

APPENDIX

Final Orders

Appellant's Final Brief

Appellant's Final Reply Brief

Respondent's Final Brief

Record on Appeal



The South Carolina Court of Appeals

TANYA A. GEE
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V: CLAIRE ALLEN
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June 27, 2011

Laura Toney
P.O. Box 722
Bishopville, SC 29010

Henry Guyton Murrell, Esquire
Korn Law Firm, PA
P.O. Box 11264
Columbia, SC 29211

Re: LaSalle Bank v. Toney, Laura

Dear Counsel:

Enclosed is the opinion of the Court of Appeals in this case.

Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Lee County after fifteen (15) days, exclusive of the date of filing of this opinion.

No extension for a petition for rehearing will be granted except in the most extraordinary circumstances and, except in the rarest cases, with seven days' notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson", is written over the typed name.

Renee S. Johnson
Administrative Specialist

TAG/rj

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

LaSalle Bank National
Association, as Trustee for the
registered holders of Structured
Asset Securities Corporation,
Structured Asset Investment
Loan Trust, Mortgage Pass-
Through Certificates, Series
2004-11, Respondent,

v.

Laura Toney, Appellant.

Appeal From Lee County
Richard L. Booth, Special Referee

Unpublished Opinion No. 2011-UP-334
Submitted June 1, 2011 – Filed June 27, 2011

AFFIRMED

Laura Toney, pro se, of Bishopville.

H. Guyton Murrell, of Columbia, for Respondent.

PER CURIAM: Laura Toney appeals the special referee's denial of her motion for relief from a foreclosure order pursuant to Rule 60(b), SCRCF. Toney argues the special referee erred in finding Toney had no meritorious defense and in failing to grant relief based on mistake and excusable neglect. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: Rule 60(b), SCRCF ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect."); BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006) ("The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief."); id. at 551, 633 S.E.2d at 502 ("Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. [The appellate] standard of review, therefore, is limited to determining whether there was an abuse of discretion. An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." (citations omitted)).

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
In the Court of Appeals
Appeal from Lee County
Richard Booth, Master-In-Equity

RECEIVED

JUL 11 2011

SC Court of Appeals

LaSalle Bank National Association
Trustee for Lehman Brothers
Structured Asset Investment Loan
Trust Sail 2005,

Respondent,

Laura Toney,

Appellant.

PETITION FOR REHEARING EN BLANC

Pursuant to Rule 240 the Appellant respectfully request a Rehearing in
The above case. The Appellant is also requesting a Rehearing En Blanc
pursuant to Rule 219. The Appellant has concerns about some of the
activities in this case. Mr. Murrell was constantly writing letters to the Clerk
of Court discrediting the Appellant. **Why was this allowed?** I thought all
communication was supposed to be in the form of a motion. I felt at times

that Mr. Murrell had a personal relationship with the Clerk's Office because they soon began to refer to him as "Guy" in written communication. I felt that this was very inappropriate and it took away from the integrity of the courts. This case involves several federal issues. I appeal to this court to please judge this case on the merits and not on the negative comments made by Mr. Murrell in his attempts to mislead the courts. Mr. Murrell stated that I have uncleaned hands. The only reason that I filed multiple bankruptcies is because Mr. Murrell had no respect for the Truth In Lending Act. I made many mistakes with the bankruptcy schedules which was misinterpreted as bad faith. I kept re-filing attempting to correct those mistakes. Mr. Murrell has misled every court proceeding by focusing on my multiple bankruptcies. I pray that this court will focus on the issues in this case and not my bankruptcies. What was more surprising to me that Mr. Murrell printed a Supplemental Record on Appeal. This same information was in the Appellant's Record on Appeal. This was another one of his strategies to mislead the courts.

When I rescinded the loan, I had a pre-approved loan with less interest and lower payments. The Respondent refused to honor my rescission letter. **The Respondent cited several cases in his Final Briefs. Please take the time**

to read these cases. You will see that Mr. Murrell overlooked some very important information in them in order to mislead the courts.

1. In Yamamoto v. Bank of N.Y., in the United States Court of Appeals for the Ninth Circuit, the court ruled that “unilateral notification of cancellation does not automatically void the loan contract,” but what the Respondent failed to acknowledge is that the Bank of N.Y. timely responded to the letter to rescind the loan within (20) days which is mandated by the Truth-In-Lending. I mailed a letter to rescind my loan on June 2005. The Respondent failed to answer in the (20) days and proceeded with the foreclosure and sale of my home. According to by Regulation Z, their interest in my property null and void. **In Yamamoto, the United States Court of Appeals for the Ninth District states, “If BNY (Bank of N.Y.) had acquiesced in Tampon’ notice of rescission, then the transaction would have been rescinded automatically, thereby causing the security interest to become void and triggering the sequence of events laid out in subsections (d)(2) and (d)(3).”** But here BNY contested the notice and produced evidence sufficient to create a triable issue of fact about compliance with TILA’s disclosure requirements. The Respondent failed to file a Declaratory Judgment as mandated by Regulation Z, which nullified all of there interest in the Appellant’s house. **Also, as cited in this case, The Bank of New**

York had enough respect for the courts and the Truth-In-Lending Act to discontinue the foreclosure proceedings until after the Truth-In-Lending violations were adjudicated. Mr. Murrell conveniently failed to mention that. The Respondent went forward and filed foreclosure without even responding to the letter of rescission with a Declaratory Judgment as mandated by Regulation Z. In my case, there was no response from the Respondent after the Appellant mailed certified letters to them informing them of my wish to cancel the loan. The Appellant had a pre-approved loan to tender to the Respondent.

2. Also, in Williams v. Homestake Mortgage Co., the court acknowledged the violations of the Truth-In-Lending Act. Homestake was cited as violating (3) Truth In Lending violations in this case. **In this case, the judgment was vacated and remanded for further proceedings.** Homestake could not determine whether the Williams' had the ability to tender, they violated the TILA when they failed to respond to the letter to rescind the loan.

3. In American Mortgage Network Inc., v. Shelton, **in the United States Court of Appeals for the Fourth District**, again the Respondent has brilliantly misled the courts. In this case, the American Mortgage Network, Inc. timely filed a Declaratory Judgment disputing that the Sheltons had the right to rescind their mortgage. The United Court of Appeals for the Fourth

Circuit follows these cases, but the Respondent has misled the courts about the true merits of these cases. The Respondents don't have any interest in my home.

4. Also, in Large v. Conseco Fin. Servicing Corp., Conseco replied within the mandatory (20) days to a letter of rescission. I urge the court to seriously read these cases and don't take what Mr. Murrell has written as "gospel." I am not the horrible person that Mr. Murrell has painted me to be. I am simply fighting for justice. Mr. Murrell is not accustomed to anyone challenging him. His job is just to go in and foreclose with no regards to the laws or the rights of others. If every homeowner were to do an audit of their loan documents, they will discover violations from the creditor. **Why am I being labeled as a bad faith litigant because I am exposing the corruption by lenders and the attorneys they hire to cover up their illegal activities?**

5. The Appellant rescinded the loan and the Respondent had (20) days in which to respond. They failed to respond in a timely manner. I am not an attorney and I understand this. Legally, the Respondent lost their interest in my home when they failed to respond within the (20) days as mandated by the Truth-In-Lending Act.

6. According to the Office of Comptroller of the Currency and the Federal Trade Commission, the Respondent's security interest is void after a letter of rescission is mailed. The statute and regulation specify that the security interest, promissory note or lien arising by operation of law on the property becomes automatically void. (15 U.S.C. 1635(b); Reg. Z 226.15(d)(1), 226.23(d). As noted in the Official Staff Commentary, the creditor's interest in the property is "automatically negated regardless of its status and whether or not it was recorded or perfected." Also, Non-Compliance is a violation of the act which gives rise to a claim for actual and statutory damages under USC 1640. As an officer of the court, the Respondent has a responsibility to adhere to the law. Violation of the Truth-In-Lending is a federal violation and subjects the Respondent to penalties and fines. Mr. Murrell stated that I hand uncleaned hands, but he violated federal law. I have gotten to know Mr. Murrell through litigations in court and I know Mr. Murrell will perform any illegal act to represent his clients.

7. Once the court finds a violation such as not responding to the TILA rescission letter, no matter how technical, it has no discretion with respect to liability (in re Wright, supra. At 708; In re Porter v. Mid-Penn Consumer Discount Co., 961 F,2d 1066, 1078 (3d. Cir. 1992); Smith v. Fidelity Consumer Discount Co., Supra. At 898. Any misgivings creditors may have

about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts.

8. If a lender fails to respond with (20) days to the notice of rescission, the ownership of the property vests in the borrowers and they are no longer required to pay the loan. See 1635(b); Staley v. Americorp Credit Corp., 164 F. Supp. 2d 578, 584 9D. Md. 2001); Gill v. Mid-Penn Consumer Discount Co., 671f. Supp. 1021 (E.D. Pa 1987).

9. Regulation Z states that if the creditor disputes a valid letter of rescission he must file a Declaratory Judgment with (20) days of receipt of the letter. The Respondent never responded to the letter, instead began foreclosure on the Appellant's home.

