

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

James E. Reeves, Special Referee

Case No. 2012-CP-38-0030

**RECEIVED**

MAY 17 2013

SCBT, NA, Respondent

**SC Court of Appeals**

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue;  
Baird Transport, Inc., Defendants,

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is the Appellant.

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**RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO  
ALLOW NOTICE OF APPEAL TO BE FILED  
OUT OF TIME**

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Rogers Townsend & Thomas, PC  
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Columbia, SC 29202-3200  
(803) 771-7900  
Attorney for Respondent

Mark W. Hardee, Esquire  
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Columbia, SC 29205  
(803) 799-0905  
Attorney for Appellant

Respondent, SCBT, formerly known as SCBT, NA, hereby requests that Appellant's Motion to Allow Notice of Appeal to Be Filed out of Time be denied on the following grounds:

First, Appellant failed to show good cause for his untimely filing in compliance with Rule 260 of the South Carolina Appellate Court Rules and failed to show that he has a meritorious defense since the issues raised in the motion are not preserved for appeal and intervening events have rendered the appeal moot.

Second, Appellant failed to timely order a transcript of the underlying proceeding as required by Rule 207(a)(1).

Third, the original Notice of Appeal served on Respondent and filed with the lower court was prepared and served by a non-attorney, non-party constituting the unauthorized practice of law.

## **I. BACKGROUND**

On March 18, 2013, the Judgment of Foreclosure and Sale which is the subject of this appeal, was served on Appellant. On April 8, 2013, Respondent expressly waived its right to a deficiency judgment. (Waiver of Deficiency J., Apr. 13, 2013, attached hereto as Ex. A.) Thereafter, on April 12, 2013, Appellant's son served a Notice of Appeal on Respondent's counsel and filed a copy of the Notice of Appeal with the Orangeburg Clerk of Court, but failed to file Notice of Appeal with the Court of Appeals within ten (10) days of service. Rule 203(a), 262(a), SCACR.

Under the South Carolina Appellate Court Rules, appellants must timely serve and file a notice of appeal. Rule 203(b)(1), SCACR. Within thirty (30) days of service of the order of judgment, appellant must serve the notice of appeal on all respondents. Rule

203(b)(1), SCACR. Then, within ten (10) days of service, the notice of appeal must be filed with the both the clerk of the lower court and the clerk of the appellate court. Rule 203(d)(1), SCACR. Under Rule 203(d)(3) SCACR, failure to timely file subjects an appeal to dismissal.

In this case, though Appellant's son complied with Rule 203(b)(1) in timely serving the Notice of Appeal on April 12, 2013, he failed to timely file. Because Appellant's son served Notice of Appeal on April 12, 2013, Appellant was required under Rule 203(d)(1) to file that document with the Court of Appeals by April 22, 2013. Even though Appellant's counsel filed a Notice of Appearance on May 1, 2013, he failed to file the Notice of Appeal until May 7, 2013.

## **II. ARGUMENT**

### **A. Appellant's Reasons for Filing the Late Appeal Do Not Meet the Good Cause Standard**

In order for an appeal to be reinstated, appellant must show "good cause" for its failure to comply with the requirements of the Rules. Rule 260(a), SCACR. Though this Court has never squarely defined "good cause" in the appellate filing context, several decisions regarding untimely filing at the trial level provide guidance regarding the good cause standard.

The good cause standard involves application of a two-prong test. First, the party seeking the relief must provide an explanation for the failure to file and to give reasons why vacation of the dismissal would "serve the interests of justice." *Sundown Operating Co. v. Intedge, Indus., Inc.*, 383 S.C. 601, 607, 681 S.E. 2d 885, 888 (2009). If the relief-seeking party meets this threshold burden, the Court must then consider the *Wham* factors, including (1) the timing of the motion for relief; (2) whether the party has a

meritorious argument; and (3) the degree of prejudice if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). Where the party seeking relief fails to meet the first “interests of justice” prong, the second prong will not be considered. *See Regions Bank v. Owens*, 2013 S.C. App. LEXIS 104, at \*10 (Ct. App. April 10, 2013) (refusing to apply the *Wham* factors where the party did not set forth a satisfactory explanation for the tardy filing).

Applying the first prong, this Court has stated that failure to understand the legal process is not a sufficient reason to excuse a tardy filing and that laymen are subject to the same good cause standard as attorneys. *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (“Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”) (quoting *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988)); *see also Limehouse v. Hulsey*, 397 S.C. 49, 71, 723 S.E.2d 211, 223 (Ct. App. 2011) (“Negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause. . . .”). In addition, this Court has recently reaffirmed this well-established good cause standard. *See Regions Bank v. Owens*, 2013 S.C. App. LEXIS 104, at \*10-11 (holding that a party failed to show good cause where he erroneously relied on the representations of a co-party and failed to take any steps to confirm a filing on his behalf).

This appeal must be dismissed pursuant to Rule 203(d)(2) because good cause has not been shown. Rule 203(d)(2), Rule 260, SCACR. In Appellant’s Motion, the reason cited for his failure to timely file the Notice of Appeal with the Court of Appeals was Appellant’s *non-attorney son and power of attorney’s* “lack of knowledge of the legal

system.” (Aff. Of Ronnie Hoffman ¶ 6, Mot. to Allow Notice of Appeal to be Filed out of Time, May 7, 2013.)

This explanation fails to meet the “interest of justice” prong for good cause because unfamiliarity with legal proceedings, especially a non-attorney representative’s unfamiliarity with legal proceedings, is not a sufficient reason for late filing, according to *Hill*. Though Appellant was a pro se litigant, this fact does not support good cause; under *Hill*, a layman is held to the same good cause standard as an attorney and, under *Limehouse*, a represented party would be unable to show good cause based on attorney negligence. In addition, Appellant’s reliance on his non-attorney son to properly perfect the appeal is analogous, if not worse, than appellant’s reliance on another party’s attorney as was the case in *Owens*. Thus, under the good cause standard elaborated in recent case law, Appellant has failed to demonstrate a sufficient reason for his tardy filing. His appeal must be dismissed.

