to
16 what he said, but I want to answer your question
17 first --

18 THE COURT: Right.

19 MR. FIELD: -- is I welcomed the mediation. I --
20 I -- I -- my attorney, at the time, set up an
21 appointment for me in Florence with this mediator,
22 Mr. Falkens (phonetic). In my opinion, he's done
23 over 4,000 mediations, he's probably the best
24 mediator in the State.

25 I couldn't hold that appointment, because of

1 their behavior. He told me, he said, "Make sure
2 that whoever they bring to mediation has full
3 authority to settle under Rule -- ADR Rule 6B2." I
4 tried for a month to get them to confirm that
5 they're gonna have someone with authority, Mr. Page,
6 to settle.

7 He would not confirm that he would have somebody
8 with authority to settle, so I filed a motion to
9 compel mediation with Judge Price. He denied that -
10 - that motion to compel mediation. So I was behind
11 the eight-ball, because if I didn't show up
12 somewhere within 60 days, I'm in deep -- I'm in
13 really deep here, because I'm going to get all of my
14 counterclaims and all of my affirmative defenses
15 dismissed or --

16 THE COURT: Right.

17 MR. FIELD: -- stricken. So Mr. Page here, I'm
18 not making this personal, this is what he did, is
19 that he -- he -- what he did was, I -- I -- because
20 after the -- the motion to compel mediation was
21 denied, I immediately contacted him, and I said,
22 "Listen, give me your preferred mediator, I'll go
23 with him." He gave Mr. Griffith, that was in front
24 of this Court today.

25 THE COURT: Yes.

1 MR. FIELD: We had an appointment with -- with
2 Mr. Griffith, but the service that was coming out of
3 that law office was very suspect, they were not res-
4 -- returning my phone calls, they weren't returning
5 my emails, it was just a mess.

6 And so then I said -- well, you know, it came
7 out that that mediator had a relationship with
8 Fannie Mae, that it represented Fannie Mae in trials
9 in Beaufort County.

10 THE COURT: Right.

11 MR. FIELD: So that's what Mr. Page set me up
12 with, but I couldn't communicate with Mr. Page,
13 because he wouldn't return any of my emails at all.
14 And my certified letters, I sent certified letters.

15 THE COURT: Just to mediate?

16 MR. FIELD: Just to mediate.

17 THE COURT: Did you mediate?

18 MR. FIELD: Yes -- yes, Your Honor, I did.

19 THE COURT: And there was a mediation?

20 MR. FIELD: Yes, Your Honor.

21 THE COURT: That's all I'm asking, and so I mean
22 there was a mediation that was -- hold on, that was
23 conducted, and a --

24 MR. FIELD: No.

25 THE COURT: -- certified mediator signed off

1 that the mediation took place, how many hours he
2 had, or she had, I can't remember, so you did
3 mediate there, right?

4 MR. FIELD: I did not.

5 THE COURT: You did not?

6 MR. FIELD: I mediated -- I -- what I did is, I
7 drove to Columbia -- at the last minute had the --
8 the -- I had to -- I was calling all over the State
9 fi- -- trying to find a mediator after I found out
10 that this one had a conflict.

11 So I drove to Columbia, I did mediate. Now, in
12 that mediation Mr. Milam showed up, Mr. Page did
13 not. Now, you have to remember that -- how this
14 medication took place, because foreclosures are not
15 entitled to mediation. The -- under the rules --

16 THE COURT: The Judge ordered it.

17 MR. FIELD: The Judge ordered it, right, and so
18 the -- Mr. Milam showed up and the -- and with a
19 representative from the so-called servicer, Ms.
20 Brittney Gomez from -- from Shellpoint Mortgage
21 Servicing.

22 Now, I had made it very clear that I wanted an
23 officer or director, pursuant to the Rules 6B2 to
24 be at the mediation, that's the rules. It's -- it's
25 somebody with full authority to settle. Now, in the

1 mediation I asked Ms. Brittney Gomez, I said, "Do
2 you have the authority to release the link?" Mr.
3 Milam says, "Don't answer that question," and that
4 was the extent of my conversation mediating with the
5 Plaintiff, which was not the Plaintiff, Shellpoint,
6 that's what I'm saying.

7 It wasn't -- it wasn't Wilmington, it wasn't
8 CSMC Trust, it wasn't anybody that -- and so the --
9 in the last hearing we had, which I've -- I've
10 submitted the transcript into the record is, that
11 Mr. Milam said in the beginning of that transcript,
12 he said, "Oh, they have full authority to settle."
13 And then when Judge Price pressed the issue, he
14 said, "Oh, well, they've got limited power of
15 attorney."

16 Now, I know what that limited power of attorney
17 means, and it doesn't have anything to do with
18 settling legal cases, okay? It has nothing to do
19 with settling legal matters. In fact, it's worse
20 than that, is that they're limited power of attorney
21 they have with Shellpoint means that, if you get in
22 hot water, you can go do all this debt collection
23 activity out here, right, and you're not gonna hold
24 Wilmington or CSMC Trust legally liable for it.

25 So they don't -- they can't legally bind

1 Shellpoint Mortgage Servicing, which acts in name
2 only, they don't exist as an entity, it's Newrez,
3 and Newrez is owned by two other partnerships, which
4 is owned by another partnership. They sent somebody
5 that had no authority, it wasn't like they had the
6 other -- they want you to believe that they had
7 limited power of attorney. Shellpoint Mortgage
8 Servicing has no authority, none, to -- to -- to be
9 in mediation, to settle on behalf of either the
10 Plaintiff -- because -- and -- and you -- if you
11 read the emails, Mr. Page, leading up to that, said,
12 "Oh, yeah, the Plaintiff will be there. The
13 Plaintiff will be there.

14 The Plaintiff will be there." I said, "Listen,
15 you sent the servicer, I'm not accepting it, that's
16 not -- that's not what the rules are." And we
17 question whether they're a servicer anyway. So they
18 did not participate in mediation in good faith.

19 THE COURT: Okay.

20 MR. FIELD: And hands down -- and if he wants to
21 show this Court a limited power of attorney that
22 shows that they have some authority to settle on
23 behalf of the Plaintiff, I'd love to see it.
24 They're not gonna present it, because they don't
25 have it. They have no authority to settle. So I'm

1 not -- I'm not sure if, you know, we're getting too
2 far away from the -- the point here --

3 THE COURT: Right, well --

4 MR. FIELD: -- but --

5 THE COURT: -- we are a little bit, but that's
6 all right, I was just asking, but I'm happy to hear
7 your response to what they just said, as it relates
8 to, you know --

9 MR. FIELD: All that other stuff, okay.

10 THE COURT: -- as to you --

11 MR. FIELD: Okay.

12 THE COURT: -- of your motion to continue.

13 MR. FIELD: Okay. They want to use res judicata
14 and collateral estoppel. Now, they're going back to
15 2012, they're going back to CitiMortgage.

16 CitiMortgage was nothing but a servicer, but we have
17 documentation that shows that Citi -- CitiMortgage
18 ceased to exist as a servicer after about 2012, it's
19 in the re- -- Court record.

20 And do you know how we found that out? From
21 CitiMortgage, they voluntarily gave us the MERS
22 milestone report, we had it. So it's not me saying
23 it, it's CitiMortgage admitting that they were not
24 the servicer after about 2012. So they want to have
25 res judicata from 2012, collateral estoppel from

1 2012? And -- and -- and CSMC Trust was formed in
2 2018, right? So how could they have collateral
3 estoppel and res judicata on a case that, by the
4 way, never went to trial, was never heard on the
5 merits, it was settled, because they out-lawyered
6 me, they out-powered me, they out-intimidated me,
7 and they out-extorted me, okay? The -- this -- it
8 was horrible.

9 And so the -- for them to come into Court, they
10 have no relationship to privity -- privy to
11 CitiMortgage. CitiMortgage is out of the mortgage
12 business, okay? And they want to come in here and
13 say that somehow what CitiMortgage did in 2012 I'm
14 gonna lay claim to that, that's what they're doing.
15 And the --

16 THE COURT: But can't they, if it's the same
17 issues?

18 MR. FIELD: It's not. It's not the same issues.

19 THE COURT: Okay.

20 MR. FIELD: There's no connection -- there is no
21 connection whatsoever between CitiMortgage and them,
22 none.

23 THE COURT: I understand that.

24 MR. FIELD: So it's not the same issues.

25 THE COURT: I don't think he -- I don't think

1 he's saying that.

2 MR. FIELD: Okay, so --

3 THE COURT: You're -- hold on, you're not saying
4 that there's some privity between you and
5 CitiMortgage?

6 MR. MILAM: Only the privity of the mortgage
7 assignments. We're not arguing that they're
8 affiliated or anything like that, but CitiMortgage
9 assigned the -- the mortgage to --

10 THE COURT: Right, but as it relu- --

11 MR. MILAM: -- to Nationstar.

12 THE COURT: -- as it relates to the other claims
13 that you were talking about, with res judicata and
14 collateral estoppel, sir, what were you speaking of
15 there?

16 MR. MILAM: Well, the -- the 2019 Order with the
17 Bankruptcy Court was between Wilmington and the
18 Fields, the --

19 THE COURT: Right.

20 MR. MILAM: -- 2014 Order was between
21 CitiMortgage and the Fields. I do believe that res
22 judicata would apply and -- and -- and could be
23 raised by an assignee of CitiMortgage, if it's over
24 -- if -- if the litigation is over whether
25 CitiMortgage was entitled to enforce the -- the

1 loan.

2 THE COURT: Okay.

3 MR. MIALM: All right.

4 THE COURT: Okay, all right.

5 MR. MILAM: Do you want me to stop or --

6 THE COURT: Go ahead, yeah.

7 MR. MILAM: I do wish to respond to that.

8 THE COURT: Okay, go ahead, yes, sir.

9 MR. FIELD: Mr. Milam made a lot of statements
10 and I'm just gonna state -- state straight up, I
11 don't agree with any of them, is --

12 THE COURT: Sure.

13 MR. FIELD: -- is that the -- they talk about --
14 okay, first of all, the attorneys' arguments are not
15 evidence. He's sitting here arguing, he's saying --
16 he's saying that Wilmington has the right to enforce
17 the note.

18 He talks about this mortgage modification. He
19 talks about the -- he said Dukes dismissed it, okay,
20 back in 2012, that's what he's talking about is,
21 that's not what happened, okay? It is -- I was
22 there, my wife was there, these guys were not there.
23 They're latching onto anything they can in this
24 case, is the -- the statements that they're making
25 is -- is just a narrative to try to tie something in

1 to -- to -- to try to make sense of this, but you
2 can't make sense of it, is that CitiMortgage in 2012
3 -- MERS extinguished the mortgage in 2012.
4 CitiMortgage was just a servicer. The -- that was
5 established. There was no final hearing in that
6 case. There was the -- there was a settlement just
7 to get rid of them, okay? I couldn't take it
8 anymore and -- not them, but CitiMortgage, but the -
9 - and then they talk about the bankruptcy case.

10 The -- that was another really horrific
11 experience, is we wanted a hearing, based on the
12 validity of the lien. They stirred up so many
13 problems in that case that we ended up back here.
14 And our ca- -- our -- that adversary proceeding was
15 dismissed without prejudice, and we have all the --
16 the Orders here, and he asked us to come back to
17 State Court to argue this. Now -- so that
18 bankruptcy case has no bearing on this.

19 THE COURT: Okay.

20 MR. FIELD: What happened in 2012 has no bearing
21 on this, is that we're here, because this is the
22 proper venue to judicate this issue, and that's why
23 we're here. And they took full advantage of that,
24 because what they did, like I said, is they filed a
25 -- a order of records before the case commenced, and

1 -- and, again, you've ruled on that, but that's my
2 opinion.

3 THE COURT: Right.

4 MR. FIELD: So --

5 THE COURT: All right. All right, what I'm
6 gonna do is, I'm gonna deny that motion. We're
7 gonna move forward with your motion -- or somebody's
8 motion over here. You had a motion to dismiss; is
9 that right?

10 MR. MILAM: Yes, sir.

11 THE COURT: What --

12 MR. MILAM: I will argue that motion.

13 THE COURT: All right. Now, you -- are you
14 arguing just the motion to dismiss, or what -- what
15 are you -- on number two what are you arguing, sir?
16 Is that -- whose motion is number two?

17 MR. MILAM: Your Honor, that is the motion of
18 the Plaintiff and all the Third-Party Defendant's to
19 dismiss the counterclaims and Third-Party claims.