10. Very few Defendants would have had the motivation to defend a foreclosure. Numerous people everyday lose their homes to predatory lenders who hire attorneys like the Korn Law Firm to cover up their illegalities. So far, Mr. Murrell has done an excellent job in covering up federal violations, forgery, and violation of the Appellant's due process.

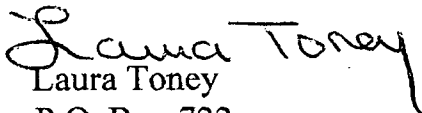
11. Also, there was forgery of Federal documents verified by a handwriting specialist. The Appellant feels that none of these issues were addressed by the courts. I was informed by many people that I would never get justice in South Carolina Court System, but I defied those statements.

12. The courts also went forward with the foreclosure hearing without me or my attorney present. The Appellant questions the validity of the transcript of the hearing before Judge Newman. The court reporter never mailed a copy of the transcript to the Appellant after the Appellant mailed a deposit. After checking with the Court Administration's Office, the Appellant was informed that she is no longer a court reporter and they have no way of getting the transcript. The Respondent is the only one who had a copy of the transcript. The Appellant does not remember making the statement in the Respondent's Final Brief.

For the aforementioned reasons, the Appellant feels that she does have a meritorious defense to allow her a new trial. The Appellant respectfully request that the court:

1. Declare the Foreclosure of the Appellant's home null and void;
2. Reverse and Remand this case for further proceedings.

July 8, 2011


Laura Toney
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

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JUL 11 2011

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

The Honorable Richard Booth, Master-In-Equity

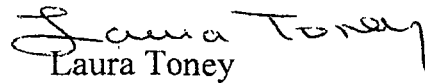
Case No. 2005-CP-31-169

LaSalle Bank National Association, as Trustee
For the registered holders of Structured Asset
Securities Corporation, Structured Asset
Investment Loan Trust, Mortgage Pass-
Through Certificates, Series 2004-11-----Respondent

v.

Laura Toney-----Appellant

This is to certify that I, Laura Toney, mailed a copy of the Motion for
Rehearing En blanc to the Korn Law Firm addressed as follows: P.O. Box
12369, Columbia, SC 29211 via United States Mail on July 8, 2011.


Laura Toney
P.O. Box 722
Bishopville, SC 29010



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 19, 2011

Laura Toney
P.O. Box 722
Bishopville, SC 29010

Re: LaSalle Bank v. Toney, Laura

Dear Ms. Toney:

Enclosed is a copy of an Order of the Court denying your Petition for Rehearing in the above case.

Your petition for rehearing en banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR (amended April 28, 2011).

The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of \$7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson", is written over a horizontal line.

Renee S. Johnson
Administrative Specialist

A handwritten signature in black ink, appearing to read "Henry Guyton Murrell", is written over a horizontal line.

TAG/rj

cc: Henry Guyton Murrell, Esquire

The South Carolina Court of Appeals

LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Securities
Corporation, Structured Asset
Investment Loan Trust, Mortgage Pass-
Through Certificates, Series 2004-11, Respondent,

v.

Laura Toney,

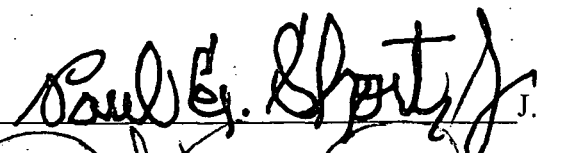
Appellant.

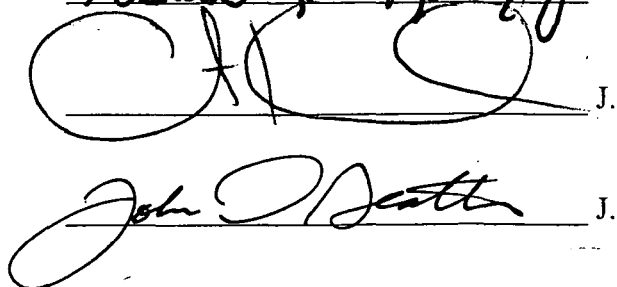
The Honorable Richard L. Booth
Lee County
Trial Court Case No. 2005-CP-31-00169

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.





Columbia, South Carolina

cc: Laura Toney
Henry Guyton Murrell, Esquire

FILED

SEP 19 2011

18265

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEE COUNTY

Richard Booth, Master-In-Equity

Case No. 05-CP-31-169

LaSalle Bank National Association, as Trustee for
The registered holders of Structured Asset Securities
Corporation, Structured Asset Investment Loan
Trust, Mortgage Pass-Through Certificates, Series
2004-11.

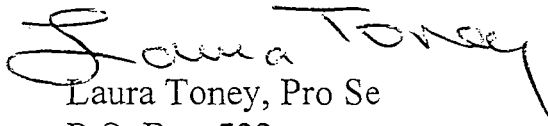
Respondent

1

Vs.

Laura Toney

RECORD ON APPEAL



Laura Toney, Pro Se
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

Korn Law Firm
P.O. Box 11264
1300 Pickens Street
Columbia, SC 29211



DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Richard Booth, Master-In-Equity

Case No. 2005-CP-31-169

LaSalle Bank

Respondent

v.

Laura Toney

Appellant

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Letter of Rescission dated June 14, 2005;
2. Summons and Complaint;
3. Answer dated;
4. Order from Foreclosure hearing dated February 6, 2007;
5. Order from Hearing on October 18, 2007;
6. Affidavit of Cheryl Scott Jones;
7. Affidavit of Laura Toney from hearing on October 18, 2007;
8. Affidavit of Michael May;
9. Affidavit Letia Benjamin;
10. Exhibit #3 Attorney Preference from the February 6, 2007 Hearing and March 27, 2007 Hearing;
11. Exhibit #8 HUD Statement admitted into evidence at the February 6, 2007 Hearing;
12. Forgery Report;

13. Transcript of Proceeding dated February 6, 2007 (page-3, lines 10-14; Page-4, lines 1-9; page-5, lines 1-4; lines 18-20; page-6, lines 14-15;
14. Transcript of Record dated March 27, 2007; page-3, lines 13-25, page-4, lines 1-22; page-5, lines 1-25; page-6, lines 1-14; page 9, lines 6-18; pages 10, line 25; page 11, lines 1-10; lines 19-25; page 12, line 1; page 12, lines 13-24; page-13, lines 5-11; page 15, lines 24-25; page 16, lines 1-12, page 17, lines 10-23; page 18, lines 24-25; page-19 lines 1-24; page-20, lines 5-18; page-23, lines 6-10, lines 12-22; page- 24, lines 8-12, lines 24-25; page-25, lines 1-8; page-26, lines 6-25; page-27, lines 3-16; lines 22-25; page-28, lines 1-25; page 29, lines 1-19; page-30 line 17; page 31, lines 3-7, lines 21-25; page 33, lines 3-10; page-36, lines 9-11; page-37, lines 20-25; page-38, lines 1-9; page-42, lines 12-18; page-43, lines 14-22; page-46, lines 10-11;
15. Transcript from the hearing on October 18, 2007. Page-6, lines 20-24; page-8, lines 17-24; page-9, lines 23-25; page-10, lines 1-20; page-13, lines 2-7; page-22, lines 20-25; page-32, lines 3-9; Page-46, lines 12-25; Page-48, lines 1-10; Page-50, lines 3-25; Page-51, lines 1-25; page 52, lines 1-25; Page-53, lines 1-25; Page-54, lines 1-25; Page-55, lines 1-25; Page-56, lines 1-25; page-57, lines 1-25; page-58, lines 1-25; Page-59, lines 18-25; Page-60, lines 1-6; Page-61, lines 1-10; Page 71, lines 15-25; Page-72, lines 1-3 and lines 14-23; Page-73, lines 5-25; Page-74, lines 2-4; Page-75, lines 15-22; Page-80, lines 10-15;

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Order of Foreclosure Hearing dated February 6, 2007

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Securities Corporation,
Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates, Series
2004-11

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

MASTER'S ORDER AND
JUDGMENT OF FORECLOSURE AND SALE

(NON-JURY MORTGAGE FORECLOSURE)

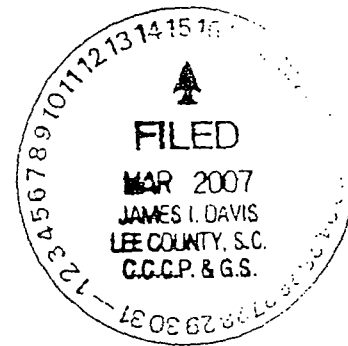
C/A NO:2005-CP-31-169

DEFICIENCY REQUESTED

F25-02718

TO:

Korn Law Firm, P.A.
Attorney for Plaintiff



Pursuant to Rule 53 SCRCF, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

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

FINDINGS OF FACT:

1. The Lis Pendens was filed on July 21, 2005.
2. The Summons and Complaint were filed on July 21, 2005. The Defendant Laura Toney filed an Answer and Counterclaim on August 18, 2005. Plaintiff filed a Reply to the Answer and Counterclaims on September 19, 2005 and an Amended Reply on October 20, 2005.