Even if Appellant were able to overcome the “good cause” prong, he still fails to show a meritorious defense. In fact, except for the first issue, none of the issues raised in the affidavit submitted by Appellant’s son were preserved for review because they are not addressed in the final judgment of foreclosure and sale, and Appellant did not file a motion to alter or amend the judgment within ten (10) days of receipt of the notice of judgment. Rule 59(e), SCRPC. (See Aff. of Ronnie Hoffman, ¶ 8 (b)-(f).)

Finally, the property has already been sold at a foreclosure sale and Respondent has waived its right to a deficiency judgment. Therefore, the appeal should not be reinstated because it is moot and lacks any practical legal effect. *Mathis v. South Carolina State Highway Dept.*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

**B. Appellant Missed the Deadline for Requesting Copy of Transcript from Hearing**

Appellant did not request a transcript of the proceeding from the court reporter within ten days of service, which was on April 12, 2013. Rule 207(a)(2), SCACR. Despite the fact that Appellant has now retained counsel and filed a Motion to File Notice of Appeal Out of Time on May 7, 2013, Respondent has not been copied on a request for a transcript. Because only motions to dismiss an appeal or motions to be relieved of counsel stay the time limits for perfecting an appeal, Appellant's motion should be denied. Rule 240(a), SCACR.

**C. Unauthorized Practice of Law in Serving and Filing Notice of Appeal with Lower Court**

The practice of law includes "the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts." *Roberts v. LaConey*, 375 S.C. 97, 103, 650 S.E.2d 474, (2007) (citations omitted).

In his affidavit attached to the Appellant's Motion to File Notice of Appeal Out of Time, Appellant's son, Ronnie Hoffman, states under oath:

(5) *I* attempted to appeal the written order by the Special Referee, by serving a Notice of Appeal on the Defendant, Defendants counsel and the Special Referee and filing a Notice of Appeal with the Orangeburg Court. Attached are copies of the certificates of service.

(6) Due to *my* lack of knowledge of the legal system, *I* did not realize the Notice of Appeal also had to be filed with the Court of Appeals in Columbia, South Carolina.

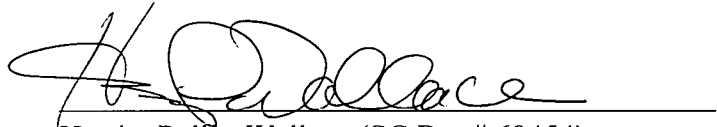
Aff. of Ronnie Hoffman attached to Mot. to File Notice of Appeal Out of Time, ¶ 5; ¶ 6, May 7, 2013 (emphasis added).

Appellant is aware of the several warnings Ronnie Hoffman received by the Master in Equity and Special Referee regarding Ronnie Hoffman's attempts to engage in the unauthorized practice of law throughout this action. (*E.g.*, Mot. to Add Representation by Att'y in Fact; Am. Mot. to Cancel Hr'g and Mot. to Dismiss Foreclosure Action and All Related Actions, attached as Ex. B.) On May 8, 2012, at the initial foreclosure hearing, Ronnie Hoffman and his brother were advised by the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, that it was unlawful for them to represent their father's interests in the case. (J. of Foreclosure and Sale at ¶ 12, ¶ 19; Order Granting Continuance of Def. Hoffman and Stipulations of Counsel, attached hereto as Ex. C; Letter from Stomski to Burgdorf, June 21, 2012, attached hereto as Ex. C.) Despite Judge Burgdorf's warning, Ronnie Hoffman continued his attempts to represent Appellant in the case, and was advised again by Special Referee James Reeves at the final hearing that the unauthorized practice of law was a criminal offense. In light of the clear warnings pertaining to the unauthorized practice of law, Appellant's motion to file a Notice of Appeal prepared by a non-attorney should be denied.

## CONCLUSION

Because Appellant Shelton Hoffman failed to show good cause for untimely filing his Notice of Appeal, has not ordered the transcript and the actions taken so far in the appeal constitute the unauthorized practice of law, the Court must deny Appellant's Motion to Allow Notice of Appeal to be Filed Out of Time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Wallace", written over a horizontal line.

Harriet Pollitt Wallace (SC Bar # 69454)

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(803)771-7900

harriet.wallace@rtt-law.com

Attorneys for Respondent SCBT

Columbia, South Carolina  
May 17, 2013



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 SCBT, N.A., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 Shelton L. Hoffman et al, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 1st JUDICIAL CIRCUIT  
 CASE NO.: 2012-CP-38-0030

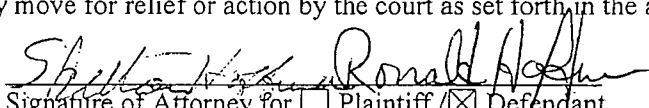
**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney:  
 Rogers, Townsend, Thomas PC, Bar No. 65250  
 Address:  
 220 Executive Center Dr, Cola, SC 29202  
 Phone: 803-771-7900 Fax \_\_\_\_\_  
 E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

Defendant's Attorney:  
 NA, Bar No. NA  
 Address:  
 225 Lightening Hill Road, North, SC 29112  
 Phone: 803-707-5941 Fax 803-359-7031  
 E-mail: good2gorh@aol.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: Add representation by attorney in fact  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES/  NO

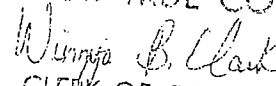
**SECTION II: Motion/Order Type**  
 Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.  
  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted 5/3/12

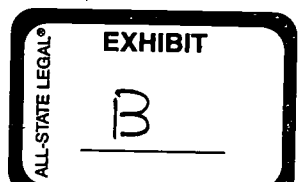
**SECTION III: Motion Fee**  
 PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)  Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in 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.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**  
 Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