20 THE COURT: Okay. All right, I'll hear that.

21 MR. MILAM: All right, so, Your Honor, I believe
22 we've -- I -- I don't want to retry to much ground.
23 This was a \$359,000 mortgage loan entered in 2005
24 with E Trade Bank. It was later assigned to
25 CitiMortgage, who filed a foreclosure action, which,

1 ultimately, was resolved by a modification in 2014;
2 but prior to that Judge Dukes did rule on the
3 counterclaims and dismissed them with -- with
4 prejudice. I believe they are the -- alleging the
5 same issues as they're currently involved in this.
6 And the loan, while the Fields filed a bank- --
7 Chapter 13 Bankruptcy Act action in 2018. They also
8 filed an adversary proceeding in connection with --
9 with that case.

10 And around the same time the loan and payments
11 went into default. Judge Waites, as I've said, an
12 Order that we've attached to our motion to dismiss,
13 along with Judge Dukes' Order, which goes through
14 the history of the loan, goes through Judge Waites
15 examination of the documents that were submitted by
16 Wilmington, as part of its proof of claim, and Judge
17 Waites determined that Wilmington had a valid proof
18 of claim rejecting the argument, as to its lack of
19 standing from the Fields.

20 Each of the counterclaims against Wilmington, in
21 this case, as well as the Third-Party claims against
22 Wilmington individually, DLJ, Fannie Mae and
23 Christiana Trust Company of Delaware. Each of --
24 each of these is based on the theory that Wilmington
25 does not have an enforceable mortgage.

1 THE COURT: Uh-huh.

2 MR. MILAM: And that somehow all of these
3 parties have conspired to deprive the Fields of
4 their home unlawfully. It's black letter law in
5 South Carolina that the holder of a valid note --
6 the valid original note endorsed and -- and blank is
7 entitled to enforce it, and -- and Judge (Waites)
8 went through all of the case law, and cited to South
9 Carolina Code 36-3-301, which is the UCC provision
10 about a person entitled to enforce a note, cited to
11 case law going back to Baleu versus Young in 1894
12 (phonetic) that a person who has been transferred a
13 note also requires the -- the right to enforce the
14 mortgage. We think that --

15 THE COURT: Let me -- let me ask you, his
16 counterclaims have a whole lot -- they're -- they're
17 a lot broader than just the foreclosure action,
18 right? I mean he's seeking -- he's seeking
19 counterclaims to include, I don't know if it was
20 conspiracy or -- I don't know, unfair trade
21 practices. Did -- did -- he was including other
22 things, correct, in those counterclaims?

23 MR. MILAM: Absolutely, the -- the counter- --

24 THE COURT: Well, Rule 15 why would that be
25 allowed to allow him to do that? I mean, literally,

1 amend? I mean what's up with that? Talk to me.

2 MR. MILAM: So, Your Honor, I would not -- I --
3 I wouldn't object to -- I would not object -- so in
4 our view, the second amended complaint is exactly
5 the same as the -- as the first amended complaint.
6 We would have the same arguments for dismissal, as
7 to the second amended complaint as to the first.
8 He's added two new claims, one under FCRA for the
9 second amended complaint, the other one is -- the
10 other one's escaping me at the moment, but all of
11 these claims, regardless of -- of what cause of
12 action he's brought, derive from the allegation that
13 Wilmington has an unenforceable mortgage.

14 So that the -- the conspiracy -- the civil
15 conspiracy claim, abuse of process, all of these are
16 predicated on the idea that these entities are
17 trying to foreclose on him, when they don't have an
18 enforceable mortgage to enforce. That's the same
19 for a slander of title.

20 The argument there is, "Well, you don't have an
21 enforceable mortgage, therefore, your assertion that
22 you do is -- is slandering my title." The same for
23 his FCRA claim, "That you're reporting on my credit,
24 when you don't have an enforceable mortgage, and you
25 can't report on my credit."

1 So the arguments are all the same. I would not
2 object to him being allowed to amend, so long as it
3 does not delay these proceedings. I mean --

4 THE COURT: What about def- -- did he sue for
5 defamation?

6 MR. MILAM: He sued for liable and slander, as
7 well as slander and defamation.

8 THE COURT: Well, would -- even if you have a --
9 even if you're a winner of the mortgage -- I mean
10 you're saying as a matter of law he wouldn't be able
11 to bring a -- bring a slander case or a defamation
12 case against the Plaintiff for things that they may
13 have said or alleged that they didn't need to be
14 saying -- or alleging?

15 MR. MILAM: If they were -- if they were
16 separate from saying we have an enforceable
17 mortgage --

18 THE COURT: Sure.

19 MR. MILAM: -- maybe so, but it -- it is -- as I
20 read the complaint, and it's -- as I read the
21 complaint, his dispute on all of these issues is,
22 "You are trying to deprive me of my home. You are
23 contending you have a lawful mortgage that you can
24 foreclose on, when you do not.

25 And so if the Court rules that we do have an

1 enforceable mortgage, as Judge Waites ruled and
2 Judge Dukes ruled before, then in our view all of
3 these counterclaims should go away.

4 THE COURT: Okay.

5 MR. MILAM: And some of the -- I mean some of
6 the counterclaims are exactly the same
7 counterclaims, as what -- what Judge Dukes ruled on
8 in the -- in the 2013 Order, unfair trade practices,
9 unjust enrichment, civil conspiracy, quiet title,
10 fraud, all based on these securitization fees.

11 THE COURT: All right.

12 MR. MILAM: So we would --

13 THE COURT: What about the third parties?

14 MR. MILAM: These are the -- the claims -- the
15 -- the counterclaims of the third party claims are
16 indistinguishable. They are -- he -- he's alleging
17 that all of these entities have somehow conspired to
18 depriving him of his home.

19 THE COURT: Well, he's amended to include third
20 P\parties, right?

21 MR. MILAM: No -- so he filed --

22 THE COURT: He hasn't?

23 MR. MILAM: -- an answer and counterclaims and
24 third party claim back in February.

25 THE COURT: Well, the third party claim is going

1 to add to Defendants?

2 MR. MILAM: We believed they've already been
3 added, Your Honor. He -- he -- he filed the answer
4 with the counterclaims and the third party claims.
5 He -- I realize he has moved to join them, but as
6 far as we can tell, they've already been joined, and
7 we filed a motion to dismiss, so I -- I don't
8 believe he has to move to join them, when he's
9 already filed a third party complaint with his
10 answer, and served all these parties.

11 THE COURT: All right.

12 MR. FIELD: Thank you, Your Honor. They keep
13 referring to this bankruptcy action. It's -- that
14 action is completely irrelevant to what we're doing
15 here, completely, completely.

16 Is -- in bankruptcy, the creditor is required to
17 file a proof of claim, it's a four, or five, six-
18 page form that you fill out; and you fill that form
19 under the penalty of perjury you -- with five years
20 in prison, or a \$500,000 fine. Now, as I said
21 before, when I filed my bankruptcy, I was not in
22 default. I could not maintain my bankruptcy case,
23 because they -- I couldn't get it confirmed to
24 challenge them; but in the meantime they filed these
25 proof of claims. I filed an objection to their

1 proof of claim.

2 Mr. Page filed a proof of claim, under the
3 penalty of perjury, with five years in prison. I
4 challenge that proof of claim. I went in front of
5 Judge Waites and -- and what happened was -- and
6 with the Trustee, they -- they both advised me, they
7 said, "This," I said, "Every time they file a proof
8 of claim I'm gonna object to it." And so what
9 happened was -- 'cause they said, "Listen, this is
10 the way it works in Bankruptcy Court, you let them
11 have prima facia validity of their claim, and then
12 we're gonna let you file an adversary proceeding to
13 challenge the validity and extent of their lien."

14 So I had to let them in the door, and so
15 counterintuitive to allow them to have a proof of
16 claim. I allowed them to have a proof of claim, and
17 then we went to the -- the adversary proceeding, and
18 that's when I filed an adversary proceeding in
19 Bankruptcy Court against the Plaintiff and Fannie
20 Mae and MERS. And what happened was, they brought -
21 - they -- they -- they brought the big dogs into
22 Bankruptcy Court, and they -- they filed an
23 extension for time, then they filed a motion to
24 dismiss, it totally frustrated the Court, and then
25 Judge Waites says, "Okay, you can -- you guys need

1 -- we're -- I'm gonna abstain from this, you guys
2 need to go back to State Court." And I said, "Okay,
3 I'm going to dismiss my case," which I did, and I
4 said, "I want you to rule on the -- the adversary
5 part."

6 They used that as an opening. They came -- and
7 after I dismissed my bankruptcy case, they came back
8 into Court and, basically, convinced the Court that
9 I was not gonna be allowed to file bankruptcy for
10 the next two years. So they got me -- they got me -
11 - I'm handcuffed that way, and I told the Judge, I
12 said, "I'm not interested in doing that again. I'm
13 not gonna do that, so just don't worry about it,"
14 but he -- that's how with -- how they operate. And
15 so the bankruptcy case, these Orders that they're
16 talking about from the bankruptcy ca- -- case, are
17 irrelevant. They didn't establish anything. I --
18 the -- what we did is, we said, "Sure, we'll give
19 them prima facia validity," because the Trustee told
20 me -- the bankruptcy Trustee told me and the Judge
21 told me, they said, "Listen, you've got to let them
22 have a proof of claim before you can challenge it,"
23 and that's what happened.

24 I had to let them have a prima facia validity
25 claim, against my own intuition, to challenge it.

1 And so we did that, and that's when they created all
2 kinds of chaos. And so there was no way I was going
3 to litigate that issue in the Bankruptcy Court, and
4 so that's why we came back here. So everything
5 they're talking about with the Bankruptcy Court is
6 irrelevant to this case. There was -- it was
7 completely -- if you'd like to see the Order where
8 it was dismissed with prejudice, we'll be glad to
9 show it to you.

10 THE COURT: Well, what about your motion to
11 amend counterclaims and third-party complaint?

12 MR. FIELD: We would like that granted.

13 THE COURT: Well, tell me why. You just heard
14 his motion in opposition of it, so why do you think
15 you're entitled to amend an answer and counterclaims
16 and third-party complaint, sir?

17 MR. FIELD: Okay, what I --

18 THE COURT: Don't tell me why not, so you tell
19 me why.

20 MR. FIELD: Okay. They made a big stink about
21 Rule 8, they said, "It's too long, you're -- you're
22 -- you're," what I did out of efficiency is, I
23 combined the -- our answer, our counterclaims, and
24 our third-party complaint all in one document, out
25 of efficiency. I could have filed them separately.

1 So they came in with a Rule 8 objection, and said,
2 "Oh, it's too -- it's too -- you -- it's too big,
3 it's too big. You -- you put too much in here."
4 And what I found out was, is that over-pleading is
5 not a violation of Rule 8. I -- you can't over-
6 plead. They're like -- they're like saying, "Oh,
7 it's too much, it's too much." In fact, I held
8 back.

9 So what I did was, after they made -- raised the
10 Rule 8 objection, what I did is, I condensed it
11 down, I streamlined my answer. I cut over 30 pages
12 out of it, and I filed a motion to amend. Now, I
13 don't know what their objection is right now, but
14 amending a compulsory counterclaim or amending --
15 amending that is certainly a right, it's -- it's a
16 substantial right, and I don't understand what the
17 big deal is.

18 Is that all they have to do, you know, they've
19 been down here three times, all they have to do is
20 go through and admit or deny, that's all they have
21 to do. They've got big law firms, admit, deny,
22 admit, deny, admit, deny. They -- they -- they put
23 me in a huge disadvantage in this case, because they
24 don't participate in discovery, they don't answer,
25 they don't participate in mediation, they don't do

1 anything. And so the -- the -- all they had to do,
2 if -- if -- if -- if they had answered the second
3 one or the first one, right, or the -- this process
4 would go a lot smoother. They're not admitting or
5 denying in -- in anything.

6 And by the way, I want to correct something on
7 the record is, that Fannie Mae on the admissions
8 didn't answer at all, any of them. So Fannie Mae
9 did not answer the admissions, not a single one. I
10 don't know why he keeps saying that, but the -- as
11 far as the amendment is concerned, that should be
12 granted freely. It's pretty obvious that the --
13 because they have not answered. They have not done
14 anything yet.

15 There's not -- why would -- they're not going to
16 be prejudiced by allowing an amendment. In fact, I
17 did exactly what they asked me to do, which reduced
18 the number of pages by over about 30, 34 pages from
19 my second -- my first amended complaint, so I
20 reduced it, and they're -- they're -- they don't
21 like what they see, that's -- that's really the
22 problem is, but as far as amendment, it should be
23 granted freely in -- in my opinion.

24 MR. MILAM: All right, Your Honor, really I
25 would not have a problem with the amendment being

1 granted, so long as we can still argue the motion to
2 dismiss today.