Plaintiff filed a Motion for Summary Judgment on March 29, 2006. Plaintiff filed a Memorandum of Law in Support of the Motion for Summary Judgment on September 22, 2006.

The Defendant filed a Chapter 13 Bankruptcy on July 20, 2006 as Case No. 06-03028-jw. That case was dismissed on August 30, 2006. The Defendant filed a second Chapter 13 Bankruptcy on September 29, 2006 as Case No.06-4333-dd. That Bankruptcy case was dismissed on November 15, 2006. The Defendant filed a third Chapter Bankruptcy as Case no.

06-05381-dd on November 27, 2006. That Bankruptcy Case was dismissed on January 2, 2007. The Defendant filed fourth Chapter 13 Bankruptcy on January 17, 2007 as Case No.07-00234-jw. Pursuant to provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the stay provided by Section 362(a) of the Bankruptcy Code did not go into effect when the Defendant filed her current Chapter 13 Bankruptcy.

A hearing on the Motion was held on February 6, 2007. The Defendant and her attorney of record were not in attendance and the Court confirmed that opposing counsel was provided notice of the hearing. A copy of the Notice of Hearing was submitted into evidence by Plaintiff's counsel as Exhibit No. One.

The Defendant's Answer and Counterclaim admits the existence of the debt and that the payments are in default. The Defendant denies that the loan documents provide for acceleration of the debt in the event of default. The Defendant further denies that she was provided Notice of Right to Cure. By way of Counterclaim, the Defendant alleges she was not provided a good faith estimate. Defendant further alleges she was not provided an opportunity to select the attorney of her preference for closing the loan. Lastly, Defendant alleges that she rescinded the loan by letter dated June 12, 2005.

Plaintiff's Motion for Summary Judgment is based upon several grounds. First, the Defendant has repeatedly filed Bankruptcy during the pendency of this foreclosure action. As part of the required declaration of assets in the Bankruptcy cases, the Defendant has affirmatively stated under oath that she possesses no "contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims". Plaintiff submitted into evidence Schedule B of the Chapter 13 Plan from the Defendant's third Bankruptcy filing. (Plaintiff's Exhibit Two).

Judicial Estoppel precludes a party from adopting a position in conflict with one taken in the same or related litigation. See *Colleton Reg. Hosp. V. MRS Med. Rev. Syst.*, 866 F. Supp 896 (D.S.C. 1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. *Estoppel & Waiver* Section 139, at 593 (1996). See also *Zimmerman v. Central Union Bank*, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940)("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interest have changed, assume a contrary position."). The Court finds that the statements under oath in the Defendant's Bankruptcy cases maintaining that no setoffs or counterclaims existed to declare as assets should act as a bar to her now assuming a contrary position in this litigation.

Summary Judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 602 S.E.2d 389 (2004); McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004); Rule 56(c), SCRCP; see also Higgins v. Medical Univ. of South Carolina, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (noting that when ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 1997). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall, 359 S.C. at 376, 597 S.E.2d at 183. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP.

The Plaintiff has further established its right to Summary Judgment based upon the evidence of record. In her Answer, the Defendant Laura Toney admits signing the Promissory Note for Seventy Six Thousand Five Hundred and 00/100ths (\$76,500.00) Dollars. She further admits signing the Mortgage and the Court has taken judicial notice of the Mortgage as a matter of public record. The Defendant denies that the mortgage provides for acceleration of the debt upon default or for a deficiency judgment despite the plain language of the document. A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 76, 77 (1977). In this case, the Defendant does not deny reading the loan documents, she merely claims that the documents do not state what they plainly state.

Additionally, the loan documents provide that Plaintiff is required to send a notice of breach to subject property address. The Affidavit submitted on behalf of Plaintiff (Plaintiff's Exhibit No. Four) establishes that two (2) breach letters were sent to the subject property address as required. The Affidavit shifts the burden of proof to the Defendant to establish that either of the two (2) letters were not sent and Defendant cannot rely upon a bare denial to avoid Summary Judgment.

An affidavit of the closing attorney was filed on March 29, 2006 in support of the motion. The affidavit confirms that the Defendant Laura Toney received a Good Faith Estimate at closing and the copy of the Good Faith Estimate attached to the affidavit bears the signature of the Defendant confirming that she received a copy. (Affidavit of Michael May filed March 29, 2006). Again, the Defendant's allegations are not only unsupported by the evidence, her denials are conclusively discredited and disproved by the evidence.

The Affidavit of Letia Benjamin, the mortgage broker, confirms that the Defendant Laura Toney selected the closing attorney at the time of loan application. (Plaintiff's Exhibit No. Three). The contemporaneous Customer Notes kept by the mortgage broker confirm that the Defendant made her own selection as to the attorney for the loan closing. The Attorney/Insurance Preference Checklist attached to the Affidavit is signed by the Defendant Laura Toney and contains a confirmation by her that she has been notified of her right to select her own legal counsel as well as her selection. The Affidavit of the closing attorney also contains a form whereby the Defendant Laura Toney confirmed she had been advised by the lender prior to closing of her right to seek counsel to close the loan. (Affidavit of Michael May filed March 29, 2006). The form also confirmed that she was again advised of her right to the attorney of her preference at closing. Therefore, the evidence conclusively proves that the Defendant Laura Toney was provided the opportunity to select the attorney of her preference and she selected the attorney who performed the closing.

The Defendant Laura Toney alleges that she rescinded the loan by letter dated June 12, 2005. Pursuant to Title 15 Section 1635 of the U.S. Code, the obligor in a real estate secured consumer credit transaction shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms. The loan closing occurred on October 6, 2004, at which time the Defendant was provided the information and rescission forms. (Affidavit of Michael May filed March 29, 2006; Affidavit of Letia Benjamin). The information and rescission forms are signed by the Defendant Laura Toney to acknowledge that she was provided a copy of each at

closing. Therefore, the Defendant's counterclaim that she rescinded the loan is without merit on its face since it is well outside the time to rescind permitted by law.

When taken as a whole, the Pleadings, together with supporting documents and Affidavits, show that there is no genuine issue as to any material fact and that the Plaintiff is entitled to judgment as a matter of law. When no issues of material fact exist, the appropriate action is Summary Judgment. *Spencer v. Miller*, 192 S.E.2d 863 (1972). Therefore, the Court finds that the Plaintiff is entitled to Summary Judgment as a matter of law.

3. Service was made upon the Defendant(s) named in this Report as is shown by the Proof(s) of Service filed herein.

4. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.

5. According to the Affidavit filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. For value received, Laura Toney made, executed and delivered a Note dated October 6, 2004, promising thereby to pay to the order of Mortgage Electronic Registration Systems, Inc. solely as nominee for Finance America, LLC the sum of Seventy-Six Thousand Five Hundred And 00/100 Dollars (\$76,500.00), with interest at an adjustable rate per terms as set out in said Note percent per annum. Other terms and conditions are stated in the Note, which is of record herein.

7. To better secure the payment of the Note described above, the said Laura Toney made, executed and delivered to Mortgage Electronic Registration Systems, Inc. solely as nominee for Finance America, LLC a Mortgage in writing, dated October 6, 2004, covering real property in Lee County, which is the same as that described in the Complaint. The mortgage was filed on October 19, 2004, and is of record in the Office of the Clerk of Court for Lee County in Mortgage Book 361 at page 79.

8. Thereafter, by virtue of an assignment dated August 15, 2005, recorded December 22, 2005, in Mortgage Book 386 at page 211, Mortgage Electronic Registration Systems, Inc. solely as nominee for Finance America, LLC assigned said mortgage unto LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11. LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 is present lien holder and Plaintiff herein.

9. The above referenced instrument constitutes a first lien priority mortgage.

10. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

11. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens. He has been responsible for the preparation of the following pleadings:

1. Lis Pendens
2. Summons and Complaint
3. Affidavit of Default
4. Order of Reference
5. Notice of Hearing
6. Proposed Final Decree
7. Notice of Sale
8. Transcript of Testimony
9. Other documents as applicable pertaining to service and finalization of this action.

Additionally, he has arranged for service of process on the defendant(s), has scheduled and attended the hearing in this matter, has provided reinstatement figures to the primary defendant, if requested, and has had telephone conversations with the defendant(s), if requested. Future duties include forwarding copies of the Decree to the defendant(s), advising the defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by plaintiff, representation of plaintiff at sale and preparation of after sale documentation as required. Eighteen hours have been spent on this file to date. Plaintiff's counsel anticipates spending approximately Six hours on the file after the hearing. In light of the potential liabilities inherent in a property matter, the attendant responsibilities and the size of the mortgage debt, I find that the attorney fees requested by the plaintiff in the amount of \$7,500.00 are reasonable.

12. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a)	Principal due as of	\$76,356.05
(b)	Interest from 3/1/05 through 2/6/07 at 8.3650 %	\$13,382.91
(c)	Escrow Advances (Insurance, Taxes)	\$ 955.06

(d)	Property Inspections	\$ 363.00
(e)	Corporate Advance	\$ 509.14
(k)	Costs of Collections Prior to Hearing	\$ 401.00
(m)	Title Search Fee	\$ 400.00
(o)	Attorney Fees	\$ 7,500.00

TOTAL DEBT secured by Note and Mortgage,
including interest to date shown \$99,867.16

Interest for the period from the date shown in (b) above, through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of an adjustable rate per terms as set out in said Note percent per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

13. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), Laura Toney, for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant(s) for any deficiency in this action remaining after sale of the mortgaged premises.

14. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

CONCLUSION OF LAW

I, therefore, conclude as follows:

1. There is no genuine issue as to any material fact in this case, therefore Plaintiff's Motion for Summary Judgment is granted.

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Ninety Nine Thousand Eight Hundred Sixty Seven and 16/100 (\$99,867.16) Dollars representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the

Plaintiff and shall bear interest hereafter at the rate of an adjustable rate per terms as set out in said Note percent per annum.

3. That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Lee County Clerk of Court at public auction at the Lee County Courthouse in Bishopville, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in the such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: The Clerk of Court will require a deposit of Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of an adjustable rate per terms as set out in said Note percent.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a first lien priority mortgage.

E. Purchaser to pay for Deed Stamps and costs of recording the Deed.

5. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

6. Fourth, Plaintiff have judgment against the Defendant, Laura Toney, for the full amount found to be due Plaintiff on the note and mortgage, with right to entere personal judgment against the Defendant, Laura Toney, for any deficiency in this action remaining after sale of the mortgaged premises.

8. That the Clerk of Court will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may

become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Thirty (30) days after date of sale, then the Clerk of Court may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the Clerk of Court will apply the proceeds of the sale as follows:

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

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Lee County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

12. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and cancelled of record.

13. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the Notice of Pendency of the within action, and the name of the Grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

14. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

15. Upon issuance of a Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to Mortgage Electronic Registration Systems, Inc. solely as nominee for Finance America, LLC by Laura Toney, dated 10/06/2004 and recorded 10/19/2004, in Mortgage Book 361 at page 79.

16. The following is a description of the premises herein ordered to be sold:

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain lot or parcel of land situate just North of the Town of Bishopville, County of Lee and State of South Carolina and being bounded as follows: On the North by Chapman Street; On the East by lot of West Wilson; on the South by Lots Nos., 9, 10, 11, 12 and 13 and on the West by Bay Street represented on a plat being of North Mohawk as Lot No. 14, said plat being of record in Plat Book E at page 46, in the Office of the Clerk of Court for Lee County, South Carolina Records.

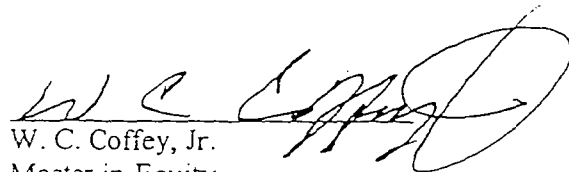
This conveyance is made subject to any and all existing reservations, easements, right-of-way, zoning ordinances, and restrictive or protective covenants that may appear of record or on the premises.

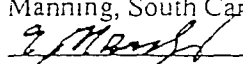
This being the same property most recently to Laura Toney by deed from Milton Toney dated December 4, 1992 and recorded December 4, 1992 in Book V-5 at page 205 in the Lee County, South Carolina Records.

729 Chatman Street, Bishopville, SC 29010

TMS 030-02-00-024

17. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.


W. C. Coffey, Jr.
Master-in-Equity

Manning, South Carolina
 2007.

ORDERS FROM HEARING ON OCTOBER 18, 2007

1.

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Securities Corporation,
Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates, Series
2004-11

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S).

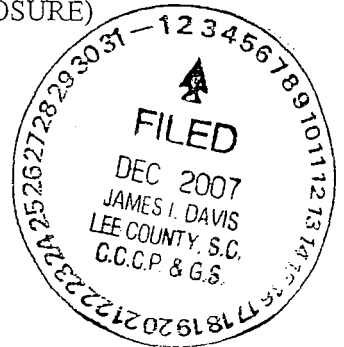
IN THE COURT OF COMMON PLEAS

ORDER AS TO
PENDING MOTIONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:2005-CP-31-169

DEFICIENCY REQUESTED



This is a foreclosure action as to certain real property located in Lee County. The action was commenced by a Summons and Complaint filed July 21, 2005. The Defendant Laura Toney filed an Answer and Counterclaim on August 18, 2005. Plaintiff filed a Reply to the Answer and Counterclaims on September 19, 2005 and an Amended Reply on October 20, 2005.

Plaintiff filed a Motion for Summary Judgment on March 29, 2006. Plaintiff filed a Memorandum of Law in Support of the Motion for Summary Judgment on September 22, 2006.

The Defendant filed a Chapter 13 Bankruptcy on July 20, 2006 as Case No. 06-03028-jw. That case was dismissed on August 30, 2006. The Defendant filed a second Chapter 13 Bankruptcy on September 29, 2006 as Case No. 06-4333-dd. That Bankruptcy case was dismissed on November 15, 2006. The Defendant filed a third Chapter Bankruptcy as Case no. 06-05381-dd on November 27, 2006. That Bankruptcy Case was dismissed on January 2, 2007. The Defendant filed fourth Chapter 13 Bankruptcy on January 17, 2007 as Case No. 07-00234-jw. Pursuant to provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the stay provided by Section 362(a) of the Bankruptcy Code did not go into effect when the Defendant filed her current Chapter 13 Bankruptcy.

A hearing on Plaintiff's Motion for Summary Judgment was held on February 6, 2007 and a Decree of Foreclosure and Sale was filed on March 15, 2007. The property was sold at foreclosure sale by the Lee County Clerk of Court on May 7, 2007. Plaintiff was the highest bidder at sale and no further bids were received during the thirty (30) day period following the sale. A judicial deed conveying the subject property to Plaintiff has been issued and Plaintiff is in

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physical possession of the subject property. Plaintiff reserved its right to a deficiency judgment and the issuance of a deficiency judgment is a matter still pending before the court.

Defendant filed a Motion dated March 23, 2007 to Alter or Amend the Verdict pursuant to Rule 59(e) motion. Plaintiff filed a Motion to Supplement the Decree dated April 2, 2007. Defendant filed a Motion for Reconsideration pursuant to Rule 60 and for Stay of Enforcement of the Order on April 25, 2007.

The Special Referee herein recused himself from the case and Plaintiff filed a Motion for Supplemental Reference on July 31, 2007. By Order filed _____, The Honorable Richard L. Booth was appointed as supplemental Special Referee herein. Hearing was held on October 18, 2007 as to the pending motions. In attendance at the hearing was the Plaintiff's counsel, H. Guyton Murrell. Also in attendance were the Defendant Laura Toney and her counsel David Weeks. The Court heard argument from both parties as to the pending motions.

Defendant's Rule 59(e) Motion to Alter or Amend

Subsequent to the hearing of February 16, 2007, the Defendant Laura Toney filed a separate case Laura Toney v. LaSalle Bank, Case No.2007-CP-31-66 and obtained an ex parte injunction as to the pending foreclosure sale in this case. The ex parte injunction was obtained by attorney Joseph Henry and attorney Nathaniel Roberson as counsel for Laura Toney. By Order filed April 2, 2007, The Honorable Clifton Newman rescinded and vacated the ex parte injunction and dismissed Laura Toney's action for an injunction with prejudice. The Order made a specific finding that the requirements of Rule 11 (b) of the South Carolina Rules of Civil Procedure had not complied with and attorney Henry and attorney Roberson were not properly substituted as counsel for Laura Toney.

The Rule 59(e) Motion herein was also submitted by attorney Henry and attorney Roberson. The Order of Judge Newman in the injunction action and the record in this matter reflect that the requirements of Rule 11(b) have not been complied with and as a matter of procedure the motion is not properly before this court. Substantively, the motion argues that the merits hearing should have been stayed due to the Defendant's bankruptcy, the case was improperly referred to a judge outside of Lee County and the security interest had been rescinded and was therefore void. The Court finds that the issue of improper reference is without merit. The record reflects an initial reference to the Lee County Master-in-Equity and his subsequent recusal from the case. The record reflects proper notice given to Defendant's counsel of the application for an Order of Reference and objection to such reference was not raised until after

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the Judge's ruling was issued. The Court finds this issue has not been timely raised or preserved and has been waived. The issue as to rescission of the loan and the alleged invalidity of the mortgage is only relevant if the Defendant's Rule 60 motion is granted. As to the Bankruptcy issue, the Court has taken judicial notice of the orders issued in the Defendant's Chapter 13 Bankruptcy. The Order of the Honorable John Waites filed February 15, 2007 confirmed that no automatic stay was in effect and the motion by Laura Toney to impose a stay was denied. Therefore, the defendant's contention that the hearing should have been stayed due to the bankruptcy is without merit. The Court further notes that the subsequent Order of the Honorable John Waites filed March 7, 2007 made a finding that Laura Toney had filed her Chapter 13 Bankruptcy in bad faith and dismissed the case with prejudice. The Defendant argues that her bad faith actions in the Bankruptcy Court should have acted as a stay to the foreclosure proceedings despite the Bankruptcy Court's express refusal to grant a stay. Accordingly, the Motion to Alter or Amend the Judgment pursuant to Rule 59(e) is denied.