ATTEST: TRUE COPY  
  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC



STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;  
South Carolina Department of Revenue; The  
United States of America acting by and through  
its agency the Internal Revenue Service;  
Baird Transport, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-38-0030

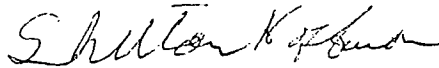
MOTION TO ADD REPRESENTATION  
BY ATTORNEY IN FACT

This motion is filed by Shelton L. Hoffman, *Pro Se* defendant, as represented by Ronald Hoffman, his father's attorney in fact, *Pro Se*:

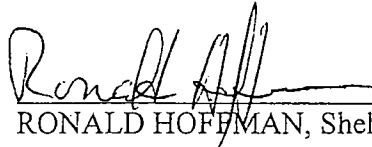
Defendant Hoffman hereby respectfully requests that his son, Ronald Hoffman, his Attorney in fact by virtue of his Power of Attorney, be allowed to represent him for this and all legal cases under the jurisdiction of this Court.

DATED this 3rd day of May, 2012.

Respectfully submitted,



SHELTON L HOFFMAN, Pro Se



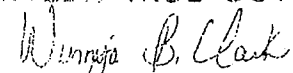
RONALD HOFFMAN, Shelton Hoffman's Attorney In Fact, Pro Se

Shelton L. Hoffman  
2950 Redmond Mill Road  
North, SC 29112  
(803) 707-5944  
[dboxh@aol.com](mailto:dboxh@aol.com)  
*Pro Se*

North, SC  
May 3, 2012

Ronald Hoffman  
225 Lightening Hill Road  
North, SC 29112  
(803) 707-5941  
[good2gorh@aol.com](mailto:good2gorh@aol.com)  
*Pro Se*

ATTEST: TRUE COPY

  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;  
South Carolina Department of Revenue; The  
United States of America acting by and through  
its agency the Internal Revenue Service;  
Baird Transport, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-38-0030

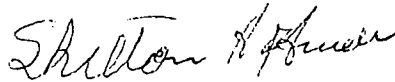
MOTION TO ADD REPRESENTATION  
BY ATTORNEY IN FACT

FILED  
MAY 3 2012  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

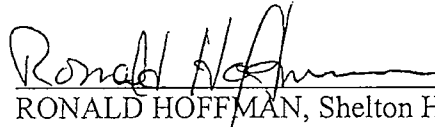
On this date, the Motion to Add Representation by Attorney in Fact was mailed by certified mail to the parties listed below:

Rogers, Townsend & Thomas, PC, Attorneys for Plaintiff  
220 Executive Center Drive, Suite 109  
Columbia, SC 29202

Respectfully submitted,



SHELTON L HOFFMAN, Pro Se

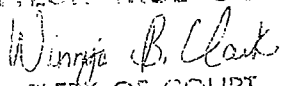


RONALD HOFFMAN, Shelton Hoffman's Attorney In Fact, Pro Se

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Pro Se

North, SC  
May 3, 2012

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CLERK OF COURT  
ORANGEBURG COUNTY, SC



STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;  
South Carolina Department of Revenue; The  
United States of America acting by and through  
its agency the Internal Revenue Service;  
Baird Transport, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-38-0030

AMENDED  
MOTION TO CANCEL HEARING AND  
MOTION TO DISMISS  
FORECLOSURE ACTION AND  
ALL RELATED ACTIONS

RECORDED  
2012-01-13-17

This motion is filed by Shelton L. Hoffman, *Pro Se* defendant, as represented by Ronald Hoffman, his father's attorney in fact, *Pro Se*:

**FACTUAL BACKGROUND**

On or about January 6, 2012, Plaintiff filed an illegal and fraudulent foreclosure Complaint for properties described in Attachment A ("The Property") against Defendant Hoffman. Defendant Hoffman answered the Complaint and requested that Plaintiff provide proof of claim that the matter has not already been settled and closed between the parties, SHELTON L. HOFFMAN AND DONALD E. PICKETT, CHIEF FINANCIAL OFFICER OF SCBT, NA, through a private Administrative Agreement referenced under South Carolina UCC-1 File Number # 111209-1607330. Defendant Hoffman demanded that Plaintiff show cause why their Complaint should not be dismissed. Defendant Hoffman has received no response to that answer. Additionally, Defendant Hoffman has asked Plaintiff to prove its ownership of the mortgage in question, and

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*Winnifred B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC  
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proof of their standing as a real party in interest under Fed. R. Civ. P. 17.<sup>1</sup> Shortly after receiving the Complaint, research conducted by Defendant Hoffman personally, led him to believe that Plaintiff was not, in fact the owner of the subject mortgage. He then found no legally filed assignments of beneficiary or transfers of beneficial interest of the mortgage, in violation of Contract Law that any 5<sup>th</sup> grader could understand.<sup>2</sup> Defendant Hoffman also noted that the original Complaint was fraudulent and illegal, since it requires a non-jury foreclosure. Plaintiff's solicitation to the Court that it be allowed to overturn Defendants' right to trial by jury is fraudulent, see U.S.C.A. Amend. 7 **Trial by jury in civil cases**: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

In Plaintiff's original foreclosure complaint, it referred to other Defendants and debts that do not belong to Defendant Shelton L. Hoffman, but may be related to a relative of his. By making this egregious error, and serving this Complaint and other documents (including, but not limited to the hearing notice) to parties unrelated to Defendant Shelton L. Hoffman, Plaintiff has violated Defendant Hoffman's privacy and slandered his good name. Defendant Hoffman is reviewing his

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<sup>1</sup> A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975))]. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S. 464, 472 (1982).

Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3<sup>rd</sup> 1107, 1112 (9<sup>th</sup> Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

<sup>2</sup> "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI; in re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

rights in this matter, and will likely bring suit against Plaintiff and its attorneys, Rogers, Townsend and Thomas, PC, as they have a duty to ensure the facts in any case with which they are associated, before proceeding with erroneous and damaging information. Their failure to do their due diligence has damaged Defendant Hoffman irreparably, has violated their Code of Ethics, and Defendant Hoffman will seek punitive action in a separate case before this court.

However, Plaintiff, upon being notified of their errors and without responding to any requests by Defendant Hoffman, pursued the case, and has notified Defendant Hoffman, as well as other unrelated Defendants, that a foreclosure hearing is scheduled for May 8, 2012. There is no indication that Plaintiff intends to produce the "wet ink" note requested by Defendant Hoffman, proving that they, in fact, own the mortgage and have standing to request this hearing or to bring a complaint of foreclosure. Defendant Hoffman avers that requesting a hearing without granting him his request to view the note and any other documents proving Plaintiff's standing, is a violation of his due process and cannot be allowed to proceed.

It is also important to note that Plaintiff modified the mortgage in question several times without the use of an attorney, which is illegal in South Carolina, and can render the mortgage invalid.<sup>3</sup>

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<sup>3</sup> "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511, S.E. 2d 372, 379 (Ct.App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E. 2d 735, 738 (1943). "Mrs. Coffey asserts that the doctrine of unclean hands bars Wachovia from seeking equitable relief from our courts. She argues that Wachovia committed the unauthorized practice of law, and, therefore, Wachovia came into court with unclean hands. We agree." "As early as 1987, lending institutions doing business in South Carolina were on notice that they could not prepare legal documents in connection with a mortgage loan without review by an independent attorney and that the loan closing had to be supervised by an attorney. See *State v. Buyers Serv. Co.*, 292 S.C. 426, 431-434, 357 S.E.2d 15, 18-19 (1987) (holding that a commercial title company's employment of attorneys to review mortgage loan closing documents did not save the company's preparation of those documents from constituting the unauthorized practice of law and that the closings should be conducted only under an attorney's supervision), modified by *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); see also *Doe Law Firm v. Richardson*, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (citing *Buyers and McMaster*) (clarifying that a lender may prepare legal documents for use in financing or refinancing a real property loan as long as an independent attorney reviews them and makes any corrections necessary to ensure their compliance with the law and reaffirming that mortgage loan closings should be conducted only under an attorney's supervision). " *Wachovia Bank v. Ann T. Coffey and Bank of America, N.A.*, SC Court of Appeals, No. 4685, May 6, 2010.

Plaintiffs continue to harass Defendant Hoffman, causing much stress and distress, without providing to him any proof of validity of their claim. Plaintiff is proceeding fraudulently into a hearing that must be cancelled, related to a foreclosure action that must be dismissed unless and until Plaintiff can show proof of claim and standing to bring this action.

### SPECIFIC VIOLATIONS

#### 1. Violation of Truth in Lending Act – 15 U.S.C. §1601, *et. seq.* (Against Plaintiff)

The loan transaction at issue is a consumer credit transaction subject to the provisions of TILA.

Plaintiff is a “creditor” as that term is defined by 15 U.S.C. §1602. The transaction between Plaintiff and Defendant Hoffman was a consumer loan transaction wherein Plaintiff (or other parties not divulged to Defendant Hoffman) extended credit to Defendant Hoffman and such credit was secured by an interest purportedly held by the Plaintiff in The Property.

As a consumer credit transaction, the Plaintiff was required to provide to Defendant Hoffman mandatory Truth-In-Lending disclosure statements and notice of the borrower’s right to rescind, specifying the date on which the three-day rescission period expires. If the lending institution fails to provide the rescission information, the borrower may rescind the loan within three years after it was consummated. 15 U.S.C. § 1635(a) and (f); 12 CFR § 226.23(b)(5). If the borrower timely exercises his/her right to rescind, the security interest giving rise to the right of rescission becomes void. *Ibid.*

In the course of the transaction described herein, Plaintiff violated TILA in numerous ways, including, but not limited to: Failing to provide required disclosures prior to consummation of the transaction; failing to make required disclosures clearly and conspicuously in writing; failing to timely deliver to Defendant Hoffman certain notices required by statute; placing terms prohibited by

statute into the transaction; and failing to disclose all finance charge details and the annual percentage rate based upon properly calculated and disclosed finance charges and amounts financed – also in violation of Defendant Hoffman’s intangible rights to honest services.

Records from the transaction indicate that Plaintiffs extended credit to Defendant Hoffman without regard to his ability to pay, and even falsified relevant income and asset data to get the loan approved. Defendant Hoffman is informed and believes and thereon alleges that Plaintiffs have a pattern and practice of extending credit to consumers under high rate mortgages without regard to the consumers’ repayment ability.

Because of these violations, Defendant Hoffman has a continuing right to rescind the loan transaction for up to three years after consummation of the transaction. Defendant Hoffman hereby gives notice of rescission by and through this Motion.

Because of these violations, Plaintiff is liable to Defendant Hoffman in the amount of twice the finance charge, actual damages to be established at trial, and costs in accordance with 15 U.S.C. § 1640(a). Defendant Hoffman is also entitled: Rescission of the loan transaction; an order requiring Plaintiff to take all actions necessary to terminate any security interest in The Property created under the transaction and a declaration by the Court that the security interest is void; expungement of any foreclosure instruments, including but not limited to any Notice of Default, relating to the transaction from any public record; removal of any derogatory information reported to any credit reporting agency or credit reporting bureau relating to the transaction; the return to Defendant Hoffman of any money given by Plaintiff to anyone, including Plaintiff, in connection with the loan transaction; statutory damages; costs and reasonable attorney’s fees; and such other relief as the Court may deem just and proper.