3 My -- my whole objection is, that, at some
4 point, my client is entitled for the litigation to
5 be over with. We think we're entitled to -- to get
6 our motions granted, and I would, again, I have no
7 problem with the amendment being allowed, so long as
8 it doesn't delay having a hearing on the motion.

9 THE COURT: All right, we'll get to these in
10 five minutes.

11 (Recess.)

12 THE COURT: As it relates to the motion to
13 dismiss the amended answer, counterclaims and third-
14 party complaint, I'm going to deny that motion; and
15 so I'm going to allow the amended answer and
16 counterclaim and third-party -- third-party
17 complaint.

18 MR. MILAM: Thank you, Your Honor.

19 THE COURT: All right. What else?

20 MR. FIELD: It looks like there's -- if I -- if
21 I'm correct, it looks like there's about four
22 motions left, may- -- maybe. There's a Plaintiff's
23 motion.

24 THE COURT: Yeah.

25 MR. FIELD: There's the motion related to the

1 discovery for deemed admissions admitted. Joint
2 third -- third-party defendants and -- and the --
3 the motion to amend, yeah, I think -- is that what
4 he just -- he just threw them out?

5 MS. FIELDS: Yeah, he granted those, yeah.

6 MR. PAGE: Okay. A rule to show cause.

7 THE COURT: All right. You've got -- you've
8 still got your motion for summary judgment, sir?

9 MR. PAGE: Yes, Your Honor.

10 THE COURT: All right. And I'll hear that now.

11 MR. PAGE: Thank you, Your Honor. Thank you,
12 Your Honor. The Plaintiff, Wilmington, would like
13 to move for summary judgment, as to its foreclosure
14 cause of action solely on this matter. In South
15 Carolina foreclosure -- a party seeking foreclosure
16 must show the existence of a debt, no mortgage is to
17 default on the debt, and that the parties seeking to
18 foreclose is entitled to enforce the mortgage.

19 In this matter, as we've gone through today,
20 we've -- I have a -- the original note that's
21 endorsed and blank, and I'm the attorney for the
22 Plaintiff on this showing; and I could present this
23 to the Court, if you'd like to examine it.

24 THE COURT: I mean are you gonna make that an
25 exhibit, or what you gonna do? How --

1 MR. PAGE: It's -- a -- a copy is attached to
2 the exhibit --

3 THE COURT: That's fine.

4 MR. PAGE: -- to our Affidavit.

5 THE COURT: That's fine.

6 MR. PAGE: And we've also filed an Affidavit in
7 support of our motion for summary judgment, and that
8 was filed on June 7th of 2021.

9 The Affidavit that's in support shows that the
10 servicer's records, Shellpoint is the servicer to
11 the loan, and they're showing that the loan is
12 delinquent as of January 1 of 2019, that the total
13 amount due on July 1 of 2020 was 388,000 --
14 \$388,728.46. I'll say that one more time, it's
15 388,724.46 cents is the total debt that was due, as
16 of June 1, 2021.

17 We think -- aside from the arguments related to
18 the securitization, that we, under South Carolina
19 law, by having the note show that we are entitled to
20 a judgment of foreclosure, and we would like summary
21 judgment in that regard.

22 THE COURT: All right, anything -- anything else
23 that y'all need to add concerning that?

24 MR. PAGE: What was that, Your Honor?

25 THE COURT: Anything else concerning that there?

1 MR. PAGE: No, Your Honor.

2 THE COURT: All right, I'm happy to hear from
3 Mr. Field.

4 MR. FIELD: We have requested discovery of -- on
5 all the things he's just said. They have not
6 responded to any discovery on anything that he said.
7 In fact, before they filed the lawsuit, we asked
8 them to validate the debt, they did not. We sent
9 certified letters to CEOs of Wilmington, CEOs of
10 DLJ, CL -- CEOs of every company that is associated
11 with this. Now, the -- they -- they -- they did not
12 respond. They have not validated the debt.

13 The -- okay, yeah, I'll get that. It's very
14 important that -- that counsel's arguments are not
15 evidence. He said -- I'm just saying they're not,
16 and so we've requested evidence, they have not
17 produced any evidence. Now, they -- they -- this
18 came up in the last hearing is that, there's a
19 difference between if they, in fact, have
20 possession.

21 Possession is not ownership. Ownership is when
22 you pay value for something, and in -- in the case
23 of a note, you have to pay without notice of any
24 defects in good faith. They have done none of that.
25 They can't prove that they paid value for it, they

1 can't prove that they bought it in good faith, and
2 they can't prove that there was no defects when they
3 -- when they acquired it. They won't even say where
4 they got it, okay?

5 It's -- they don't say where they got it, or who
6 they got it, you know, they got it from, or it --
7 and -- and the thing is, is that a note does not
8 qualify for a foreclosure. The note represents a
9 debt, not a mortgage. They have not demonstrated to
10 this Court that they have a mortgage.

11 They have not dem- -- demonstrated they have an
12 injury. They have not demonstrated they've loaned
13 me any money.

14 And this Affidavit that he's talking about, we
15 have all kinds of discovery relating to this
16 Affidavit, which they have failed to answer. We
17 sent several questions relating to this Affidavit in
18 our interrogatories, what they're talking about,
19 crickets, nothing, so there's no discovery on any of
20 the things that they're talking about. So they
21 spout off and say, "Oh he owes me \$388,000 since
22 June 1st," prove it.

23 They've got nothing. They, literally, have
24 nothing. And that note, at best, they got in a dark
25 alley, okay? They found it in a trashcan. So the -

1 - this whole -- this -- the -- the fact that you can
2 build a foreclosure case, based on these five
3 things, they can't show chain of title, they can't
4 show a valid mortgage, they can't show that they
5 acquired the debt, they can't show that they've got
6 injury, they can't even show standing in this case.
7 And so it's -- it's -- they're doing this all over
8 the State by the way. And -- and I just want to
9 bring it to the Court's attention, it's not quite
10 relevant to this case, but it -- it does matter is,
11 that in the State of South Carolina, if someone
12 dies, they don't even have to prove the debt.

13 So they just sit around and wait for people to
14 die, and then they show up with this note and
15 they're -- and they're good to go. So the -- it's -
16 - it's -- it's really horrific what's going on in
17 this -- in -- in this -- in this country right now,
18 but the -- I just want to say that the -- if they
19 want to prove up their claims, I've asked for it.
20 They haven't proved up their claim. They haven't
21 proved up a valid mortgage. They haven't proved up
22 the debt.

23 He's not presenting any evidence here. You
24 know, they can find somebody in Houston, who will
25 sign an Affidavit that says, "Yeah, I saw these

1 records that somebody else produced, that this --
2 this happened." Their records are not their
3 records, they're third-party records. They
4 basically buy records from somebody else, and then
5 submit them to the Court. Now -- so I didn't hear
6 in this presentation that there was a default.

7 Now, I didn't hear that they had an injury. I
8 didn't hear that they had a valid mortgage. I'm not
9 hearing any of that, and they're not proving it.
10 And the thing is that we're put -- they put us at a
11 disadvantage, because there's no discovery, you
12 know, they didn't participate in foreclosure
13 intervention, didn't participate in mediation, and
14 now they want to come in here and make these
15 allegations without any proof.

16 And so my wife wants me to show this to you, so
17 I will, we saw this coming, okay, in 2018. We sent
18 them, every CEO in this -- that's connected to this
19 -- this -- this scheme, we sent them certified
20 letters. Shellpoint -- Christiana Trust came back
21 and said, "It's not me." We didn't get an answer
22 from Wilmington. "Not me" Fannie Mae, "it's not
23 me." DLJ -- DLJ, they're want -- they -- they said,
24 "It's -- it's SPS Portfolio Servicing," which is the
25 servicer for this CSMC Trust," "not me," I've got

1 all the letters for it, "not me."

2 So -- but we knew, based on what this kind of --
 3 they're not disparaging, buddy, I'm just saying we -
 4 - we've already been through this before. We knew
 5 what was coming, and so what we did is, we sent them
 6 a check, okay, for \$12,468.28, which was more than
 7 what they were asking for, after we -- after this --
 8 the bankruptcy was dismissed, we sent them a check.
 9 They -- they have it. They sent it back, didn't
 10 cash it. They proceeded the foreclosure, and not
 11 only did they proceed the foreclosure, we knew that
 12 we didn't owe them this money, but I want to live my
 13 life. Now --

14 THE COURT: But, now, isn't it their prerogative
 15 to return that, if they don't want to accept it?

16 MR. FIELD: No, no, they sent me a right-to-
 17 cure, and the Bankruptcy Court was shocked, because
 18 -- see, the Bankruptcy Court was shocked, because
 19 they didn't believe me, and so when they found out
 20 that they, basically, after I had dismissed my
 21 bankruptcy case --

22 THE COURT: Right.

23 MR. FIELD: -- they were shocked that they did
 24 that, because -- because I can prove that I -- I --
 25 I could maintain a bankruptcy case. And so the --

1 they don't have the right to do that. If they send
2 me a right-to-cure and I send them the money --

3 THE COURT: Oh, the right-to-cure, okay, I'm
4 with you.

5 MR. FIELD: They -- they sent me a right-to-
6 cure. I sent them the money before the -- the
7 deadline, they came after me anyway. They sent the
8 check back, I've got it right here. Here's the
9 check, okay?

10 And the thing is, is that no one has lost a
11 penny on this mortgage, and the -- the -- what they
12 -- what they did is, they sent me this fee schedule,
13 you know, this \$25,000 in fees for this, and there
14 was all kinds of crazy stuff, it's extortion. They
15 are extorting money out of me.

16 THE COURT: Well, what's the right-to-cure
17 letter say you owe?

18 MR. FIELD: It was -- it was -- it's right here.

19 MS. FIELD: It's less than that. We paid --

20 MR. FIELD: Well, no, just -- look --

21 THE COURT: Hold on.

22 MR. FIELD: -- he's asking a question, find it.
23 The -- these are all exhibits by the way that we
24 filed with the Court, so they're --

25 THE COURT: Yes, sir.

1 MR. FIELD: -- they're in the Court record.

2 MS. FIELD: And it's right here.

3 MR. FIELD: Okay.

4 All right, so there's a letter here dated August
5 14th, 2019, and it says, "Notice of default and
6 intent to be accelerated."

7 THE COURT: Right.

8 MR. FIELD: "As of 8/14 a total amount necessary
9 to bring the loan current is \$10,922.88." And what
10 I did is -- they -- they say, "You need to call to
11 get the exact amount." So I called them, and I
12 said, "What is -- what's the amount?" And they gave
13 me a number over the phone, it was less than what we
14 sent though, less than the \$12,000, okay? I sent
15 them more money than they were asking for.

16 THE COURT: All right.

17 MR. FIELD: And we have the certified receipts
18 here that they received the money before the
19 deadline, and they mailed the check back. The
20 mailed the check back, they didn't cash it.

21 THE COURT: Did they say why?

22 MR. FIELD: Yes, absolutely. They said -- this
23 is -- this is their response. Okay, so they've got
24 returned check, they've got the -- the check number
25 and the amount, \$12,468.28, and they said, "Dear

1 Valued Customer," I've never done business with
2 these people at all, but anyway, "Enclosed is a
3 check we are returning to you, because your loan is
4 more than 90 days past due, and you are not in an
5 active workout with Shellpoint Mortgage Servicing.
6 We would like to apologize for any inconvenience
7 experienced regarding this issue.

8 If you would like to contact Shellpoint to
9 discuss your options, please call -- call our
10 Customer Service Department and speak to a Loss
11 Mitigation Specialist," and that is dated October
12 2nd. That -- that's dated before the -- before they
13 filed for foreclosure.

14 THE COURT: Excuse me. All right, so I need to
15 see that. I want to see that. I know you've got it
16 I there. I want to see that, I want to see the
17 check.

18 MR. FIELD: All right.

19 THE COURT: I want to see the letter where they
20 ask for it. I want to see the verification that
21 they got it before the time limit.

22 MR. FIELD: Sure.

23 THE COURT: The time expired, excuse me.

24 MR. FIELD: There's also -- do you want the
25 corresponding letters that went with it?

1 THE COURT: Yeah, all -- all I want is -- I want
2 to see a right-to-cure letter that they sent you. I
3 want to see the check that you sent to them with
4 verification that it was received by them
5 beforehand, and then they sent the letter, where
6 they sent it back to you.

7 MR. FIELD: All right. Okay, Your Honor, we
8 have notice of default, an intent to accelerate
9 letter. We have a letter -- we sent you a copy of
10 this, this is the only copy I have.

