

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 First National Bank of Spartanburg, Div. )  
 of First National Bank of the South, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Liberty Village, LLC, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 2009-CP-08-3652

**ORDER DENYING DEFENDANT'S  
 MOTION TO ALTER OR AMEND  
 JUDGMENT**

2013 MAY 31 PM 4:05  
 BERKELEY COUNTY, SC  
 FILED  
 [Signature]

This matter came before the Court on December 13, 2012, on Defendant's Motion to Reconsider, Alter or Amend three separate rulings of the Court contained in the Court's order dated June 6, 2012. Present for the moving party was Aaron Edwards, Esquire of the Richter Firm, PA. The Plaintiff was represented by Robert A. Kerr, Jr. of Moore & Van Allen, PLLC.

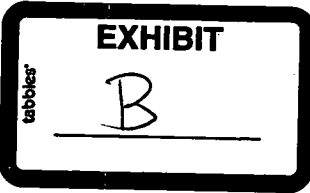
In its Motion, Defendant asks the Court to review three rulings: summary judgment for Plaintiff on defendant's counterclaim for unfair trade practices; a denial of Defendant's motion for summary judgment based on an unclean hands argument; and the court's denial of Defendant's Motion to Transfer the Case to the Jury Trial Roster. The court heard arguments on December 13, 2012.

**FINDINGS**

1. This commercial foreclosure case was commenced with the filing of a Lis Pendens, Summons and Complaint on November 3, 2009. Plaintiff amended its pleadings on November 24, 2009. T
2. Thereafter, on January 7, 2010, Defendant filed its Answer and Counterclaim. Plaintiff served and filed its reply to Counterclaims on February 9, 2010. Defendant amended its Answer

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and Counterclaim on January 27, 2010, and Plaintiff filed its Reply on March 1, 2010. No request for a jury trial is noted on the pleadings.

3. Plaintiff filed its Motion for Summary Judgment on October 29, 2010. Defendant filed its Motion for Summary Judgment on July 15, 2011. A hearing on those motions was held on August 31, 2011. The Court took those motions under advisement.

4. The Court entered a Consent Scheduling Order on November 14, 2011, which included, among other dates, a statement that the case was not for trial before March 1, 2012.

5. On May 9, 2012, after receipt of a second notice of the case being on the Berkeley County Non-Jury Trial Roster, Defendant filed and served its Motion to Transfer the Case to the Jury Trial Roster.

6. A hearing was held on June 5, 2012, on the Motion to Transfer and thereafter, the Court entered its Order dated June 6, 2012 denying the Motion to Transfer, denying Defendant's Motion for Summary Judgment, granting Plaintiff's Motion for Summary Judgment as to Defendant's counterclaim for unfair trade practices, and denying Plaintiff's Motion as to the Defendant's other counterclaims.

7. Defendant filed this Motion on June 18, 2012.

### CONCLUSIONS

1. A Rule 59(e), SCRPC, motion is a request for the trial judge to reconsider matters properly encompassed in a decision on the merits. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002).

2. Under federal procedural law, motions for reconsideration made under Rule 52(b) or Rule 59 (e) are limited in scope and are not to be used to rehash the same arguments and facts

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previously presented. Dockins v. Benchmark Communications, 180 F.R.D. 294, 295 (D.S.C. 1998), aff'd, 176 F.3d 745 (4th Cir. 1999).

3. A motion to reconsider cannot appropriately be granted where the moving party simply seeks to have the court rethink what the court has already thought through, rightly or wrongly. Dockins, 180 F.R.D. at 295. Accordingly, the federal courts have recognized only three grounds for revisiting a matter under this rule: (1) to accommodate an intervening change in the law; (2) to account for new evidence not previously available; and (3) to correct a clear error of law or prevent manifest injustice. Id.

4. Here, Defendant's Motion does not meet any of the criteria necessary to consider and grant a motion under SCRPC Rules 52(b) and 59(e). There has been no intervening change in the law. There is no new evidence offered in support of the Motion that was not previously available. Further, the Court sees no clear error of law and there is no manifest injustice here to be prevented.

5. To be actionable under the S.C. Unfair Trade Practices Act, S.C. Code Ann. 39-5-10, et seq., (Act) the unfair or deceptive act or practice must have an impact upon the public interest and have the potential for repetition. Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989); Burbach v. Investors Management Corp. Intern., 326 S.C. 492, 484 S.E.2d 119 (Cl. App. 1997). The court previously determined that the facts demonstrate that this is a private dispute between a lender and its borrower and falls outside of the Act. The evidence does not support an inference of actionable conduct under the Act.

6. As to Defendant's Motion for Summary Judgment, Defendant contended that Plaintiff's legal remedies as well as its equitable remedy of foreclosure should be barred by the doctrine of unclean hands. Under existing law, the Loan Modification at issue was not a real estate or

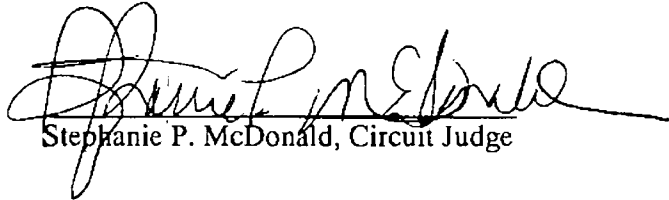
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mortgage loan closing requiring attorney participation, as title was not reviewed, funds were not advanced or disbursed, no liens were paid off, and no documents were recorded. Therefore, an attorney was not required to prepare the Loan Modification or supervise its execution.

7. With respect to the ruling on the Motion to Transfer, the requirements of Rule 38, SCRPC, and case law construing the Rule, support the Court's ruling that Defendant waived its right to a jury trial. There is no evidence of the existence of exceptional circumstances to transfer the case to the jury roster, so the Court declined to exercise its discretion to transfer the case to the jury roster.

### CONCLUSION

For the reasons set forth above, Defendant's Motion to Reconsider, Alter or Amend is respectfully denied.

  
Stephanie P. McDonald, Circuit Judge

Charleston, SC

April 29, 2013

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 -CP-08-03652

FIRST NATIONAL BANK OF SPARTANBURG

LIBERTY VILLAGE, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41, 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

2012 JUN -6 PM 3:10  
 FILED  
 CLERK OF COURT  
 BERKELEY COUNTY

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: Plaintiff's motion for summary judgment is denied with the exception of the Unfair Trade Practices Act Claim, which is granted. Defendant's motion for Summary Judgment is denied. Defendant's motion to transfer to jury trial roster is denied. The parties may renew their motion for summary judgment pursuant to Warrington v. Bank of South Carolina and/or Carolina Federal Savings Bank v. Campbell if the Supreme Court provides additional relevant authority prior to trial.

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)
N/A	N/A	\$ N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