As a result of Plaintiff’s misconduct, Defendant Hoffman has suffered and continues to suffer damages in an amount to be proven at trial, which he is entitled to recover. Moreover,

Plaintiff's misconduct including perjury and other false impersonations was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

As a result of Plaintiff's misconduct, the loans were void and unenforceable as of their inception, and therefore Defendant Hoffman is entitled to rescind the loan agreements and promissory notes and do hereby demand rescission.

As a result of Plaintiff's misconduct, Defendant Hoffman is entitled to declaratory and injunctive relief preventing Plaintiffs from taking any action to collect on the loan, and/or to foreclose upon The Property, and/or to transfer The Property.

## **2. Violation of RESPA – 12 U.S.C. §2601, *et. seq.* (Against Plaintiff)**

The loan transaction between Plaintiff and Defendant Hoffman is a mortgage loan covered by RESPA based on using the status of "owner-occupied" in loan applications by lenders.

Defendant Hoffman is not certain at this time if the Plaintiff was actually the servicer of the loan at any given time, although he believed that the loan servicer was the Plaintiff at the time of the foreclosure. However, due to the conspiratorial nature of the misdeeds alleged herein, and also due to Plaintiff's general failure to properly advise Defendant Hoffman as to the roles and identities of the various entities that were purportedly handling his loan at any given time, these allegations are made as to Plaintiff and any others who may have been involved at any time during the life of this loan.

Plaintiff violated RESPA at the time of closing on the sale of The Property by failing to correctly and accurately comply with disclosures required by law.

Plaintiff violated RESPA, 12 U.S.C. §2605(e)(2) by failing and refusing to provide a written explanation or response to Defendant Hoffman's Qualified Written Request not later than 60 days after receipt of the request.

Defendant Hoffman is informed and believes, and thereon alleges, that Plaintiff has engaged in a pattern or practice of non-compliance with the requirements of the mortgage servicer provisions of RESPA, as set forth in 12 U.S.C. §2605.

As a result of Plaintiff's failure to comply with RESPA, Defendant Hoffman has suffered and continues to suffer damages and cost of suit. Defendant Hoffman is entitled to recover statutory damages of \$1,000.00, actual damages in an amount to be determined at trial, and costs and reasonable attorney's fees.

### **3. Fair Debt Collection Practices Act (Against Plaintiff)**

Plaintiff's actions constitute a violation of the FDCPA in that they threatened to take actions not permitted by law, including, but not limited to: Foreclosing upon a void security interest; foreclosing upon a note of which they were not in possession nor otherwise entitled to payment; falsely stating the amount of a debt; increasing the amount of a debt by including amounts that are not permitted by law or contract; and using unfair and unconscionable means in an attempt to collect a debt.

Similarly, the law firm retained by Plaintiff is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Rogers, Townsend & Thomas Law Firm to verify actual ownership and factual, legal debt.

Plaintiff's actions have caused Defendant Hoffman actual damages, including, but not limited to: Severe emotional distress, including, but not limited to, loss of appetite, frustration, fear, anger, helplessness, nervousness, anxiety, sleeplessness, sadness and depression.

As a result of Plaintiff's actions, Defendant Hoffman is entitled to statutory damages in an amount to be determined at trial, actual damages according to proof, and costs and reasonable attorney's fees.

#### **4. Quiet Title (Against Plaintiff)**

Plaintiff claims an interest adverse to Defendant Hoffman's interest in The Property, in the form of the Mortgage recorded pursuant to the loan transaction, and Defendant Hoffman is seeking to quiet title against the claims of Plaintiff under such Mortgage.

Defendant Hoffman desires and is entitled to a judicial declaration quieting title in Defendant Hoffman's name as of October 21, 2003, the date on which the loan transaction was consummated.

#### **5. Wrongful Foreclosure (Against Plaintiff)**

UCC §3 specifically identifies the persons who are entitled to enforce a security interest, such as instituting a foreclosure sale under a deed of trust. The statute is exclusive rather than inclusive in nature, and those who are not identified do not have the right to enforce such an interest.

Defendant Hoffman is informed and believes and thereon alleges that Plaintiff was not and is not in possession of the Note, and is not otherwise entitled to payment. Moreover, Defendant Hoffman is informed and believes and thereon alleges that said Plaintiff is not a "person[s] entitled to enforce" the security interest on The Property, as that term is defined in UCC §3.

In the foreclosure Complaint, Plaintiff claimed that it was the holder of the beneficial interest under the Mortgage as of October 21, 2003. Defendant Hoffman is informed and believes and thereon alleges that such claim was false, and Plaintiff had reason to know that such claim was false. Moreover, Defendant Hoffman is informed and believes and thereon alleges that Plaintiff was not in possession of the Note, and was not entitled to enforce the security interest on the Property.

Said Plaintiff's failure to comply with statutory notice requirements denied Defendant Hoffman the opportunity to exercise the rights that the statutory notice is specifically designed to protect.

Said Plaintiff did not have the right to seek to foreclose upon the Property under the law. Even assuming, arguendo, that Plaintiff did have some right to enforce the security interest, the procedures used violated statutory requirements governing foreclosures.

As a direct and proximate result of said Plaintiff's wrongful actions, Defendant Hoffman has suffered damages, including, but not limited to, direct monetary loss, consequential damages and emotional distress.

In committing the wrongful acts herein, Plaintiff acted with malice, oppression, fraud, and perjury by written testimony in a court of law. Said Plaintiff's willful conduct warrants an award of exemplary damages in an amount sufficient to punish the wrongful conduct and deter such misconduct in the future.

#### **6. Slander of Title (Against Plaintiff)**

Plaintiff disparaged Defendant Hoffman's exclusive valid title in 2012, by and through the preparing, posting, publishing and recording of the documents previously described herein, including, but not limited to, the foreclosure Complaint and Notice of Hearing or Other Means of Loss Mitigation. Said Plaintiff knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Plaintiff had no right, title or interest in The Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Defendant Hoffman's legal title to The Property. By posting, publishing, and recording, said documents, Plaintiff's disparagement of Defendant Hoffman's legal title was made to the world at large. Similarly, the law firm retained by Plaintiff is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Rogers, Townsend & Thomas Law Firm to verify actual ownership and factual, legal debt.