11 MR. PAGE: Okay, that's --

12 MR. FIELD: It's -- it's actually in part --
13 it's part of the Court record.

14 MS. FIELD: It's part of the Court record.

15 MR. PAGE: Can I see it before you hand it up to
16 the Judge?

17 MS. FIELD: Yeah, it's -- it's this filing.

18 MR. FIELD: It says -- it's -- it's filed -- it
19 was filed on June 30th, Defendant's Affidavit of
20 Documents in Opposition to Plaintiff's Motion for
21 Summary Judgment, so this is -- these documents are
22 under Affidavit.

23 THE COURT: And I probably have them somewhere
24 in this stack --

25 MR. FIELD: That's fine.

1 THE COURT: -- but it was easier to make you work
2 to get them.

3 MS. FIELD: That's fine.

4 MR. FIELD: No, I'm happy to do it.

5 THE COURT: If you can get them, okay? That's
6 all.

7 MR. FIELD: Your Honor, I'm happy to do it.

8 THE COURT: All right.

9 MR. FIELD: Okay.

10 THE COURT: Sir, why is there one check that's
11 scratched out?

12 MS. FIELD: I just --

13 THE COURT: Or, excuse me, why are there two?

14 MS. FIELD: I just scratched out my --

15 MS. FIELD: Just stand when you talk to him.

16 MS. FIELD: Oh, I'm sorry. Oh, I'm sorry.

17 THE COURT: Okay.

18 MS. FIELD: I just scratched out my account
19 numbers, so that the file in the Court on the public
20 index --

21 MR. FIELD: It's the same check though.

22 MS. FIELD: It's the same check.

23 THE COURT: Okay, I'm with you. Yes, ma'am,
24 thank you.

25 MS. FIELD: I'm -- I'm sorry.

1 THE COURT: That's all right.

2 MR. FIELD: By the way, Your Honor, the second
3 check was the check that they sent back. The last
4 check on there is that they sent it back to us, was
5 -- that's why there's two copies.

6 THE COURT: All right. All right, go ahead,
7 sir. Anything else you want to tell me in regard to
8 the motion for summary judgment?

9 MR. FIELD: The -- I'd just like to say that the
10 -- we filed an opposition that's about 130 pages,
11 and there's no way I can go through all this and
12 explain it; but the -- there's dozens of exhibits in
13 here that show that there are issues in dispute,
14 material facts in dispute, beyond a shadow of a
15 doubt, and -- and that's why we presented them to
16 the Court and filed them, and that's -- we're just
17 gonna rest on our Affidavit.

18 THE COURT: All right. What about it? What
19 about the fact that they sent him a right-to-cure,
20 telling him to pay it by a certain date? He sends
21 them a check and they send it back.

22 MR. PAGE: Your Honor, the amount -- the right-
23 to-cure letter that notes default, and the letters -
24 - It looks like it was required to be sent in by
25 8/14 of 2019, and it instructs the borrower to call,

1 'cause it'll change from day-to-day and get an
2 accurately stated quote.

3 Now, the checks that were sent in purports --
4 say a full of all the missed payments, which at this
5 time, because of the bankruptcy action we had
6 incurred substantial legal fees that were
7 recoverable -- recoverable, and so those had not
8 been -- I'm not sure if my office hadn't invoiced
9 them yet, or they were not reflected in the
10 servicer's records at the time this letter went out.

11 MR. FIELD: Your Honor, the -- the -- the -- the
12 only --

13 THE COURT: Hold on. Anything else?

14 MR. PAGE: No, Your Honor, thank you.

15 THE COURT: Yes, sir.

16 MR. FIELD: The fees that he's talking about are
17 -- it's like Disney dollars, it's funny money, is
18 there was no fees recoverable.

19 The -- the case was dismissed without prejudice,
20 and we're the ones that gave up our rights, when we
21 did that, because we -- we -- we promised the Court
22 we would not refile within two years to litigate
23 this matter in State Court, so there's no
24 recoverable fees. The notice that we sent -- that
25 they sent to us, we paid them; and, in fact, not

1 only -- we have correspondence that documents that
2 not only that -- that -- that -- that
3 correspondence, but we talked to them on the phone,
4 and I said -- that's how I got the updated amount.
5 So the -- the \$10,000 number, I called them, and I
6 said, "What is it gonna take to -- to -- so you guys
7 won't foreclose on me?" And that's what the number
8 he gave me.

9 So he didn't mention anything about legal fees.
10 There was no foreclosure filed, so there's no fees
11 relating to foreclosure, right? Because foreclosure
12 had not been filed at that point.

13 THE COURT: All right, all right. I'm going to
14 deny your motion for summary judgment. I mean this
15 thing is -- I -- I think there are -- looking at it
16 in the light most favorable of a non-moving party, I
17 certainly think there are issues of both fact and
18 law that surround -- I think he's put together -- I
19 think he has presented this Court with sufficient
20 evidence of both fact and law.

21 Questions are gonna come up and arise, and I
22 don't think, as a matter of -- of course, I can
23 grant a summary judgment motion, given the
24 information that's been presented to me today. When
25 I listened to the argument of counsel, the

1 information that's been presented to me, the -- this
2 whole issue about right-to-cure and being sent back,
3 I -- the check being sent back, I've got this
4 information here in front of me, I'm just not gonna
5 grant it. I -- I think -- and -- and it also
6 appears evident that there has not been significant
7 discovery in this matter, and while, normally, you
8 wouldn't think there'd be a lot of discovery in a
9 foreclosure action, unfortunately -- or,
10 fortunately, this one's gonna have them, and there's
11 just not a thing I can do about it.

12 And so to that extent I'm going to have to deny
13 your motion, sir, I'm sorry about that.

14 All right, what other motions do we have?

15 MR. FIELD: Okay. Not in -- this is not in any
16 specific order, I'm just -- the -- Your Honor, we
17 have a -- a motion for continuance, which was
18 combined with to deem admissions admitted. So
19 there's a -- it's kind of a discovery motion, but
20 Fannie Mae did not answer the admissions at all.
21 They claim they did in this Court today, but we have
22 not documentation that shows they didn't, and -- but
23 the -- the -- if you want to go through that. The
24 -- and then --

25 THE COURT: Well, let me tell you what I'm gonna

1 do about that. What you're saying is, they didn't
2 respond to the request to admit?

3 MR. FIELD: Fannie Mae did not. It was a
4 partial response from the Plaintiff.

5 THE COURT: All right, well --

6 MR. FIELD: It's a partial --

7 THE COURT: -- let --

8 MR. FIELD: -- partial response.

9 THE COURT: Let me tell you what I'm going to do
10 on that.

11 MR. FIELD: Okay.

12 THE COURT: Given the ruling set apart today,
13 I'm going to give everybody an opportunity,
14 including Fannie Mae, I think it's within my
15 discretion under the Rules, as it relates to request
16 to admit.

17 In fact, that very issue has come up this week,
18 it's in my discretion, I'm exercising it. Everybody
19 has the ability to enter answers to request to admit
20 that are pending -- and when I say pending, I don't
21 care if they're pending a day, three years, they've
22 got the ability to answer them, and they need to
23 answer them within 45 days. Because discovery is
24 going to have to end up perceived in this matter,
25 and, you know, I'm not gonna get into why people may

1 not have responded or didn't respond. With
2 everything that's going on in this case and with the
3 rulings I've made so far, I do not think that it
4 prejudices anybody moving forward; and I think
5 that's fair and that's what I'm gonna do about --
6 about that. Have you got any problems with that?

7 MR. FIELD: No, Your Honor.

8 THE COURT: I mean I'm willing to listen to you
9 about that.

10 MR. FIELD: No, I don't -- I -- I'm --

11 THE COURT: I think that's fair.

12 MR. FIELD: No, that's -- that's fair.

13 THE COURT: All right, do y'all understand that?

14 MR. MILAM: I --

15 THE COURT: As it relates to request to admit,
16 there are -- he -- he's gonna be -- he was moving,
17 I'm assuming, to -- to have -- to have the Court put
18 the hammer down on some of the request to admits
19 that may not have been made by certain people,
20 whatever it is, you know, I just want everybody to
21 have the opportunity to enter whatever responses to
22 request to admit that they want to.

23 And from there, those requests to admit are
24 inconclusive are not appropriate with the rules,
25 then file a motion, and I, or some other Judge will

1 address that.

2 MR. MILAM: I -- I guess my only question is, I
3 -- I want to be sure that Mr. Field and I are not
4 misunderstanding each other. Fannie Mae served
5 objections to each of -- each of his requests to
6 admit. We may have answered some of them, I don't
7 remember. It's possible we objected to all of them.

8 THE COURT: Okay.

9 MR. MILAM: When he says we did not respond, I
10 just want to be sure that --

11 THE COURT: Okay.

12 MR. MILAM: -- well we're not misunderstanding
13 each other.

14 THE COURT: Right. And -- and what I -- and so
15 what happens is, I'm giving everybody the benefit of
16 the doubt. If Fannie Mae didn't respond, instead
17 they just didn't, then, great, they can respond.

18 If Fannie Mae responded, as in they responded,
19 but that response is not acceptable to him, then he
20 can file a motion to have more definite and certain,
21 or whatever he wants to do with that. I was of the
22 opinion that there may be some matters that folks
23 just didn't respond at all, and if they had, I want
24 to give everybody an opportunity to respond. If
25 they've already responded, they don't have to

1 respond again. And if he's not happy, and I'm not
2 singling you out, if -- if y'all sent a request to
3 them, and you're not happy with those responses,
4 then, certainly, you can go and file a motion with
5 the Court and explain why that's not done; but I
6 think everybody ought to go back, look at their
7 responses. And, again, I'm not -- I'm not ordering
8 anyone to change their responses if they've been
9 responded to. If he's not happy with them, then we
10 can move forward another day and have that motion,
11 as it relates to whether or not the Court deems that
12 there needs to be more specific responses requested
13 then. Is that -- sir?

14 MR. MILAM: Yes, Your Honor, that -- that --

15 THE COURT: I want to make sure you unders- -- I
16 don't want there to be any confusion. Do you
17 understand that, Mr. Field, what I'm ordering?

18 MR. FIELD: I do, Your Honor. I just want to
19 just get a clarification on one thing.

20 THE COURT: Yeah.

21 MR. FIELD: Is the -- we did send
22 interrogatories. I understand your ruling, I'm fine
23 with that. We have not requested documents yet. We
24 want to have the -- the ability to request
25 production of documents.

1 THE COURT: Right.

2 MR. FIELD: So we'd like to have -- be able to
3 go ahead and do that.

4 THE COURT: Well, I'm gonna make -- I'm gonna
5 say a little bit more about all that in just a
6 second.

7 MR. FIELD: Okay.

8 THE COURT: Okay? As it relates to discovery --

9 MR. FIELD: Yeah.

10 THE COURT: -- I think clearly given my rulings
11 today, there's going to be discovery, fortunately or
12 unfortunately, but that's depending on what sides
13 you're on. What I want to do is this, there are --
14 there are some discovery that, apparently, has
15 already been sent.

16 If you want to supplement that, you can, if you
17 want to file a motion request for production of
18 documents, you can, if y'all want to object,
19 because, basically, including sub-parts, there's 72
20 questions, you can, but what I want to do is, I
21 don't want to address any of that today. I want to
22 give everybody time to regroup, have an opportunity
23 to respond to the questions. You know, if y'all
24 object and say, "Listen, Judge, he's got 57 parts,
25 you know, we don't know which 50 to respond to, I'd

1 probably -- when I was practicing I just answered
2 the first 50 and be done with the rest, but, you
3 know, whatever y'all want to do is fine; but what
4 I'm gonna do is, do you have a dis- -- have you
5 already sent them the discovery, Mr. Field, or is
6 there additional discovery that you've got to send?
7 I don't know.

8 MR. FIELD: Okay, I've sent the Plaintiff and
9 the four Third-Party Defendants all interrogatories.

10 THE COURT: Okay.

11 MR. FIELD: Okay? They're all within the rules,
12 I -- I didn't even see --

13 THE COURT: Now I don't -- I don't want --

14 MR. FIELD: Okay, yeah, I've sent them, but I'm
15 just saying -- I just want to say that there was no
16 response what -- whatsoever.

17 THE COURT: Okay.

18 MR. FIELD: So --

19 THE COURT: Have you sent request to produce?

20 MR. FIELD: No, I've not.

21 THE COURT: All right, are you planning on
22 sending a request to produce?

23 MR. FIELD: Yes, Your Honor.

24 THE COURT: Okay. Then what I'm gonna do is,
25 once you serve the parties with your request to

1 produce, then I'm going to order that they have 30
2 days to respond to the interrogatories and the
3 request to produce. Y'all follow me on that? In
4 other words, I don't want you to have to go back and
5 -- everything will come in, in theory, at one time.
6 If you're not happy with what they produce, then you
7 certainly can come back and file a motion and make
8 it more definite and certain, or if they don't
9 answer, you can file a motion to compel, if they
10 think it's too broad and too complicated, or unduly
11 burdensome, they can file a motion which relates to
12 that; but once you serve them with the request to
13 produce, 30 days they have on both the
14 interrogatories and the request to produce, all
15 right?