Defendant's Motion for Reconsideration pursuant to Rule 60

The Defendant Laura Toney filed a Motion for Reconsideration of Decision pursuant to Rule 60 and for Stay of Enforcement of the Order. The court finds, and the parties agree, that the motion to stay enforcement of the order is moot given that the property has been sold and a judicial deed issued. The remaining issue is reconsideration of the Decree pursuant to Rule 60(b).

Rule 60(b)(1), SCRCF provides that the court may relieve a party from a final judgment or order if the judgment was induced by mistake, inadvertence, surprise, or excusable neglect. This rule is an appropriate remedy for good faith mistakes of fact if all other applicable factors are met. See Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986). However, a party may not generally use Rule 60(b)(1) as a vehicle for relief from a mistake of law. See Savage & Cannon, 204 S.C. 473, 30 S.E.2d 70 (1944); see generally 11 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure §2858 (1973)(stating that an appellant is not entitled to relief under Rule 60(b)(1) for ignorance of the rules or ignorance of the law).

In this case, the mistake alleged by the Defendant Laura Toney is a mistake of law that an automatic stay was in effect pursuant to her fourth Chapter 13 Bankruptcy. Therefore, Rule 60(b) would be inapplicable. The Court notes that Laura Toney filed her Chapter 13 Bankruptcy pro se. "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." Goodson v. Am. Bankers Ins. Co., 295 S.C.

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400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Moreover, the contention by the Defendant Laura Toney that she believed an automatic stay to be in effect is not credible. The Order of the Honorable John Waites filed February 15, 2007 noted that Laura Toney had requested that a stay be imposed by the U.S. Bankruptcy Court and that the request was denied. The evidence clearly establishes that Laura Toney fully understood that a stay was not in effect due to the bankruptcy filing.

Furthermore, the Court finds that the Defendant Laura Toney lacks a meritorious defense to the foreclosure. In determining whether a default judgment should be set aside under Rule 60(b)(1), "[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant." New Hampshire Ins. Co. v. Bey Corp., 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993)(quoting Harry M. Lightsey & James F. Flanagan, South Carolina Civil Procedure 82 (1985)). Plaintiff submitted sworn affidavits from the mortgage broker and the closing attorney that they personally witnessed Laura Toney sign the requisite documents and a copy of the signed documents was attached to the affidavits. Defendant has submitted the statement of a handwriting analyst questioning the validity of her signature on the documents. These are issues that the Defendant is now attempting to raise for the first time. The Court finds such statement not to be credible or persuasive given the first hand eyewitness testimony that the Defendant signed the documents.

Lastly and most importantly, the Court finds that the Defendant's own sworn statements in her bankruptcy proceedings mandate that Plaintiff's Motion for Summary Judgment be granted and preclude her from the relief she now seeks. Defendant has repeatedly filed Bankruptcy during the pendency of this foreclosure action. As part of the required declaration of assets in the Bankruptcy cases, the Defendant has affirmatively stated under oath that she possesses no "contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims". In the foreclosure, Plaintiff submitted into evidence Schedule B of the Chapter 13 Plan from the Defendant's third Bankruptcy filing.

Judicial Estoppel precludes a party from adopting a position in conflict with one taken in the same or related litigation. See Colleton Reg. Hosp. V. MRS Med. Rev. Syst., 866 F. Supp 896 (D.S.C. 1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. *Estoppel & Waiver* Section 139, at 593 (1996). See also Zimmerman v. Central Union Bank, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940)("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interest have changed,

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assume a contrary position.”). The Court finds that the statements under oath in the Defendant’s Bankruptcy cases maintaining that no setoffs or counterclaims existed to declare as assets act as a bar to her assuming a contrary position in this litigation. Therefore, the sworn statements and filings by the Defendant Laura Toney in her Bankruptcy cases have established that she lacks a meritorious defense to the foreclosure.

Plaintiff’s Motion to Supplement the Decree

The final motion before the Court is Plaintiff’s Motion to Supplement the Decree. Plaintiff reserved its right to a deficiency judgment. The Report on Sale reflects a deficiency between the judgment debt set forth in the Decree and the sales price obtained at foreclosure sale in the amount of \$34,859.75, plus interest thereon at the rate of Eight and 365/1000ths (8.365%) percent from the date of compliance June 6, 2007. Plaintiff’s Motion seeks to supplement the Decree, and the resulting deficiency judgment, with the fees and costs related incurred since the summary judgment hearing. The post-hearing fees and costs can be generally grouped as those incurred in responding to: 1) Defendant’s separate action for an injunction and ex parte temporary restraining order in Laura Toney v. LaSalle Bank, Case No.2007-CP-31-66; 2) Chapter 13 and Chapter 7 bankruptcy actions; and 3) Defendant’s post-trial motions. Plaintiff’s counsel submitted an Affidavit of Attorney Fees that provided an itemized statement of the fees and costs incurred since the hearing on the motion for summary judgment.

The record reflects a pattern of bad faith and dilatory actions by the Defendant Laura Toney. The Court notes that these actions were either taken by Laura Toney pro se or through other counsel. In no way does the Court find or opposing counsel allege any bad faith actions were undertaken by her counsel herein David Weeks. However, these actions by the Defendant have caused the Plaintiff to incur further fees and costs to protect its security interest and to safeguard itself and its counsel against the unfounded allegations of wrongdoing leveled by Laura Toney in the various motions and related actions.

Laura Toney filed repetitive bankruptcy cases for the express purpose of frustrating Plaintiff’s legitimate collection efforts. The U.S. Bankruptcy made express findings of bad faith in her last Chapter 13 Bankruptcy case and her subsequent Chapter 7 case. Both cases were dismissed with prejudice and with a bar imposed as to any subsequent bankruptcy filings for a term of one (1) year. The authority of the U.S. Bankruptcy Court is established by the U.S. Constitution and subsequent legislation and its power to affect all debts, including mortgage liens, is not in dispute. The Court finds that the Plaintiff defended its security interest in the

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Bankruptcy proceedings as a matter of necessity and is accordingly entitled to the attorneys fees and costs incurred therein. The Court finds that the Decree and subsequent deficiency judgment should be supplemented to include the fees and costs incurred in the Defendant's bankruptcy cases.

Laura Toney filed a separate action through other counsel and obtained an ex parte injunction from the Honorable Clifton Newman as to the pending foreclosure sale. The ex parte injunction was rescinded by Judge Newman by Order filed April 2, 2007. The Order reflects that the injunction was issued in reliance on the allegations by Laura Toney that Plaintiff's counsel had knowingly violated a stay imposed by the bankruptcy filing. As previously set forth, the evidence establishes that Defendant Laura Toney knew this allegation of wrongdoing leveled at Plaintiff and its counsel was untrue and Judge Newman rescinded the injunction due to it being based on the misrepresentations by Laura Toney. Furthermore, the Order found that Laura Toney had her subsequent attorneys had failed to conform to the express rules as to substitution of counsel. Although the injunction action filed by Laura Toney was technically a separate case, there is a clear nexus between it and the present foreclosure action in that the injunction sought to stay the pending foreclosure sale. The injunction action cast serious allegation of wrongdoing at Plaintiff and its counsel and the necessity of responding to such allegations are obvious.

Although the fees and costs incurred by Plaintiff in the separate injunction action may have been necessary to protect its security interest, the Court must also determine if it is appropriate to assess such fees and costs against the Defendant Laura Toney in this action. The promissory note provides that the holder is entitled to "all of its costs and expenses in enforcing this Note not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees". The mortgage contains an identical provision. The mortgage also contains a provision in paragraph 9 (Protection of Lender's Interest in the Property and Rights Under this Security Instrument) that states:

"If ... there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument ... then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument ... Lender's action can include, but are not limited to ... appearing in court; and paying reasonable attorneys' fees to protect its interest in the property and/or rights under this Security Instrument... Any amounts disbursed by Lender under this Section 9 shall become additional debt of the Borrower secured by this Security Instrument."

The Court finds that the note and mortgage provide for the award of fees and costs as the injunction action was a legal proceeding that might significantly affect the Lender's interest in the property and its rights under the security instrument. The Court finds that the Decree and

WJ #6

subsequent deficiency judgment should be supplemented to include the fees and costs incurred by Plaintiff in the subsequent injunction action.

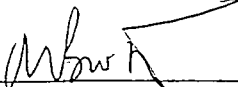
Lastly, the Plaintiff seeks to include the fees and costs incurred in relation to the post-trial motions in this case. The Court finds that the post-trial motions lack merit but Plaintiff was nonetheless required to defend its security interest by responding to the motions. The Court qualifies this ruling with the finding that Defendant's counsel David Weeks has in no way been a participant in any of the bad faith and dilatory actions enumerated in the record and related orders. The declaration under oath by Defendant Laura Toney in her Chapter 13 Bankruptcy that she possessed no claims or setoffs effectively barred her from asserting any defenses and counterclaims in the foreclosure under the doctrine of judicial estoppel. The Court finds that the Rule 60 Motion filed by Defendant's counsel David Weeks was filed in good faith but rendered meritless through the Defendant's own actions in Bankruptcy Court. Therefore, the Court finds that the Decree and subsequent deficiency judgment should be supplemented to include the fees and costs incurred by Plaintiff in the subsequent post-hearing motions.