As a direct and proximate result of Plaintiff's conduct in publishing these documents, Defendant Hoffman's title to The Property has been disparaged and slandered, and there is a cloud on Defendant Hoffman's title, and Defendant Hoffman has suffered, and continues to suffer, damages in an amount to be proved including loss of business and business goodwill. As a further proximate result of Plaintiff's conduct, Defendant Hoffman has incurred, and will continue to incur, expenses, including reasonable attorney's fees, in order to clear title to The Property. Moreover, these expenses are continuing, and Defendant Hoffman will incur additional charges for such purpose until the cloud on Defendant Hoffman's title to The Property has been removed. The amounts of future expenses and damages are not ascertainable at this time.

As a further direct and proximate result of Plaintiff's egregious conduct, Defendant Hoffman has suffered loss of business, humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to his health and well-being, and continues to suffer such injuries on an ongoing basis. The amount of such damages shall be proven upon request by the court.

At the time that the false and disparaging documents were created and published by the Plaintiff, Plaintiff knew the documents were false and created and published them with the malicious intent to injure Defendant Hoffman and deprive him of his exclusive right, title, and interest in The Property, and to obtain The Property for their own use by unlawful means. Plaintiff committed perjury before the court by asserting they had ownership based on void and false documents.

The conduct of the Plaintiff in publishing the documents described above was fraudulent, oppressive, and malicious. Therefore, Defendant Hoffman is entitled to an award of punitive damages in an amount sufficient to punish Plaintiff for their malicious conduct and deter such misconduct in the future.

## **7. Civil Conspiracy (Against Plaintiff)**

Defendant Hoffman is informed and believes, and thereon alleges, that Plaintiff conspired and agreed to implement a scheme to defraud and victimize Defendant Hoffman through the predatory lending practices and other unlawful acts alleged herein.

Defendant Hoffman is informed and believed and thereon alleged that Plaintiff did the acts and things alleged herein pursuant to and in furtherance of their conspiracy to defraud and victimize Defendant Hoffman, and use tainted court processes to steal Defendant Hoffman's property.

Defendant Hoffman is informed and believes that Plaintiff s committed acts in furtherance of the conspiracy, and/or lent aid and encouragement to their co-conspirators and/or ratified and adopted the acts of their co-conspirators, and are thus jointly and severally liable for all harm to Defendant Hoffman resulting from the conspiracy, see *Salinas v. United States*, 118 S. Ct. 469 (1997) at pg. 470: "...conspiracy is distinct evil, dangerous to public, and so punishable in itself."

As the direct and proximate result of Plaintiff's conspiracy to defraud and victimize Defendant Hoffman, Defendant Hoffman has suffered damages, including, but not limited to, direct monetary loss, consequential damages, and emotional distress.

In conspiring to defraud and victimize Defendant Hoffman, and in committing the wrongful acts alleged herein, Plaintiff acted with malice, oppression, and fraud including perjury by written testimony in a court of law, thus justifying an award of exemplary damages in an amount sufficient to punish their wrongful conduct and deter such misconduct in the future.

## **8. Unfair Business Practices – South Carolina Unfair Trade Practices Act (Against Plaintiff)**

Defendant Hoffman is informed and believes and thereon alleges that Plaintiff committed unlawful, unfair and/or fraudulent business practices, as defined by South Carolina Unfair Trade Practices Act by engaging in the unlawful, unfair, and fraudulent business practices alleged herein.

As a result of Plaintiff's wrongful conduct, Defendant Hoffman has suffered various damages and injuries.

Defendant Hoffman seeks injunctive relief enjoining Plaintiff from engaging in the unfair business practices described herein.

Defendant Hoffman further seeks restitution, disgorgement of sums wrongfully obtained, costs of suit, reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

**9. Fraud and Swindle 19 U.S.C. §1346 any scheme or artifice to defraud; 18 U.S.C. §1001 statement or entries generally (Against Plaintiff)**

As alleged herein, Plaintiff has made several representations to Defendant Hoffman with regard to important facts.

These representations made by Plaintiff were false.

Plaintiff knew that these representations were false when made, or these representations were made with reckless disregard for the truth.

Plaintiff intended that Defendant Hoffman rely on these representations.

Defendant Hoffman reasonably relied on said representations.

As a result of Defendant Hoffman's reliance, he was harmed and suffered damages. Defendant Hoffman's reliance on Plaintiff's false representations was a substantial factor in causing Defendant Hoffman's harm.

Plaintiff is guilty of malice, fraud or oppression, and Plaintiff's actions were malicious and done willfully, in conscious disregard of the rights and safety of Defendant Hoffman, in that the actions were calculated to injure Defendant Hoffman.<sup>4</sup> As such, Defendant Hoffman is entitled to

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<sup>4</sup> South Carolina allows punitive damages, except in actions against the state or other governmental entity and in product liability actions based on strict liability. Punitive damages are allowed upon a showing by clear and convincing

recover, in addition to actual damages, punitive damages to punish Plaintiff and to deter future misconduct.

WHEREFORE, Defendant Hoffman prays for judgment and an order against Plaintiff as follows:

- A. That Foreclosure Hearing scheduled for May 8, 2012 be cancelled.
- B. That judgment be entered in his favor and against Plaintiff.
- C. For an order and judgment stating that the Mortgage claimed by Plaintiff is adjudged void and of no legal force and effect and shall be cancelled, stricken, and or rescinded forthwith.
- D. For a temporary restraining order, preliminary and permanent injunction directing the Master in Equity to refrain from executing any foreclosure orders with respect to The Property.
- E. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiffs, or anyone acting under or in concert with them, from collecting on the subject loan and from causing The Property to be sold or assigned to a third party.
- F. For an order stating that Plaintiff engaged in unfair business practices.
- G. For an order stating that the Mortgages, Foreclosure Complaint or any related Notices, constitute slander of title to Defendant Hoffman and The Property.
- H. For an order and judgment quieting title to The Property for Defendant Hoffman.
- I. For damages, disgorgement, and injunctive relief under South Carolina's common and statutory law of unfair business practices.
- J. For compensatory and statutory damages, attorney's fees and costs.
- K. For exemplary damages in an amount sufficient to punish Plaintiff's wrongful conduct and deter future misconduct.