16 MR. MILAM: Briefly --

17 THE COURT: Has anybody got -- is that okay with
18 everybody? I mean 9--

19 MR. MILAM: Yes, Your Honor.

20 MR. PAGE: Yes, Your Honor.

21 THE COURT: Are you sure?

22 MR. MILAM: Yes, sir.

23 THE COURT: I mean now is the time to bring it
24 up, I'm -- I'm asking.

25 MR. FIELD: Well I just want to add too that is

1 that --

2 THE COURT: Yeah?

3 MR. FIELD: -- there's the -- there's gonna be a
4 request for authentication of documents too re- --
5 relating to admissions too, but it's all gonna be
6 together.

7 THE COURT: Well, that's all part of the
8 discovery, but the main thing is, I don't want them
9 to feel pressured that they've got to go run back
10 and answer these discoveries, everything gets sent
11 at one time, in theory, okay? And, again, if
12 there's disputes concerning discovery, the amount of
13 discovery, whatever it is, then you certainly can
14 take that up with the Court, all right?

15 MR. FIELD: So I'm good with that.

16 THE COURT: And what other motions do we have
17 today?

18 MR. FIELD: Your Honor, we have two motions
19 left. One is rule to show cause, and the other one
20 is a joinder of the parties. And I'm willing to, on
21 the joinder motion, because discovery has not had
22 yet, I'm willing to, if the Court would allow it, to
23 -- to continue that motion until discovery is had.

24 THE COURT: Do y'all got an objection to that?

25 MR. PAGE: Your Honor, I've reviewed the motion

1 for joinder, it looks like he's joining the -- the
2 same Third Party Defendants that he has already
3 brought in via the third party complaints, so I
4 don't really know if the joinder motion is
5 necessary. I mean they're already a party to the
6 action by nature of the third party complaint.

7 MR. FIELD: That's fine, but we would like to
8 have -- if that's the ca- -- if they -- if they're
9 willing to join them in, what it -- what it really
10 becomes is, there's no longer a third party
11 complaint, it's really counterclaims, or -- or
12 cross-claims.

13 They're part of the suit, so Fannie Mae, DLJ,
14 Wilmington, in its individual capacity, and
15 Christiana Trust are all part of the same suit. So
16 it'd be efficient to do it that way, but just keep
17 in mind that -- that, if they're --

18 THE COURT: Right.

19 MR. FIELD: -- if that's what they want, I'm fine
20 with that, I wanted to do that probably in the
21 beginning, just keep it all in one -- one suit, but
22 they don't want you to rule on that. And if -- if
23 -- but I'm saying is, if -- if that's the case, then
24 I'd like to have a ruling.

25 THE COURT: I'll tell you what I'm gonna do on

1 this one, okay? I'm gonna tell you --

2 MR. FIELD: Pardon?

3 THE COURT: I'll tell you what I'm gonna do --

4 MR. FIELD: Okay.

5 THE COURT: -- one.

6 MR. FIELD: All right.

7 THE COURT: All right? That I'm going to
8 continue. I -- I don't want people to make a
9 decision today concerning issues of this nature,
10 without having the opportunity to caucus with
11 whoever they might need to caucus with, and then
12 make the decision. And -- and, you know, you know,
13 yes, but then this stipulation and, you know, I -- I
14 -- unless y'all are ready to stipulate and do that,
15 I mean -- but I -- I think what I want to do is, I
16 want to continue that, okay? I think, essentially,
17 the discovery can still go out, 'cause I don't know
18 that there's gonna be a whole lot of new discovery,
19 regardless of who ends up being joined, or how they
20 end up being joined.

21 So what I'm gonna do is, I'm gonna continue that
22 motion, sir.

23 MR. FIELD: All right.

24 THE COURT: All right? Is there -- I mean
25 anybody got a problem with that?

1 MR. FIELD: No, Your Honor.

2 THE COURT: None for the Plaintiff for the
3 defense?

4 MR. PAGE: No, Your Honor.

5 THE COURT: All right.

6 MR. FIELD: All right.

7 THE COURT: So what's the last motion?

8 MR. FIELD: The last motion would be rule to
9 show cause.

10 THE COURT: Rule to show cause?

11 MR. FIELD: Yes.

12 THE COURT: And what was that?

13 MR. FIELD: That's -- do you have it? It's --
14 okay, the -- it's a motion for rule to show cause,
15 as to why sanctions should not be issued for
16 violation of Court Order.

17 THE COURT: Are you going to withdraw that?

18 MR. FIELD: I --

19 THE COURT: Do you want sanction from these guys
20 today?

21 MR. FIELD: What I'm -- the -- how about if we
22 continue it? I -- I -- the --

23 THE COURT: No, I'll listen to you today, go
24 ahead. I mean --

25 MR. FIELD: No, I -- I appreciate the indulgence

1 of the Court, I'm not trying to be difficult.

2 The --

3 THE COURT: Well, I mean I just -- I can tell
4 you right now, you know, folks have been zealously
5 -- have been zealous advocates on this case, okay?
6 Fine, and I'm happy to listen to you.

7 As a general rule, I would say that it's got to
8 be an extreme, extreme case before I'd be
9 sanctioning somebody; but, you know, I'm happy to
10 hear from you on that. I'm not gonna shut you down.
11 Lord knows I haven't shut you down one time today,
12 and I don't mean that in a bad way, I don't mean
13 that as a smart alack or disrespectful, but I think
14 I've been fair and given everybody an opportunity to
15 state their case.

16 MR. FIELD: Yes, Your Honor, I'm gonna --

17 THE COURT: I'm happy --

18 MR. FIELD: -- let it go.

19 THE COURT: I'm happy to hear from you.

20 MR. FIELD: No, I'm gonna withdraw the motion.

21 THE COURT: Are you sure?

22 MR. FIELD: Yes.

23 THE COURT: I don't want to be -- I don't want
24 to be intimidating you, sir.

25 MR. FIELD: You're not.

1 THE COURT: You got into Bankruptcy Court and
2 you were intimidated, so what I don't want to do is
3 intimidate you. If you want to state the case and
4 make the motion, I'm happy to hear it.

5 MR. FIELD: I'm not gonna waste this Court's
6 time. I'm -- I'm gonna withdraw the motion.

7 THE COURT: Okay.

8 MR. FIELD: I'm good.

9 THE COURT: All right. Are there any other
10 motions?

11 I want -- I want the defense to prepare the
12 Order. I want to make sure he gets a copy of it,
13 okay? And just get that to me sometime in the next
14 week.

15 MR. MILAM: Okay, Your Honor --

16 THE COURT: Hold on, hold on, hold on, hold on,
17 yes sir.

18 MR. MILAM: Just to -- I guess one -- one
19 question for the second amended answer and
20 counterclaims and -- and third-party claims, is that
21 just deemed filed today? I - I'm just trying to
22 make sure I -- I know when my deadline is to -- to
23 file answers --

24 THE COURT: Oh.

25 MR. MILAM: -- to that.

1 THE COURT: Yeah, I mean --

2 MR. MILAM: I'm -- I'm fine for it to be deemed
3 just being filed, so that we have 15 -- well I guess
4 we'd have 15 days --

5 THE COURT: Yeah.

6 MR. MILAM: -- to answer.

7 THE COURT: I mean deemed that -- deemed that
8 his second is being filed, and so you've got a copy
9 of it and you have -- you need 15 days; is that
10 enough? Do you -- do you want 30 days, I'll give
11 you --

12 MR. MILAM: I'd prefer to have 30, if -- if --

13 THE COURT: I'll give him 30 days to answer your
14 complaint.

15 MR. FIELD: Well, Your Honor, the -- the --
16 what's really complicated discovery for us is, the
17 fact that they haven't answered. And so --

18 THE COURT: All right.

19 MR. FIELD: -- I feel like that they have seen
20 this -- nothing's changed, so I feel like 15 days
21 is --

22 THE COURT: Why don't -- why don't we do this.

23 MR. FIELD: Okay.

24 THE COURT: Okay? He may need 30 days. In 30
25 days he'll get you the answer, 30 days from today.

1 You don't have to send your request to produce to
2 him until you get the answers, which will be in 30
3 days.

4 MR. FIELD: I'm good with that.

5 THE COURT: So then all of a sudden -- so in
6 other words, you don't have to send him that. You
7 can hold it back, and then when you get his answer
8 in 30 days, then you can go ahead and probably be
9 able to go ahead and send him what you need to send.
10 You've got to remember, he doesn't have to answer
11 discovery, he's got 30 days until you send a request
12 to produce.

13 MR. FIELD: I'm good with that.

14 THE COURT: So that -- that ends up not putting
15 anybody under the gun, and giving everybody time to
16 evaluate this matter; is that satisfactory?

17 MR. FIELD: That's satisfactory.

18 THE COURT: Is that satisfactory for the
19 defense?

20 MR. PAGE: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. FIELD: I -- I would just -- just to clarify
23 is, that the -- your, basically, requesting that the
24 Plaintiff write the order relating to, basically,
25 all the things you ruled on today; is that,

1 basically --

2 THE COURT: Yeah.

3 MR. FIELD: Okay. I'm only saying this because
4 I've had really bad experiences with these Orders --

5 THE COURT: Uh-huh.

6 MR. FIELD: -- is --

7 THE COURT: Well --

8 MR. FIELD: -- the -- I would just request that
9 the Order be very limited to -- if you could outline
10 what the Order should be, so that we know, because
11 I've been just like hit over the head with orders
12 before that -- that I can't really -- that I don't
13 know how to deal with them. In other words, we know
14 what you -- you've ruled on today.

15 THE COURT: Sir --

16 MR. FIELD: It --

17 THE COURT: -- you've sent me this much
18 information and you can't deal with a three-page
19 order?

20 MR. FIELD: No, the problem is, is the content
21 of the order is -- if I send in an order and say,
22 "Hey, this is not -- he -- the Judge didn't," I
23 don't want to get in a -- in a -- in a shouting
24 match with -- with -- with anybody and say --

25 THE COURT: We --

1 MR. FIELD: -- "Hey, that's not what he -- you
2 ruled on, " if --

3 THE COURT: No, no --

4 MR. FIELD: -- you could just kind of outline --

5 THE COURT: -- no, no.

6 MR. FIELD: -- what's supposed to be in the
7 Order.

8 THE COURT: All me to explain my policy.

9 MR. FIELD: Sure.

10 THE COURT: My policy is, I'm asking him to
11 draft it, okay? He's going to send you a copy.
12 He's going to send me a copy. If there's something
13 you don't like about that copy, you'll have a day or
14 two before I sign it.

15 You submit to me what you don't like, send a
16 copy to him; and then what I'll do is, I'll decide
17 what I like, and I'll either accept one, reject one
18 or piecemeal them together, actually, I will, okay,
19 but that's how I -- that's how I handle that. In
20 other words, if the parties can't agree, when I ask
21 for them to -- when I ask for one side to be
22 responsible for preparing the Order, if the parties
23 can't agree, then what I end up doing is, I end up,
24 a) either picking the winner, or so to speak, or b)
25 I end up going and piecemealing it together in a

1 fashion that I think is consistent with my rulings.

2 MR. FIELD: That sounds fair, Your Honor.

3 THE COURT: Do you understand that?

4 MR. FIELD: Yes, I just -- so a clarification is
5 they have 30 days to answer our counterclaims and
6 third-party complaint, and then we will have 30 days
7 to participate in discovery after that? 'Cause they
8 will have -- but that -- that's the trigger --

9 THE COURT: You'll have -- they'll have 30 days
10 to provide you with an answer. If they provide you
11 with an answer next week, okay, I mean what I don't
12 -- what I would say is this, I mean I can get more
13 specific, but I mean you're -- you're asking for it.
14 I don't mean you're asking for it, like you're
15 asking for it, I mean, you're -- you know what I'm
16 saying, okay? Once you get their answer, sir, I'll
17 give you a little time to review it.

18 Within two weeks of getting their answer, you
19 ought to be able to send your request to produce to
20 them.

21 MR. FIELD: And then they would have --

22 THE COURT: Then they would have 30 days, sir,
23 to respond to your request to produce and to your
24 interrogatories. Now, the problem you've got is,
25 let me -- all right, let's address this. The

1 problem you've got is, you already sent a bunch of
2 interrogatories, your interrogatories may change,
3 based upon the answers that you get, right?