The Attorney Fee Affidavit submitted by Plaintiff's counsel set forth \$9,605.30 in fees and costs incurred subsequent to the summary judgment hearing and estimated fees and costs of \$1,125.00 to attend this hearing and prepare a proposed order. When awarding attorney's fees, the trial court must consider the following six factors: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged for similar legal services; and (6) the beneficial results obtained. Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 37 S.E.2d 296 (1989).

The Court finds that this has been a long and vigorously contested matter that has spanned several different judicial forums. The time and labor reflected on the fee affidavit is reasonable and the actions undertaken were necessary to protect the client's security interest. The Plaintiff's counsel enjoys a good standing in the legal community and is a frequent practitioner before the Equity Courts and Bankruptcy Courts. He is a frequent lecturer at legal seminars and is a published author in legal periodicals. The contingency of compensation is inapplicable. The hourly rate of \$150.00 charged by Plaintiff's counsel is reasonable and equal or less than the fee customarily charged for similar legal services. The Plaintiff's counsel has ultimately obtained beneficial results through a Decree of Foreclosure and sale. Therefore, the Court finds that the additional fees and costs of \$10,730.30 are reasonable and should be added to the Decree of Foreclosure and subsequent Deficiency Judgment.

Wb f7

IT IS SO ORDERED.



Richard L. Booth
Special Referee herein

Sumter, South Carolina
11/27, 2007.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEE

ORDER FOR DEFICIENCY JUDGMENT

LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Securities Corporation,
Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates, Series
2004-11

(NON-JURY
FORECLOSURE)

MORTGAGE

C/A NO: 2005-CP-31-169

PLAINTIFF,

DEFICIENCY REQUESTED

vs.

Laura Toney,

DEFENDANT(S).

F25-02718

I have determined the existence of a deficiency after sale of the property which is the subject of this action in the amount of \$45,590.05. It is now proper for this amount to be entered as a monetary judgment. The Plaintiff has a pending motion to amend the foreclosure decree to additional fees and costs and this Order for Deficiency Judgment is issued with a reservation to amend the Judgment upon the hearing of the motion.

IT IS THEREFORE ORDERED that the Plaintiff, LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11, have judgment against the Defendants Laura Toney, in the amount of \$45,590.05, plus interest thereon at the rate of Eight and 365/1000ths (8.365%) percent from October 18, 2007 until paid pursuant to the terms of the Note which was the subject of this foreclosure action.



Richard L. Booth
Special Referee herein

Sumter, South Carolina
11/27, 2007

CALCULATIONS FOR DEFICIENCY JUDGMENT

Judgment amount in Decree of Foreclosure		\$99,867.16
Interest on total from 2/6/06 to 6/6/07 (compliance date)	+	\$ 2,746.80
Costs incurred – not included in Decree		
a. Sale's commission	+ \$	700.00
b. Advertisements	+ \$	807.15
c. Auctioneer	+ \$**	
d. Court Reporter	+ \$**	
Less bid at foreclosure		<u>- \$70,000.00</u>
Deficiency from sale		\$ 33,821.11
Accrued interest from 06/06/07 to 10/18/07	+	<u>\$ 1,038.64</u>
Subtotal		\$34,859.75
Post-trial fee and costs	+	<u>\$10,730.30</u>
Total Deficiency Judgment		\$45,590.05

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

LaSalle Bank National Association, as)
Trustee for the registered holders of)
Structured Asset Securities Corporation,)
Structured Asset Investment Loan Trust,)
Mortgage Pass-Through Certificates,)
Series 2004-11,)

Plaintiff,)

vs.)

Laura Toney,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO: 2005-CP-31-169

ORDER

On October 18, 2007 a hearing was held in this case to address all the pending motions in this case. Present at this hearing was H. Guyton Murrell, Esquire attorney for the Plaintiff, the Defendant Laura Toney and her attorney J. David Weeks, Esquire. During this hearing, the Court heard arguments on four motions: (1) the Defendant's Motion to Alter or Amend Verdict Pursuant to Rule 59(e), (2) the Defendant's Application for a Temporary Restraining Order, (3) the Plaintiff's Motion to Supplement Decree and Assess Publication Costs and (4) the Defendant's Motion for Reconsideration and Stay of Enforcement. After reviewing the record, oral arguments, the pleadings and the substantive law in this case, my rulings are as follows:

DEFENDANT'S MOTION TO ALTER OR AMEND VERDICT PURSUANT TO

RULE 59(e)

The first Motion brought before this Court was the Defendant's Motion for Reconsideration of the Foreclosure Order under *SCRCP. Rule 59(e)*. The Defendant, who was 24

single or joint cases of the debtor were pending within the previous year but were dismissed...the stay under subsection (a) shall not go into effect upon filing of the later case.” Therefore the Defendant was not protected by the Federal Bankruptcy Laws in the present case, and the Plaintiff while involved in the Bankruptcy proceedings could still adjudicate its position in the present Foreclosure action. In fact the record reflects that the Bankruptcy Court denied the motion for the automatic stay and one was never in effect.

Moreover, I find that, while the motion was filed by other counsel than the one present at this hearing, both parties in the case agree that there was no issue of Jurisdiction in this action, and that the case was properly referred.

The issue of recession in this case is also brought up in the Defendant’s Motion for Reconsideration and Stay of Enforcement and would be disposed through my analysis of that particular motion under *SCRCP. Rule 60*.

Therefore, I find that the Defendant’s motion under *SCRCP. Rule 59(e)* does not have any basis and shall be dismissed since the Defendant was not protected by the automatic stay, jurisdiction was proper in this case, and all the remaining issues that this motion raised and incorporated in the Defendant’s Motion for Reconsideration under *SCRCP. Rule 60*, which I also address in this Order.

DEFENDANT’S APPLICATION FOR TEMPORARY RESTRAINING ORDER

The Defendant brought this Application for Temporary Restraining Order because the Plaintiff sought to have her evicted from the property at issue in this case. The Special Referee initially assigned this case refused to hear any motions due to the Defendant, unbeknownst to her present counsel at the time, filing judicial misconduct proceedings against him for his prior

ruling in this case. The matter was not heard timely and the Defendant was actually evicted and the property sold at a foreclosure sale.

While in no way prejudice to either party on the merits of the issues raised by the Application for Temporary Order, the fact is that the Defendant was evicted and does not have actual possession of the premises, I find the issue raised in this motion to be moot and the motion is dismissed because the remedy sought can no longer be granted.

**PLAINTIFF'S MOTION TO SUPPLEMENT DECREE AND ASSESS
PUBLICATION COSTS**

Through this motion, the Plaintiff is seeking to have attorney's fees and costs awarded. This motion contends that the Plaintiff is entitled to receive additional reasonable attorney's fees and costs in addition to the ones already awarded in the Foreclosure Order. The Plaintiff's counsel argues that in order to protect his interest in the property he had to represent the Plaintiff in the various federal bankruptcy and state cases in addition to the expenses incurred to date in the present foreclosure case. To prove all this expenses, fees and costs, the Plaintiff provided the Court with an Affidavit outlining the additional expenses incurred by the Plaintiff. Counsel for the defense argued that he did not represent the Defendant in any of the bankruptcy filings and that the Defendant was represented by other counsel in various other actions, and therefore he cannot argue against the reasonableness of the fees since he has no idea of the amount of time and preparation incurred to handle these matters.

I found that the Plaintiff's Affidavit as it reflects the attorney's fee and costs in the present action are reasonable, and the Decree in this case should be amended to correctly reflect them. While I recognized that the Federal Cases and State Cases referred to in the Motion are connected to the issues in this case, I must answer the question to whether or not the Plaintiff is

represented at various times during this matter by other attorneys or pro se, filed this motion while represented by Attorneys Joseph Henry and Nathaniel Roberson of the Richland County Bar. This Rule 59(e) Motion is based on grounds:

1. The Plaintiff was in Bankruptcy Court at the time of the hearing on the Foreclosure;
2. That the Foreclosure was improperly referred to the Master In Equity in a county other than the Defendant's county of residence and the property's location and was therefore heard in an improper venue.
3. That Plaintiff's security interest in the property was extinguished when Plaintiff failed to respond to the Notice of Rescission filed by Defendant within the time allotted by the Truth in Lending Act.

When ruling whether or not the Plaintiff was barred from proceeding with the Foreclosure action because the Plaintiff was in Bankruptcy Court at the time of the proceeding, the Court must consider whether the existence of an automatic stay was in effect at the time of the foreclosure summary judgment hearing. While it is clear that the Plaintiff was part of the Defendant's numerous Bankruptcy actions and that one of such actions was taking place during the foreclosure summary judgment hearing of February 6, 2007, which resulted in the Foreclosure Order, the record also clearly shows that no automatic stay was in place at the time.