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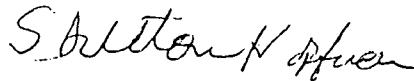
evidence of malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof. *King v. Allstate Ins. Co.*, 251 S.E. 2d 762 (S.C. 1979). S.C. Code § 15-33-135.

L. For mandatory prosecution of Plaintiff and seizure of all their assets as fruits of a racketeering enterprise.

M. For such other and further relief as the Court may deem just and proper.

DATED this 3rd day of May, 2012.

Respectfully submitted,



\_\_\_\_\_  
SHELTON L HOFFMAN, Pro Se



\_\_\_\_\_  
RONALD HOFFMAN, Shelton Hoffman's Attorney In Fact, Pro Se

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*Pro Se*

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[good2gorh@aol.com](mailto:good2gorh@aol.com)  
*Pro Se*

North, SC  
May 3, 2012

ATTACHMENT A

Description of Properties:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

Also:

All that certain piece, parcel or tract of land; containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:  
Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.  
Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of

ATTEST: TRUE COPY  
*Wynne B. Clark*  
CLERK OF COURTS  
ORANGEBURG COUNTY  
Page 15 of 16

Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightening Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodor Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001  
0089-00-03-003

Property Address: 3897 North Road, Orangeburg, SC 29115

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;  
South Carolina Department of Revenue; The  
United States of America acting by and through  
its agency the Internal Revenue Service;  
Baird Transport, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

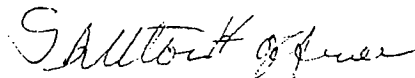
C/A NO.: 2012-CP-38-0030

AMENDED  
MOTION TO CANCEL HEARING AND  
MOTION TO DISMISS  
FORECLOSURE ACTION AND  
ALL RELATED ACTIONS

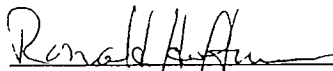
On this date, the Amended Motion to Cancel Hearing and Motion to Dismiss was mailed by certified mail to the parties listed below:

Rogers, Townsend & Thomas, PC, Attorneys for Plaintiff  
220 Executive Center Drive, Suite 109  
Columbia, SC 29202

Respectfully submitted,



SHELTON L HOFFMAN, Pro Se



RONALD HOFFMAN, Shelton Hoffman's Attorney In Fact, Pro Se

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Pro Se

North, SC  
May 3, 2012

ATTEST: TRUE COPY

Wingja B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY SC

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LICENSED IN SOUTH CAROLINA



June 21, 2012

**VIA FACSIMILE (803) 533-5898**

The Honorable O. Davie Burgdorf  
Orangeburg County Master in Equity  
PO Drawer 9000  
Orangeburg, SC 29116

RE: SCBT, N.A. vs. Shelton Hoffman, et al.  
C/A#: 2012-CP-38-0030

Dear Judge Burgdorf:

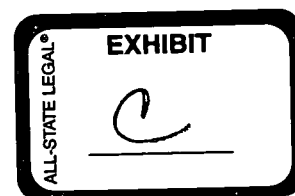
I have just received Ms. Collins' letter addressed to you, dated June 21<sup>st</sup>, via email today at 11:55 AM and I must say that I am surprised and concerned by the misstatements and omissions by Ms. Collins therein. Please forgive this lengthy letter but based on Ms. Collins letter, I feel it is necessary to make sure you have the whole story.

This this matter has been pending since January. When the parties were before you at our original hearing on May 8, 2012, you continued the hearing when Defendant Shelton Hoffman ("Defendant") did not appear. He had not requested a continuance but sent his twin sons to be his "attorney in fact representative." From the bench, you instructed them that by law they could not represent their father's interests in court and that if their father wanted representation, he should seek counsel immediately because you would not be continuing the next hearing.

Ms. Collins filed a Notice of Appearance with this honorable court on May 30<sup>th</sup>, not June 6<sup>th</sup> as stated in her letter. Prior to receiving the Notice of Appearance, Ms. Collins' paralegal contacted me and I provided her with my paralegal's email address and she then emailed my paralegal requesting service addresses for the co-defendants in the action and we willingly obliged to assist them in timely filing the Notice of Appearance.

My office did not hear from Ms. Collins' office for approximately two (2) weeks thereafter and the first mention of taking depositions did not come until on or about June 11<sup>th</sup> when I received a call from Ms. Collins' paralegal regarding scheduling depositions of an SCBT employee, Bruce Rheney, for June 20<sup>th</sup>, less than the 10 days' notice required by the Rules.

Thereafter, she called me to say that the June 20<sup>th</sup> date might not work because of a scheduling conflict for Ms. Collins and I reminded the paralegal of Your Honor's ruling from the bench that the June 26<sup>th</sup> hearing would not be continued. She said she would relay that information to Ms. Collins and call me back but as of Friday, June 15<sup>th</sup>, I had yet to receive any further communications from her office, nor had I received a Notice of Deposition, despite the fact that her office had communicated with my office



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previously by both phone and email. Therefore, I had no reason to believe that the deposition date had changed and certainly not that it would occur before June 20<sup>th</sup>. Further, in all the conversations I had with Ms. Collins' office, no indication or notice was ever given that Defendant would be seeking written or production discovery.