4 MR. FIELD: If I'm allowed to do that, sure.

5 THE COURT: I'm a genius, okay? Now, you --
6 they haven't answered your interrogatories, have
7 they?

8 MR. FIELD: No. No, Your Honor.

9 THE COURT: Then what you're gonna do is,
10 they're gonna disregard the interrogatories that you
11 have already provided to them, and within two weeks
12 -- 'cause I don't want this thing to -- to continue
13 to fester, within two week so your getting their
14 answer, you are to serve upon them your
15 interrogatories and your request to produce.

16 That way you've got everything you need, sir.
17 You'll have an answer. You'll be able to craft
18 whatever interrogatories and request to produce you
19 want, and then they'll have 30 days -- really like
20 anybody else, you've got 30 -- they've got 30 days
21 to respond. If you're not happy with that, then
22 that's fine. And if they serve you interrogatories,
23 then, naturally, you have 30 days, just like the
24 rule, to respond.

25 MR. FIELD: Thank you for the clarification.

1 THE COURT: All right.

2 MR. FIELD: Thank you.

3 THE COURT: Everybody got it?

4 MR. FIELD: Got it.

5 THE COURT: Good. Anything else?

6 MR. MILAM: No, I'll -- I'll circulate the Order
7 to the Fields before I -- so they can review and
8 comment first. Do -- do you prefer I -- I send it
9 to your Law Clerk by email?

10 THE COURT: Yeah.

11 MR. MILAM: Okay.

12 THE COURT: Rbondslc@sccourts.org. All right, I
13 think that's got it. Thank y'all.

14 MR. FIELD: Thank you very much, Your Honor.

15 THE COURT: All right.

16 MR. MILAM: Thank you.

17 MS. FIELD: Thank you.

18 MR. PAGE: Thank you, Your Honor.

19 (At 2:20 p.m. the hearing was concluded.)

20 ***

21 END OF TRANSCRIPT

22 ***

23

24

25

CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete (amended on 12-29-21) transcript of the proceedings held in this case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina on the 12th Day of August, 2021.

I do further certify that I am neither of kin, counsel, or interest to any party hereto.

This, the 29th day of December, 2021.



Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust,

Plaintiff,

vs.

Rex A. Field, Tracy L. Field,

Defendant(s).

BCP No.: 19-43531

IN THE COURT OF COMMON PLEAS

C/A No.: 2019-CP-07-02279

**NOTICE OF HEARING &
CERTIFICATE OF MAILING**

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above-entitled cause, Marvin H. Dukes, III, as Master in Equity for Beaufort County has appointed **March 26, 2020 at 1:30 PM**, 102 Ribaut Road, Room 212, Beaufort, SC, 29902, 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 Record of Hearing containing written testimony and a final judgment and order to sell the subject property will be entered.

YOU WILL ALSO TAKE NOTICE that the Plaintiff's attorney will submit written testimony on behalf of Plaintiff pursuant to S.C. Code Ann. Section 14-11-110 (as amended). All issues raised in the pleadings will be decided at this hearing. You are requested to notify Plaintiff's attorneys at 803-509-5078 of your intention to appear.

I hereby certify that I am an employee of Bell Carrington Price & Gregg, LLC, that on March 9, 2020, I served a copy of this hearing notice 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:

Rex A Field
1 Dulamo Bluff Road
Saint Helena Island, SC 29920

Tracy L Field
1 Dulamo Bluff Road
Saint Helena Island, SC 29920

s/J. Martin Page
J. Martin Page (SC Bar No.: 100200)
Bell Carrington Price & Gregg, LLC
339 Heyward Street, 2nd Floor
Columbia, SC 29201
Attorney for the Plaintiff

2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Johnson, Karen <kjohnson3@bcgov.net>
To: Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Milam, Ben <bmilam@bradley.com>
cyberport@protonmail.com <cyberport@protonmail.com>
CC: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Date: Friday, April 9th, 2021 at 11:17 AM

Good Morning,

There are currently five pending motions in the above case:

1. Motion to Strike Demand for Jury Trial
2. Joint Motion to Extend Time to Reply to Counterclaim and Answer to Third Party Complaint
3. Motion to Extend Time to DLJ's Answer to Third Party Complaint
4. Motion for Sanctions for Failure to Comply with SCRCP 11(b)
5. Motion to Dismiss Complaint Pursuant to SCRCP 120B)(7)

Judge Price would like to hear these motions sometime next week and will notify all parties once they have been scheduled.

Thank you,

Karen Johnson
Judicial Clerk
Beaufort County Clerk of Court
843-255-5051

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Milam, Ben <bmilam@bradley.com>
To: Johnson, Karen <kjohnson3@bcgov.net>
CC: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
cyberport@protonmail.com <cyberport@protonmail.com>
Date: Friday, April 9th, 2021 at 12:00 PM

Ms. Johnson,

Plaintiff and Third-Party Defendants will be filing a motion to dismiss the counterclaims and third-party claims today. Because the Fields' amended pleading was filed on March 25th and the motion to dismiss is being filed within 15 days of that date, that should moot the motions for extension.

Thanks,
Ben Milam

G. Benjamin Milam

Associate | Bradley
bmilam@bradley.com
704.338.6049

From: Johnson, Karen <kjohnson3@bcgov.net>
Sent: Friday, April 9, 2021 11:18 AM
To: mpage@bellcarrington.com; Milam, Ben <bmilam@bradley.com>; Rex Field <cyberport@protonmail.com>
Cc: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Subject: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

[External Email]

Good Morning,

There are currently five pending motions in the above case:

1. Motion to Strike Demand for Jury Trial
2. Joint Motion to Extend Time to Reply to Counterclaim and Answer to Third Party Complaint
3. Motion to Extend Time to DLJ's Answer to Third Party Complaint
4. Motion for Sanctions for Failure to Comply with SCRCP 11(b)
5. Motion to Dismiss Complaint Pursuant to SCRCP 120B)(7)

Judge Price would like to hear these motions sometime next week and will notify all parties once they have been scheduled.

Thank you,

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

To: Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>

CC: Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
cyberport@protonmail.com <cyberport@protonmail.com>

Date: Sunday, April 11th, 2021 at 5:08 PM

Good afternoon,

To clarify, which motions still need to be heard?

Thank you,
Aimee

From: Milam, Ben <bmilam@bradley.com>
Sent: Friday, April 9, 2021 12:01 PM
To: Johnson, Karen <kjohnson3@bcgov.net>
Cc: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; mpage@bellcarrington.com; Rex Field <cyberport@protonmail.com>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Ms. Johnson,

Plaintiff and Third-Party Defendants will be filing a motion to dismiss the counterclaims and third-party claims today. Because the Fields' amended pleading was filed on March 25th and the motion to dismiss is being filed within 15 days of that date, that should moot the motions for extension.

Thanks,
Ben Milam

G. Benjamin Milam
Associate | [Bradley](#)
bmilam@bradley.com
704.338.6049

From: Johnson, Karen <kjohnson3@bcgov.net>
Sent: Friday, April 9, 2021 11:18 AM
To: mpage@bellcarrington.com; Milam, Ben <bmilam@bradley.com>; Rex Field <cyberport@protonmail.com>
Cc: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Subject: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Milam, Ben <bmilam@bradley.com>
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Johnson, Karen <kjohnson3@bcgov.net>
CC: Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
cyberport@protonmail.com <cyberport@protonmail.com>
Date: Sunday, April 11th, 2021 at 10:41 PM

I am aware of the following motions that need to be heard at this point:

1. Plaintiff's Motion to Strike Demand for Jury Trial
2. Defendants' Motion for Sanctions for Failure to Comply with SCRCP 11(b)
3. Defendants' Motion to Dismiss Complaint Pursuant to SCRCP 120B)(7)
4. Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third-Party Claims

G. Benjamin Milam

Associate | [Bradley](#)
bmilam@bradley.com
704.338.6049

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Sunday, April 11, 2021 5:08 PM
To: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>
Cc: mpage@bellcarrington.com; Rex Field <cyberport@protonmail.com>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

[External Email]

Good afternoon,

To clarify, which motions still need to be heard?

Thank you,
Aimee

From: Milam, Ben <bmilam@bradley.com>
Sent: Friday, April 9, 2021 12:01 PM
To: Johnson, Karen <kjohnson3@bcgov.net>
Cc: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; mpage@bellcarrington.com; Rex Field <cyberport@protonmail.com>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

CC: Milam, Ben <bmilam@bradley.com>

Johnson, Karen <kjohnson3@bcgov.net>

Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Date: Monday, April 12th, 2021 at 8:08 AM

Good morning Aimee,

On Friday, Ms. Johnson emailed a list of motions that Judge Price wanted heard this week as follows:

1. Plaintiffs Motion to Strike Demand for Jury Trial
2. Plaintiff's Joint Motion to Extend Time to Reply to Counterclaim and Answer to Third Party Complaint (**Granted**)
3. Plaintiff's Motion to Extend Time to DLJ's Answer to Third Party Complaint
4. Defendants' Motion for Sanctions for Failure to Comply with SCRCP 11(b)
5. Defendants Motion to Dismiss Complaint Pursuant to SCRCP 12(b)(7)

Then, on Friday, Judge Price granted motion #2, leaving #1, #3, #4, and #5.

1. Plaintiffs Motion to Strike Demand for Jury Trial
3. Plaintiff's Motion to Extend Time to DLJ's Answer to Third Party Complaint
4. Defendants' Motion for Sanctions for Failure to Comply with SCRCP 11(b)
5. Defendants Motion to Dismiss Complaint Pursuant to SCRCP 12(b)(7)

Then, on Friday April 9th, the Plaintiff and Third Party Defendants filed the following motion after Judge Price requested that the above referenced motions be heard: They filed "Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third-Party Claims", that motion is not ripe for consideration this week because the Defendants are not waiving the (10) ten day notice requirement before a hearing pursuant to SCRCP Rule 6(d).

The Defendants have mediation tomorrow in Columbia and plan to file a joinder motion on Wednesday, however, if the court were to grant Defendants' Motion to Dismiss Complaint Pursuant to SCRCP 12(b)(7) listed as #5 above, then Defendants motion to join third-party defendants would be moot.

We are available Thursday or Friday of this week for a hearing, we believe that the only motions ripe for consideration are #1, #3, #4, and #5 and not "Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third-Party Claims"

Also, we hereby request an in person hearing.

Thank you,
Best regards,

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

To: cyberport@protonmail.com <cyberport@protonmail.com>

CC: Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 1:08 PM

Good afternoon all,

Judge Price is available to hear the outstanding motions on **Thursday April 15 at 10:00AM** in person at the Beaufort County courthouse.

Please let me know if this time and date works for all parties.

Thank you,
Aimee

From: Rex Field <cyberport@protonmail.com>

Sent: Monday, April 12, 2021 8:09 AM

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com

Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good morning Aimee,

On Friday, Ms. Johnson emailed a list of motions that Judge Price wanted heard this week as follows:

1. Plaintiff's Motion to Strike Demand for Jury Trial
2. Plaintiff's Joint Motion to Extend Time to Reply to Counterclaim and Answer to Third Party Complaint (**Granted**)
3. Plaintiff's Motion to Extend Time to DLJ's Answer to Third Party Complaint
4. Defendants' Motion for Sanctions for Failure to Comply with SCRC 11(b)
5. Defendants Motion to Dismiss Complaint Pursuant to SCRC 12(b)(7)

Then, on Friday, Judge Price granted motion #2, leaving #1, #3, #4, and #5.

1. Plaintiff's Motion to Strike Demand for Jury Trial

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
CC: Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@belcarrington.com) <mpage@belcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
Date: Monday, April 12th, 2021 at 2:05 PM

Good afternoon Aimee,

Please list the motions that are considered outstanding.

Thank you.
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Monday, April 12, 2021 1:08 PM, Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org> wrote:

Good afternoon all,

Judge Price is available to hear the outstanding motions on Thursday April 15 at 10:00AM in person at the Beaufort County courthouse.

Please let me know if this time and date works for all parties.

Thank you,
Aimee

From: Rex Field <cyberport@protonmail.com>
Sent: Monday, April 12, 2021 8:09 AM

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpriclc@sccourts.org>

CC: Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 2:32 PM

Good afternoon Aimee,

We are available and agree to attend on Thursday April 15 at 10:00am to hear any outstanding motions in person at the Beaufort County courthouse.

Thank you,
Best regards,
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Monday, April 12, 2021 1:08 PM, Price, Bentley Law Clerk (Aimee Intagliata) <bpriclc@sccourts.org> wrote:

Good afternoon all,

Judge Price is available to hear the outstanding motions on Thursday April 15 at 10:00AM in person at the Beaufort County courthouse.

Please let me know if this time and date works for all parties.