It is clear that during the foreclosure proceedings the Defendant filed more than two bankruptcy cases within the period of one year. In fact, the record reflects that either four or five bankruptcy actions were filed and discharged for various reasons. As the result of the Defendant's repetitive filings, the automatic stay generally granted under *11 U.S.C. § 362(a)* did not come into effect pursuant to *11 U.S.C. § 362(4)(A)(i)*, which stipulates that "if 2 or more

On the Plaintiff's Motion to Supplement the Decree and Assess Publication Costs, I found in the event that the Plaintiff prevails in this case the Defendant should repay the Plaintiff for the additional reasonable attorney's fee that the Plaintiff incurred to secure and enforce the said Note and any final Decree in favor to the Plaintiff should reflect such finding.

DEFENDANT'S MOTION FOR RECONSIDERATION AND STAY OF
ENFORCEMENT OF THE ORDER

The Defendant, pursuant to *SCRCP Rule 60(b)(1)*, petitions this Court to have the Judgment in this case vacated on the belief that the Judgment entered against her was the result of mistake and/or excusable neglect and shall therefore be reconsidered.

On February 6, 2007, a hearing on the merits of the Plaintiff's Summary Judgment Motion was held in this case; however, the Defendant was in bankruptcy awaiting a ruling on the automatic stay, and therefore she contends that the hearing should not have been scheduled. She did and her Counsel did not appear at the hearing, and the Plaintiff's Summary Judgment was granted. It is the Defendant's contention that due to mistake and excusable neglect that she and her Counsel were not able to appear at the February 6, 2007. Therefore, the final Order in this case was improperly ruled upon because she did not have the chance to properly present her case, and that she should at least be given the opportunity to confront the evidence on record and to testify and present evidence to the merits of her Defense and Counterclaims.

"[W]here there is a good faith mistake of fact and no attempt to thwart the judicial system, there is a basis for relief [under *SCRCP. Rule 60(b)*]." *Columbia Pools, Inc. v Galvin*, 288 S.C. 59, 339 S.E. (2d) 524 (1986) (emphasis added) While I note that the Defendant through her repetitious filings and representations in other courts implies some measure of bad faith, I

found that they do not apply to the present proceeding and Motion under *SCRCP. Rule 60(b)1*. Therefore, I found that the Defendant has basis for relief under *SCRCP. Rule 60(b)1*.

Pursuant to *Micronics, Inc. v. South Carolina Department of Revenue*, 345 S.C. 506; 548 S.E. 2d 223 (2001), a trial judge in determining whether to grant a motion to set aside a final order pursuant to *SCRCP. Rule 60(b)* shall consider the following factors:

1. the promptness with which relief is sought.
2. the reasons for the failure to act promptly.
3. the existence of a meritorious defense.
4. the prejudice to the other party.

In the present case, there is no question that the Defendant's Motion under Rule 60 is timely and therefore, the Defendant has satisfied the first prong of the test under *Micronics*. The Defendant's reason for not appearing at the hearing and not properly asserting her Defenses and Counterclaim in response to the Plaintiff's Motion for Summary Judgment are twofold:

1. The Defendant believed that she was protected under Federal Bankruptcy Laws,
2. The Defendant's Counsel as a State Representative could not have appeared in Court as the South Carolina General Assembly was in session.

The issue of whether or not the Defendant was protected by Federal Bankruptcy Laws is a question of law and not of fact. It is clear that the Defendant in this case was not protected by the automatic stay and such mistake of law is basis for relief under *SCRCP. Rule 60(b)(1)*.

From the record, it appears that due to mistake and neglect, either through miscommunications and misunderstanding, the Defendant's Counsel's inability to attend the hearing was not properly conveyed to the Plaintiff and the Special Referee hearing the case. While it is clear that the Plaintiff and the Special Referee were aware of the Defendant's Counsel

legislative schedule and duty, the Defendant's Counsel failed to properly secure a continuance in this case, due to misunderstandings and miscommunications.

South Carolina Code of Laws Section 2-1-150 states in part that "*Notwithstanding any other provision of law or rule of court, no member of the General Assembly shall be required to appear in court as an attorney, who is an attorney of record, witness or otherwise during any regular legislative day. . .*" The statute lists exceptions, none of which is applicable in accordance with the specifics of this case. Counsel for the Defendant is a member of the South Carolina General Assembly. The motion for summary judgment hearing was scheduled on a legislative day when counsel for the Defendant was at the session, therefore, the Defendant should be granted a new hearing on this basis alone.

Not unlike in *Micronics*, where due to interoffice miscommunication and poor scheduling a party failed to appear and was subsequently granted relief under *SCRCP. Rule 60(b)(1)*, I found that the Defendant's counsel failure to appear was the result of mistake and neglect, which are excusable and satisfies the second prong of the *Micronics* test.

The third prong in the *Micronics* test is whether or not meritorious defense exist. "To establish a meritorious defense, a party is not required to show an absolute defense." *Micronics, Inc. v. South Carolina Department of Revenue*, 345 S.C. 506; 548 S.E. 2d 223 (2001); see also *Thompson v. Hammond*, 299 S.C. 116; 382 S.E.2d 900 (1989) Furthermore,

[A] meritorious defense need not to be perfect nor one which can be guaranteed to prevail at trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy.

Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506; 548 S.E. 2d 223 (2001); see also *Graham v. Town of Loris*, 272 S.C.442; 248 S.E.2d 594 (1978)

In the present case, the Defendant raised many defenses and counterclaim in her pleadings. Therefore, if one or more of those defenses genuinely meets the status of meritorious defense, then the Defendant will have satisfied the third prong of the test. I find that the Defendant has such defense.

The Defendant raised various defenses and counterclaim centering on issues with the process of closing and regarding her alleged rescission of the Mortgage. She alleged that she did not received all the federally mandated disclosures required for real estate transactions, that she was not offered the opportunity of choosing her own attorney, and that she made a legal and procedurally correct overture to the Plaintiff to have her loan rescinded, but that the Plaintiff failed to respond to her demand within the statutorily mandated time frame of twenty (20) days.

The Defendant has also contended that she did not execute certain documents pertaining to the closing and that any execution of her signature was done by someone else, therefore constituting forgery.

The question presented to me is not if the Defendant would prevail on the merits of the defenses raised in her pleadings, but whether or not such defenses in prima facie could warrant a decision in the favor of the Defendant. It is clear that if the Defendant was successful in proving that she did not received all the disclosure mandate by Federal and State laws, she would be entitled to some damages, furthermore, if she did not received all the disclosure her rescission would have been timely under *15 U.S.C §1635*, and the Plaintiff would have the duty to respond within twenty (20) days of receipt of the rescission. Furthermore, if the rescission was timely, the

Plaintiff would have effectively lost any security interest in the transaction and the mortgage would have become null and void. *15 U.S.C §1635*

Based on those findings, I found that the Defendant presented valid and meritorious defenses that she should have the opportunity to fully present in this case. Moreover, I do not find that the Plaintiff would be prejudiced in this case and would not be injured if the Defendant's Motion under SCRCP. Rule 60(b)(1) was granted. Therefore, I found that the Defendant has met the test in Micronics, and the Defendant's Motion to Reconsider and Stay of Enforcement is granted.

IT IS THEREFORE ORDERED, the Defendant's Motion to Alter or Amend Verdict under SCRCP. Rule 59(e) and the Defendant's Application for Temporary Order are dismissed

IT IS FURTHER ORDERED that in the event the Plaintiff successfully obtains a final Decree in its favor in this case that such Order includes all attorney fees and costs as presented in connection to the present case and any proceeding related to the Plaintiff's right to enforce the note.

IT IS FURTHER ORDERED that the Defendant's Motion for Reconsideration and Stay of Enforcement is granted and that the Master's Order and Judgment of Foreclosure and Sale is vacated.

IT IS FURTHER ORDERED that the parties successfully schedule a hearing within 30 days of this Order, so the Plaintiff's Motion for Summary Judgment can be properly heard by this court and that the Defendant be allowed to effectively present her case.

AND IT IS SO ORDERED!

RICHARD BOOTH
MASTER IN EQUITY FOR SUMTER
COUNTY, THIRD JUDICIAL CIRCUIT

Sumter, South Carolina

Date: _____

COMPLAINT

1.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEE

LaSalle Bank National Association, as Trustee for
the registered holders of Structured Asset Securities
Corporation, Structured Asset Investment Loan
Trust, Mortgage Pass-Through Certificates, Series
2004-11

CIVIL ACTION COVERSHEET

PLAINTIFF,

vs.

Laura Toney

DEFENDANT(S).

C/A NO:

05-CP-31-169

(Please Print) J. Scott Walls

Submitted By: Korn Law Firm, P.A.

Address: 1300 Pickens Street

Columbia, SC 29201

SC Bar #:

15582

Telephone #:

803.252.5817

Fax #:

803.779.2845

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Penden (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600) ☐ Pharmaceuticals (630)
☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640)
☐ Medical (620) ☐ Other (699) | | | |

Submitting Party Signature: [Signature] Date: July 13, 2005

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (5/04)

Page 1 of 2

35

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as Trustee
for the registered holders of Structured Asset
Securities Corporation, Structured Asset
Investment Loan Trust, Mortgage Pass-Through
Certificates, Series 2004-11

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S).