On Monday, June 18<sup>th</sup>, I opened my mail to find that the date listed on the Notice of Deposition was Tuesday, June 19<sup>th</sup> – the next day – and that the Defendant was serving Requests to Produce and Interrogatories. I immediately called Ms. Collins to object to the lateness of the request and voice my concern that she had failed to provide these documents to me via email or fax or to even call any time between the purported filing date of Thursday, June 14<sup>th</sup> and Monday, June 18<sup>th</sup> and that this appeared to be an attempt to delay so as to force a continuance of the June 26<sup>th</sup> hearing. Ms. Collins provided "unsuccessful fax transmission" notices for Thursday, June 14<sup>th</sup> showing the fax "bounced back" that day but nothing to show that any attempt was made on Friday, June 15<sup>th</sup> to send the notices or contact our office to let us know that she had unilaterally changed the agreed up deposition date and scheduled them at her office in West Columbia and not in Orangeburg County as required by Rule 30.

Despite Defendant's failure to provide adequate notice, Plaintiff was prepared to move forward with the June 19<sup>th</sup> deposition. Several calls were exchanged that day between Ms. Collins and me and it was agreed we would not delay the hearing per your ruling and further, that she would not be arguing the Defendant's "sham" defenses to include the purported "Private Administrative Agreement" UCC/Secretary of State filing referenced in his Answer. Accordingly, Plaintiff focused its answers to discovery and was completing the discovery requests received that morning in preparation for the deposition the next day.

At 5:18 PM, Ms. Collins' paralegal emailed me with an Amended Notice of Deposition, again moving the deposition without proper notice to Friday, June 22<sup>nd</sup>. Ms. Collins emailed shortly thereafter at 7:23 PM stating that her client would also be taking the deposition of another SCBT employee.

At 10:10 PM on Tuesday, June 19<sup>th</sup>, Ms. Collins emailed me changing her position from the previous day:

"As a matter of courtesy and based upon the limited answer I have to work under, I need to amend a prior statement about my not intending to argue the secured party creditor issue, as well as other general defenses. Since I indicated previously that I did not intend to argue the matter, I am just letting you know as a professional courtesy that is no longer the case. This is also in light of my client's repeated request for me to do so, and I need to argue the matter to prevent subsequent disagreement that I did not argue all available defenses. I am sure you understand."

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As for the time Ms. Collins said she would need to review the documents prior to the deposition, she stated:

"I would also need the documents requested in my recent discovery to commence the deposition as early as possible to allow review prior to the deposition. Thursday by 3:00 would be sufficient time for my preparation." (emphasis added)

The Defendant's change in the agreed upon scope of the hearing and discovery put Plaintiff at a further disadvantage in answering the discovery requests by Thursday, June 21<sup>st</sup> but in consideration of and in compliance with Your Honor's prior ruling, Plaintiff provided answers to Defendant's discovery requests on Wednesday, June 20<sup>th</sup> - well before Ms. Collins' deadline of Thursday, June 21<sup>st</sup> at 3:00.

The responses were deposited in the mail but to avoid delay and provide Ms. Collins with additional preparation time, they were also made available for pick-up at our front desk, which is open until 6:00 PM Monday-Friday.

Ms. Collins emailed me beginning at 7:50 PM that evening/last night until 10:54 PM asking for additional documents, which had either been provided already or were outside of the scope of her original discovery requests. In her final email of the evening, she said "Let's talk in the mid morning. Then, maybe we can get a conference call with the judge."

This morning she and I exchanged emails, the last of which was 8:42 AM, wherein she acknowledged she was already in receipt of certain documents she had asked for and ended by saying "Let me know the status of the ""internal communications" and email search" - both of which were not part of her original discovery requests.

As I was awaiting our "mid morning talk" to discuss setting up a conference call with you, I continued to gather information in response to her numerous additional discovery requests sent by email the night before because I was still under the impression that we were proceeding toward a conference call with you to discuss the matter. At 11:39 AM this morning, I emailed her and provided additional information showing that what she is looking for apparently does not exist in the Plaintiff's records, subject to my objection that her emails did not constitute appropriate supplemental discovery requests under the Rules.

Fifteen minutes after this, I received her letter to you wherein she misstated when she was retained, failed to acknowledge her own delay in requesting discovery or depositions, failed to mention your ruling from the bench regarding no continuances, misstated the date she provided Plaintiff with the discovery requests and the initial notice of deposition, misstated that Plaintiff has not fully complied with the discovery requests, omitted that she gave Plaintiff until today at 3:00 to provide responses to discovery (which it provided a day early) and omitted other material and relevant facts leading up today.

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LICENSED IN SOUTH CAROLINA



Further, it is the Plaintiff's position that the discovery she is seeking is in regard to defenses that have not been timely plead, are not relevant to the subject matter involved in the pending action, and any delay of the proceedings to allow discovery for same would result in a fishing expedition without a reasonable expectation of obtaining information that would aid the dispute's resolution.

For the reasons stated herein, I respectfully oppose Defendant's request to continue this hearing for a second time. If Defendant's true motivation is to compel discovery, Plaintiff would agree to waive the 10 day hearing notice to have a Motion to Compel heard prior to next week's foreclosure hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teri K. Stomski", is written over a large, light-colored circular scribble or stamp.

Teri K. Stomski  
Attorney at Law

cc: Margaret A. Collins, Esquire (via electronic delivery)  
Matthew Modica, Esquire (via facsimile (843)-727-4078)  
Thomas Gore, Esquire (via facsimile (912) 232-7060)  
Milton G. Kimpson, Esquire (via facsimile (803) 898-5147)

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**CERTIFICATE OF SERVICE**

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I HEREBY CERTIFY that I have served the Respondent's Motion to Dismiss Appeal on May 17, 2013, on the Attorney for Appellant, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Mark W. Hardee, Esquire  
2301 Devine Street  
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**RECEIVED**  
MAY 17 2013  
**SC Court of Appeals**