Thank you,
Aimee

From: Rex Field <cyberport@protonmail.com>
Sent: Monday, April 12, 2021 8:09 AM

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Milam, Ben <bmilam@bradley.com>

To: cyberport@protonmail.com <cyberport@protonmail.com>
Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

CC: Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 3:35 PM

I am available for Thursday at 10:00 am as well. I will appear for Plaintiff and all of the Third-Party Defendants.

Thanks,
Ben Milam

G. Benjamin Milam

Associate | Bradley
bmilam@bradley.com
704.338.6049

From: Rex Field <cyberport@protonmail.com>

Sent: Monday, April 12, 2021 2:33 PM

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

[External Email]

Good afternoon Aimee,

We are available and agree to attend on Thursday April 15 at 10:00am to hear any outstanding motions in person at the Beaufort County courthouse.

Thank you,
Best regards,
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Monday, April 12, 2021 1:08 PM, Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org> wrote:

Good afternoon all,

Re: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

To: Milam, Ben <bmilam@bradley.com>
cyberport@protonmail.com <cyberport@protonmail.com>

CC: Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 3:39 PM

Thank you both for your quick replies.

I will add it to Judge Price's calendar.

Thank you,
Aimee

Get Outlook for iOS<<https://aka.ms/o0ukef>>

~~From: Milam, Ben <bmilam@bradley.com>
Sent: Monday, April 12, 2021 3:35:40 PM
To: Rex Field <cyberport@protonmail.com>; Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Cc: Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com <mpage@bellcarrington.com>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al~~

~~*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***~~

~~I am available for Thursday at 10:00 am as well. I will appear for Plaintiff and all of the Third-Party Defendants.~~

~~Thanks,~~

~~Ben Milam~~

~~G. Benjamin Milam
Associate | Bradley <<https://urldefense.com/v3/http://www.bradley.com>>; !!JHVHxrUang!BWi7yMnE2IQ-BDvR5q2tHYak3374w8SihCcrNyGbFiQlQOWLpwJ9961YU3J66cJD\$>
bmilam@bradley.com<<mailto:bmilam@bradley.com>>
704.338.6049~~

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

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To: Milam, Ben <bmilam@bradley.com>

CC: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Johnson, Karen <kjohnson3@bcgov.net>

Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 4:08 PM

Thanks Aimee,

We will be there, for clarification, has Mr. Milam agreed to be there in person?

Thank you,
Best regards,
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Monday, April 12, 2021 3:35 PM, Milam, Ben <bmilam@bradley.com> wrote:

I am available for Thursday at 10:00 am as well. I will appear for Plaintiff and all of the Third-Party Defendants.

Thanks,

Ben Milam

G. Benjamin Milam

Associate | Bradley
bmilam@bradley.com
704.338.6049

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To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>;
mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

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CC: Milam, Ben <bmilam@bradley.com>

Johnson, Karen <kjohnson3@bcgov.net>

Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 4:50 PM

Good afternoon Aimee,

We are not waiving our (10) ten day notice pursuant to SCRC 6(d) for the "Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third-Party Claims" Motion filed on Friday, April 9th.

If this Motion is on the Judge Price's calendar to be heard for Thursday, April 15th, please remove the motion from the hearing.

Thank you,

Best regards,
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Monday, April 12, 2021 3:39 PM, Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org> wrote:

> Thank you both for your quick replies.

>

> I will add it to Judge Price's calendar.

>

> Thank you,

> Aimee

>

> Get Outlook for iOS <https://aka.ms/o0ukef>

>

> From: Milam, Ben bmilam@bradley.com

> Sent: Monday, April 12, 2021 3:35:40 PM

> To: Rex Field cyberport@protonmail.com; Price, Bentley Law Clerk (Aimee Intagliata) bpricelc@sccourts.org

> Cc: Johnson, Karen kjohnson3@bcgov.net; mpage@bellcarrington.com

mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) bpricesc@sccourts.org

> Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

>

> *** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Re: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

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To: cyberport@protonmail.com <cyberport@protonmail.com>
CC: Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 5:16 PM

Good afternoon,

Judge Price will hear whichever motions you all are prepared to argue.

If you all would list out which motions are ready to be argued, that would be great.

Thank you,
Aimee

Get Outlook for iOS<<https://aka.ms/o0ukef>>

From: Rex Field <cyberport@protonmail.com>
Sent: Monday, April 12, 2021 2:05:03 PM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>;
mpage@bellcarrington.com <mpage@bellcarrington.com>; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

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Good afternoon Aimee,

Please list the motions that are considered outstanding.

Thank you.
Rex Field

Sent with ProtonMail<[https://urldefense.com/v3/https://protonmail.com/!!JHVHxrUang!FiMz5GFhLG06VEPNhrJbmuch3EOsSXpM-n6j9dgA0Gxna0WykViRanb0kb-wZJK7\\$](https://urldefense.com/v3/https://protonmail.com/!!JHVHxrUang!FiMz5GFhLG06VEPNhrJbmuch3EOsSXpM-n6j9dgA0Gxna0WykViRanb0kb-wZJK7$)> Secure Email.

----- Original Message -----

On Monday, April 12, 2021 1:08 PM, Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org> wrote:

Re: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

CC: Milam, Ben <bmilam@bradley.com>

Johnson, Karen <kjohnson3@bcgov.net>

Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Monday, April 12th, 2021 at 5:36 PM

Hello Aimee,

We are prepared to argue the following motions:

1. Defendants' Motion for Sanctions for Failure to Comply with SCRPC 11(b);
2. Defendants' Motion to Dismiss Complaint Pursuant to SCRPC 12(b)(7).

Thank you,

Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Monday, April 12, 2021 5:16 PM, Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org> wrote:

> Good afternoon,
>
> Judge Price will hear whichever motions you all are prepared to argue.
>
> If you all would list out which motions are ready to be argued, that would be great.
>
> Thank you,
> Aimee
>
> Get Outlook for iOS<https://aka.ms/ooukef>
>
> From: Rex Field <cyberport@protonmail.com>
> Sent: Monday, April 12, 2021 2:05:03 PM
> To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
> Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>;
> mpage@bellcarrington.com <mpage@bellcarrington.com>; Price, Bentley Secretary (Tamara
> Walters) <bpricesc@sccourts.org>
> Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et
> al
>
> *** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Milam, Ben <bmilam@bradley.com>

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

CC: Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
cyberport@protonmail.com <cyberport@protonmail.com>

Date: Monday, April 12th, 2021 at 6:02 PM

Ms. Intagliata,

To my knowledge, the following motions are currently pending in this case:

1. Plaintiff's Motion to Strike Defendants' Demand for Jury trial, filed 01/20/20
2. Defendants' Motion for Sanctions for Failure to Comply With SCRCP 11(b), filed 04/05/2021
3. Defendants' Motion to Dismiss Complaint Pursuant to Rule 12(b)(7), filed 04/05/2021
4. Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third Party Claims, filed 04/09/2021

It is my understanding that the Fields object to having item 4 (and possibly item 1) heard Thursday, on the grounds that they are entitled to 10 days' notice of hearing under Rule 6(d). In response, I would point out that the parties have agreed to hear the other motions on 3 days' notice. I would also point out that Rule 6(d) permits a different period to be set by court order. It would be more efficient to have all the outstanding motions heard at one time, and I would respectfully ask the Court to exercise its discretion to do so. In the alternative, we would consent for the Plaintiff and Third-Party Defendants' Motion to Dismiss to be decided on the briefs, or set for a future date under such circumstances as the court will permit.

Thanks,
Ben Milam

G. Benjamin Milam
Associate | Bradley
bmilam@bradley.com
704.338.6049

-----Original Message-----

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Sent: Monday, April 12, 2021 5:16 PM

To: Rex Field <cyberport@protonmail.com>

Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Subject: Re: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

[External Email]

Good afternoon,

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>

To: Milam, Ben <bmilam@bradley.com>

CC: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Tuesday, April 13th, 2021 at 7:56 AM

Good morning Aimee,

We are not waiving the (10) ten day notice pursuant to SCRCP 6(d) for motion #4 "Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third Party Claims", filed 04/09/2021 and object to that motion being heard on Thursday.

Also, Mr. Milam has omitted "Plaintiff's Motion to Extend Time to DLJ's Answer to Third Party Complaint", we would agree for that motion to be heard on Thursday.

And, we are filing today, "Defendants' Motion to Join Third Parties" motion #6 listed below.

So the motion list for Thursday is as follows:

1. Plaintiff's Motion to Strike Defendants' Demand for Jury trial, filed 01/20/20 **(Thursday)**
2. Defendants' Motion for Sanctions for Failure to Comply With SCRCP 11(b), filed 04/05/2021 **(Thursday)**
3. Defendants' Motion to Dismiss Complaint Pursuant to Rule 12(b)(7), filed 04/05/2021 **(Thursday)**
4. Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third Party Claims, filed 04/09/2021 **(Objection by Defendants)**
5. Plaintiff's Motion to Extend Time to DLJ's Answer to Third Party Complaint, filed 3/26/2021 **(Thursday)**
6. Defendants Motion to Join Third-Party Defendants, filed 4/13/2021 **(Filed today, not to be heard on Thursday)**

We agree to have motions #1, #2, #3, and #5 heard on Thursday. Motions #4 and #6 will have to be heard at a later date.

We will be traveling all day today to mediation all day today.

Thank you,
Best regards,
Rex Field

Sent with [ProtonMail](#) Secure Email.

----- Original Message -----

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
To: cyberport@protonmail.com <cyberport@protonmail.com>
Milam, Ben <bmilam@bradley.com>
CC: Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>

Date: Tuesday, April 13th, 2021 at 10:51 AM

Good morning all,

Due to the 10 day notice requirement, these motions will be heard on Thursday:

1. Plaintiff's Motion to Strike Defendants' Demand for Jury trial, filed 01/20/20
2. Defendants' Motion for Sanctions for Failure to Comply With SCRC 11(b), filed 04/05/2021
3. Defendants' Motion to Dismiss Complaint Pursuant to Rule 12(b)(7), filed 04/05/2021
4. Plaintiff's Motion to Extend Time to DLJ's Answer to Third Party Complaint, filed 3/26/2021

Thank you,
Aimee

From: Rex Field <cyberport@protonmail.com>
Sent: Tuesday, April 13, 2021 7:57 AM
To: Milam, Ben <bmilam@bradley.com>
Cc: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>; Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good morning Aimee,

We are not waiving the (10) ten day notice pursuant to SCRC 6(d) for motion #4 "Plaintiff and Third Party Defendants' Motion to Dismiss Counterclaims and Third Party Claims", filed 04/09/2021 and object to that motion being heard on Thursday.

Also, Mr. Milam has omitted "Plaintiff's Motion to Extend Time to DLJ's Answer to Third Party Complaint", we would agree for that motion to be heard on Thursday.

And, we are filing today, "Defendants' Motion to Join Third Parties" motion #6 listed below.

So the motion list for Thursday is as follows:

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Milam, Ben <bmilam@bradley.com>
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
CC: Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
cyberport@protonmail.com <cyberport@protonmail.com>

Date: Tuesday, April 20th, 2021 at 11:28 PM

Ms. Intagliata,

At the hearing last Thursday in this matter, I believe that Judge Price said he intended to refer this case back to the Master in Equity. The Form 4 order entered today grants the motion striking the Defendants' jury demand, but does not appear to refer the case to the MIE. Would Judge Price like us to prepare a proposed order of reference, or will this matter remain in the Circuit Court?

Thanks,
Ben Milam

G. Benjamin Milam
Associate | [Bradley](#)
bmilam@bradley.com
704.338.6049

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Tuesday, April 13, 2021 10:52 AM
To: Rex Field <cyberport@protonmail.com>; Milam, Ben <bmilam@bradley.com>
Cc: Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

[External Email]

Good morning all,

Due to the 10 day notice requirement, these motions will be heard on Thursday:

1. Plaintiff's Motion to Strike Defendants' Demand for Jury trial, filed 01/20/20
2. Defendants' Motion for Sanctions for Failure to Comply With SCRCP 11(b), filed 04/05/2021
3. Defendants' Motion to Dismiss Complaint Pursuant to Rule 12(b)(7), filed 04/05/2021
4. Plaintiff's Motion to Extend Time to DLI's Answer to Third Party Complaint, filed 3/26/2021

Thank you,
Aimee

From: Rex Field <cyberport@protonmail.com>

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
To: Milam, Ben <bmilam@bradley.com>
CC: Johnson, Karen <kjohnson3@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
cyberport@protonmail.com <cyberport@protonmail.com>

Date: Wednesday, April 21st, 2021 at 10:30 AM

Good morning Mr. Milam,

The other two motions will have to be heard either by Judge Price or another judge. At that point, if it needs to be referred to the master please reach out to Judge Price as the Chief Administrative Judge.

Thank you,
Aimee

From: Milam, Ben <bmilam@bradley.com>
Sent: Tuesday, April 20, 2021 11:29 PM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Cc: Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; Rex Field <cyberport@protonmail.com>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Ms. Intagliata,

At the hearing last Thursday in this matter, I believe that Judge Price said he intended to refer this case back to the Master in Equity. The Form 4 order entered today grants the motion striking the Defendants' jury demand, but does not appear to refer the case to the MIE. Would Judge Price like us to prepare a proposed order of reference, or will this matter remain in the Circuit Court?

Thanks,
Ben Milam

G. Benjamin Milam
Associate | Bradley
bmilam@bradley.com
704.338.6049

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Tuesday, April 13, 2021 10:52 AM
To: Rex Field <cyberport@protonmail.com>; Milam, Ben <bmilam@bradley.com>
Cc: Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Milam, Ben <bmilam@bradley.com>
To: Kirkman, Kristen <kristen.kirkman@bcgov.net>
CC: Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
cyberport@protonmail.com <cyberport@protonmail.com>
Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Date: Thursday, April 22nd, 2021 at 8:55 AM

Ms. Kirkman,

The Court has entered the attached order granting the Plaintiff's motion to strike the jury demand in this case. As such, we request that this matter be removed from the May 11 jury trial roster.

Additionally, we would ask that a hearing be scheduled on all pending motions, including Plaintiff's and Third-Party Defendants' Motion to Dismiss the counterclaims and third-party claims.

Please confirm this matter can be removed from the May 11th roster.

Best regards,
Ben Milam

G. Benjamin Milam
Associate | [Bradley](mailto:bmilam@bradley.com)
bmilam@bradley.com
704.338.6049

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Sent: Wednesday, April 21, 2021 10:31 AM
To: Milam, Ben <bmilam@bradley.com>
Cc: Johnson, Karen <kjohnson3@bcgov.net>; mpage@bellcarrington.com; Price, Bentley Secretary (Tamara Walters) <bpricesc@sccourts.org>; Rex Field <cyberport@protonmail.com>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

[External Email]

Good morning Mr. Milam,

The other two motions will have to be heard either by Judge Price or another judge. At that point, if it needs to be referred to the master please reach out to Judge Price as the Chief Administrative Judge.

Thank you,
Aimee

From: Milam, Ben <bmilam@bradley.com>
Sent: Tuesday, April 20, 2021 11:29 PM

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>

To: Milam, Ben <bmilam@bradley.com>

CC: Kirkman, Kristen <kristen.kirkman@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Date: Thursday, April 22nd, 2021 at 9:29 AM

Good morning Kristen,

Please find attached "Motion to Continue Jury Trial",

We will be filing a motion for reconsideration of Judge Price's Form 4 Order dated April 20, 2021, as such, we have (10) ten days from 4/20/2021 to file the motion for reconsideration..

Further, if our motion to reconsider is denied, it would be an immediately appealable order. Therefore, please continue the jury trial until our motion(s) for reconsideration are heard by Judge Price

Accordingly, no motions should be scheduled at this time.

Therefore, we respectfully request that the "Motion to Continue Jury Trial" is granted.

Thank you.
Best regards,
Rex Field

The Court has entered the attached order granting the Plaintiff's motion to strike the jury demand in this case. As such, we request that this matter be removed from the May 11 jury trial roster.

Additionally, we would ask that a hearing be scheduled on all pending motions, including Plaintiff's and Third-Party Defendants' Motion to Dismiss the counterclaims and third-party claims.

Please confirm this matter can be removed from the May 11th roster.

Sent with ProtonMail Secure Email.

----- Original Message -----

On Thursday, April 22, 2021 8:55 AM, Milam, Ben <bmilam@bradley.com> wrote:

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

To: cyberport@protonmail.com <cyberport@protonmail.com>
Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>

CC: Kirkman, Kristen <kristen.kirkman@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Date: Thursday, April 22nd, 2021 at 1:30 PM

Good afternoon all,

Judge Price would like to continue the jury trial and set the motions for a hearing.

Karen, please add this to the next available roster.

Thank you,
Aimee

From: Rex Field <cyberport@protonmail.com>

Sent: Thursday, April 22, 2021 9:30 AM

To: Milam, Ben <bmilam@bradley.com>

Cc: kristen.kirkman@bcgov.net; mpage@bellcarrington.com; Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good morning Kristen,

Please find attached "Motion to Continue Jury Trial",

We will be filing a motion for reconsideration of Judge Price's Form 4 Order dated April 20, 2021, as such, we have (10) ten days from 4/20/2021 to file the motion for reconsideration..

Further, if our motion to reconsider is denied, it would be an immediately appealable order. Therefore, please continue the jury trial until our motion(s) for reconsideration are heard by Judge Price

Accordingly, no motions should be scheduled at this time.

Therefore, we respectfully request that the "Motion to Continue Jury Trial" is granted.

Thank you.
Best regards,
Rex Field

The Court has entered the attached order granting the Plaintiff's motion to strike the jury demand in this case. As such, we request that this matter be removed from the May 11 jury trial roster.

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Roseneau, Jerri <jroseneau@bcgov.net>
To: Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
cyberport@protonmail.com <cyberport@protonmail.com>
Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
CC: Kirkman, Kristen <kristen.kirkman@bcgov.net>
Johnson, Karen <kjohnson3@bcgov.net>
Date: Thursday, April 22nd, 2021 at 1:33 PM

Good afternoon,

The case has been removed from the jury roster per the Judge's Order.

BY copy of this email, I am forwarding your request to schedule motions to our Motions Scheduling Clerk.

Regards,

Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901
843 255 5050

From: Kirkman, Kristen <kristen.kirkman@bcgov.net>
Sent: Thursday, April 22, 2021 9:05 AM
To: Roseneau, Jerri <jroseneau@bcgov.net>
Subject: FW: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Milam, Ben <bmilam@bradley.com>
Sent: Thursday, April 22, 2021 8:55 AM
To: Kirkman, Kristen <kristen.kirkman@bcgov.net>
Cc: mpage@bellcarrington.com; Rex Field <cyberport@protonmail.com>; Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

Ms. Kirkman,

The Court has entered the attached order granting the Plaintiff's motion to strike the jury demand in this case. As such, we request that this matter be removed from the May 11 jury trial roster.

Additionally, we would ask that a hearing be scheduled on all pending motions, including Plaintiff's and Third-Party Defendants' Motion to Dismiss the counterclaims and third-party claims.

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

CC: Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>
Kirkman, Kristen <kristen.kirkman@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Date: Thursday, April 22nd, 2021 at 2:28 PM

Good afternoon,

We are filing (2) two motions for reconsideration relating to Judge Price's April 20, 2021 Order. We have (10) days from the date of the order to file those motions.

If our motion for reconsideration of the motion to strike jury trial demand is denied, we intend to immediately appeal that order. Thus, no motions should be scheduled at this time.

As such, opposing counsel, after receiving the motion(s) for reconsideration may want to file an opposition to those motion(s) which may take an additional (10) ten days, therefore the next roster would not be appropriate.

As stated, the only motion(s) that the Defendants agree to be heard at this time are the Defendants' motion(s) for reconsideration before Judge Price and no other motions.

Once the Defendants motion(s) for reconsideration are filed, then, the court would schedule the hearings, then, properly provide written notice to the parties (10) ten days in advance of the hearing.

At this time, since the Defendants motion(s) for reconsideration have yet to be filed, it is premature to schedule any motions on Judge Price's roster or any roster.

We will notify the court when the motion(s) for reconsideration are filed, until such time, please grant the continuance for the Jury Trial.

Thank you,
Best regards,
Rex Field

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>
To: Roseneau, Jerri <jroseneau@bcgov.net>
CC: Martin Page (mpage@belcarrington.com) <mpage@belcarrington.com>
Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Kirkman, Kristen <kristen.kirkman@bcgov.net>
Johnson, Karen <kjohnson3@bcgov.net>

Date: Thursday, April 22nd, 2021 at 2:37 PM

Ms. Roseneau,

Judge Price's April 20, 2021 Form 4 Order does not remove this from the jury roster. In fact, just minutes ago, Judge Price agreed to grant our motion for a continuance to continue the jury trial until the appropriate motions could be heard.

If you have removed the case from the jury roster, please restore the case to the jury roster so that it may be continued as per Judge Price.

Please confirm that the case has been restored to the jury roster.

Thank you,
Best regards,
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Thursday, April 22, 2021 1:33 PM, Roseneau, Jerri <jroseneau@bcgov.net> wrote:

Good afternoon,

The case has been removed from the jury roster per the Judge's Order.

BY copy of this email, I am forwarding your request to schedule motions to our Motions Scheduling Clerk.

Regards,

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>

To: Roseneau, Jerri <jroseneau@bcgov.net>

CC: Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>
Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Kirkman, Kristen <kristen.kirkman@bcgov.net>
Johnson, Karen <kjohnson3@bcgov.net>

Date: Thursday, April 22nd, 2021 at 3:24 PM

Aimee,

As per your email, Judge Price granted our motion for a continuance of the jury trial until the pending reconsideration motions could be heard. Three minutes later, at 1:33pm, Ms. Roseneau sent an email alerting everyone that she removed the case from the jury docket contrary to Judge Price's email instructions at 1:30pm

Please restore the case to the jury docket so that the case may be continued on the jury docket pending the motion(s) for reconsideration hearing with Judge Price.

The motion(s) for reconsideration are a matter of right and Judge Price's April 20, 2021 Order is not final until the motion(s) for reconsideration are heard, thus, the case should be continued on the jury docket.

Please advise.

Best regards,
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Thursday, April 22, 2021 1:33 PM, Roseneau, Jerri <jroseneau@bcgov.net> wrote:

Good afternoon,

The case has been removed from the jury roster per the Judge's Order.

BY copy of this email, I am forwarding your request to schedule motions to our Motions Scheduling Clerk.

Regards,

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

To: cyberport@protonmail.com <cyberport@protonmail.com>

CC: Milam, Ben <bmilam@bradley.com>

Johnson, Karen <kjohnson3@bcgov.net>

Kirkman, Kristen <kristen.kirkman@bcgov.net>

Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Date: Thursday, April 22nd, 2021 at 4:52 PM

Please contact our office when the Motion to Reconsider is filed to schedule a hearing.

Thank you,
Aimee

From: Rex Field <cyberport@protonmail.com>

Sent: Thursday, April 22, 2021 2:28 PM

To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>

Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>; kristen.kirkman@bcgov.net;
mpage@bellcarrington.com

Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good afternoon,

We are filing (2) two motions for reconsideration relating to Judge Price's April 20, 2021 Order. We have (10) days from the date of the order to file those motions.

If our motion for reconsideration of the motion to strike jury trial demand is denied, we intend to immediately appeal that order. Thus, no motions should be scheduled at this time.

As such, opposing counsel, after receiving the motion(s) for reconsideration may want to file an opposition to those motion(s) which may take an additional (10) ten days, therefore the next roster would not be appropriate.

As stated, the only motion(s) that the Defendants agree to be heard at this time are the Defendants' motion(s) for reconsideration before Judge Price and no other motions.

Once the Defendants motion(s) for reconsideration are filed, then, the court would schedule the hearings, then, properly provide written notice to the parties (10) ten days in advance of the hearing.

At this time, since the Defendants motion(s) for reconsideration have yet to be filed, it is premature to schedule any motions on Judge Price's roster or any roster.

We will notify the court when the motion(s) for reconsideration are filed, until such time, please grant the continuance for the Jury Trial.

Thank you,
Best regards,
Rex Field

RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

From: cyberport@protonmail.com <cyberport@protonmail.com>
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
CC: Milam, Ben <bmilam@bradley.com>
Johnson, Karen <kjohnson3@bcgov.net>
Kirkman, Kristen <kristen.kirkman@bcgov.net>
Martin Page (mpage@bellcarrington.com) <mpage@bellcarrington.com>

Date: Thursday, April 22nd, 2021 at 5:03 PM

Aimee,

Thank you, we will.

Best regards,
Rex Field

Sent with ProtonMail Secure Email.

----- Original Message -----

On Thursday, April 22, 2021 4:52 PM, Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org> wrote:

Please contact our office when the Motion to Reconsider is filed to schedule a hearing.

Thank you,

Aimee

From: Rex Field <cyberport@protonmail.com>
Sent: Thursday, April 22, 2021 2:28 PM
To: Price, Bentley Law Clerk (Aimee Intagliata) <bpricelc@sccourts.org>
Cc: Milam, Ben <bmilam@bradley.com>; Johnson, Karen <kjohnson3@bcgov.net>; kristen.kirkman@bcgov.net; mpage@bellcarrington.com
Subject: RE: 2019CP0702279 / Wilmington Savings Fund Society, et al -vs- Rex A. Field, et al

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Good afternoon,