IN THE CIRCUIT COURT FOR THE _____
JUDICIAL CIRCUIT

(NON-JURY MORTGAGE FORECLOSURE)

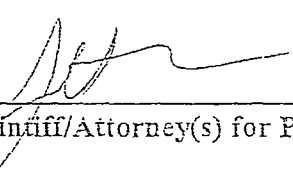
CERTIFICATE OF EXEMPTION
FROM ADR

C/A NO:

DEFICIENCY REQUESTED

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.



Plaintiff/Attorney(s) for Plaintiff(s)

PETER D. KORN/JOHN S. KAY

JOHN B. KELCHNER/ALAN M. STEWART

LAURA B. BRENT/J. SCOTT WALLS

H. GUYTON MURRELL

Defendant/Attorney(s) for Defendant(s)

Date: 7/15/05

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as Trustee for
the registered holders of Structured Asset Securities
Corporation, Structured Asset Investment Loan
Trust, Mortgage Pass-Through Certificates, Series
2004-11,

PLAINTIFF,

VS.

Laura Toney,

DEFENDANT(S).

F25-02718

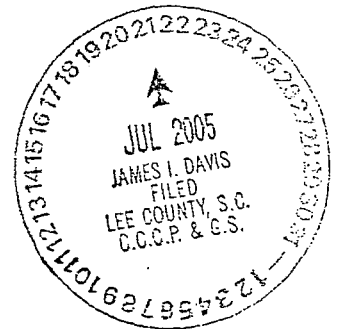
IN THE COURT OF COMMON PLEAS

SUMMONS 05-CP-31-169

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

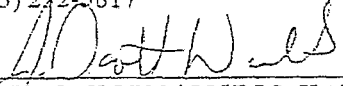
DEFICIENCY REQUESTED



TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817


PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / LAURA B. BRENT
JOHN B. KELCHNER / J. SCOTT WALLS
GUYTON MURRELL
Attorneys for Plaintiff

Columbia, South Carolina
July 13, 2005

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as Trustee
for the registered holders of Structured Asset
Securities Corporation, Structured Asset
Investment Loan Trust, Mortgage Pass-Through
Certificates, Series 2004-11 ,

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY REQUESTED

F25-02718

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of United Statse of America; and that the Defendant(s) Laura Toney is upon information and belief, a citizen(s) and resident(s) of the County of Lee, State of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Lee, State of South Carolina.

4. That on or about October 6, 2004, for value received, Laura Toney, did execute and deliver to Finance America, LLC, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Laura Toney promised to pay to Finance America, LLC the sum of Seventy-Six Thousand Five Hundred And 00/100 Dollars (\$76,500.00), together with interest thereon at an adjustable rate per terms as set out in said Note.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Laura Toney, did execute and deliver on October 6, 2004 unto Mortgage Electronic Registration Systems, Inc. solely as nominee for Finance America, LLC, its successors and assigns, a mortgage covering the following described property:

Legal description and property address:

All that certain lot or parcel of land situate just North of the Town of Bishopville, County of Lee and State of South Carolina and being bounded as follows: On the North by Chapman Street; On the East by lot of West Wilson; on the South by Lots Nos., 9, 10, 11, 12 and 13 and on the West by Bay Street represented on a plat being of North Mohawk as Lot No. 14, said plat being of record in Plat Book E at page 46, in the Office of the Clerk of Court for Lee County, South Carolina Records.

This conveyance is made subject to any and all existing reservations, easements, right-of-way, zoning ordinances, and restrictive or protective covenants that may appear of record or on the premises.

This being the same property most recently to Laura Toney by deed from Milton Toney dated December 4, 1992 and recorded December 4, 1992 in Book V-5 at page 205 in the Lee County, South Carolina Records.

729 Chatman Street, Bishopville, SC 29010
TMS# 030-02-00-024

6. Thereafter said mortgage was recorded in Book 361 at page 79 on October 19, 2004 in the office of the Clerk of Court of Lee County.

7. Thereafter, by virtue of an assignment to be recorded Mortgage Electronic Registration Systems, Inc. solely as nominee for Finance America, LLC assigned said mortgage unto LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 making LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 the present lien holder and Plaintiff herein.

8. The above referenced instrument constitutes a first lien priority mortgage.

9. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

10. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a

reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

11. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

12. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

13. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

14. The monthly payments due on said note and mortgage are in default since March 1, 2005, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of March 1, 2005 the sum of Seventy-Six Thousand Three Hundred Fifty-Six And 05/100 Dollars (\$76,356.05), together with interest at an adjustable rate per terms as set out in said Note from February 1, 2005 and also for the costs and disbursements of this action, including attorney's fees.

15. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), Laura Toney, for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant(s) for any deficiency in this action remaining after sale of the mortgaged premises.

16. On information and belief, the Notice of consumer's Right to Cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, was sent to the Defendant or was not required.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's mortgage be declared a first lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

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

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

Fourth, Plaintiff have judgment against the Defendant Laura Toney for the full amount found to be due Plaintiff on the note and mortgage, with right to enter personal judgment against the Defendant Laura Toney for any deficiency in this action remaining after sale of the mortgaged premises.

(4) For an Order directing and empowering the Sheriff of Lee County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(7) For such other and further relief as may be just and proper.

- (8) For an order satisfying any prior liens that may be of record, but have been paid in full.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817


PETER D. KORN / JOHN S. KAY
JOHN B. KELCHNER ALAN M. STEWART
LAURA B. BRENT / J. SCOTT WALLS
GUYTON MURRELL
Attorneys for Plaintiff

Columbia, South Carolina
July 13, 2005

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

1. The amount of the debt is stated in paragraph 7 of the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputed, in within, the validity of the debt or some portion thereof.
4. If the debtor(s) notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor(s) by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor(s) make a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor(s) by the creditor's law firm.

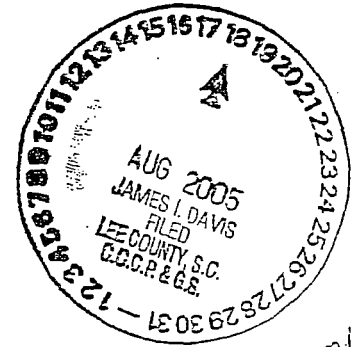
Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.

ANSWER

1.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEE) Case Number: 05-CP-31-169
)
 LaSalle Bank National Association, as Trustee)
 For the registered holders of Structured Asset)
 Securities Corporation, Structured Asset Investment)
 Loan Trust, Mortgage Pass-Through Certificates,)
 Series 2004-11,)
)
 Plaintiff,)
)
 vs.)
)
 Laura Toney,)
)
 Defendant (s).)

ANSWER



OK
AMS

The Defendant Answers as follows:

1. Each material allegation in Plaintiff's Complaint, except those specifically admitted herein are denied and Defendant demand strict proof thereof.
2. The allegations in Paragraph One are admitted.
3. That the allegations in Paragraph Two are admitted.
4. That the allegations in Paragraph Three are admitted.
5. That the allegations in Paragraph Four are admitted.
6. That the allegations in Paragraph Five are admitted.
7. That the allegations in Paragraph Six are admitted.
8. That the Defendant is without information to admit or deny the allegations of Paragraph Seven.
9. That the allegations in Paragraph Eight are admitted.
10. That the Defendant is without sufficient information to admit or deny

the allegations of Paragraph Nine and demands strict proof thereof.

11. That the Allegations in Paragraph Ten are denied.

12. Defendant admits the allegations in Paragraph Eleven.

13. Defendant admits the allegations in Paragraph Twelve.

14. Defendant denies the allegations of Paragraph Thirteen.

15. Defendant admits the allegations of Paragraph Fourteen.

16. Defendant denies the allegations of Paragraph Fifteen.

17. Defendant denies the allegations of Paragraph Sixteen.

COUNTERCLAIM

18. The Defendant re-alleges the allegations contained in paragraphs 1-17 as if stated verbatim.

19. That the Plaintiffs owed the Defendant a duty of disclosing true and accurate information regarding the transaction of this matter pursuant to the Truth in Lending laws.

20. That the Plaintiffs failed to provide a good faith estimate of the property at issue.

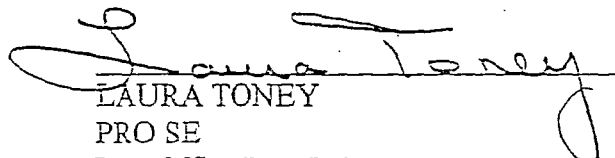
21. That the Plaintiffs did not provide Defendant an opportunity to select the representative of her choice to act in her behalf at the closing of the loan.

22. That the Defendant forwarded a letter of rescission on June 12, 2005 via certified mail notifying the Plaintiff of her intent to rescind the loan based on the violation of federal laws by Plaintiff.

23. That Plaintiff failed to acknowledge Defendant's intent to rescind.

WHEREFORE, Plaintiff prays that:

1. The Court order the Plaintiffs to accept Defendant's rescission of the loan;
2. The Court dismisses Plaintiff's action; and
3. The Court order such other relief deemed just and proper.


LAURA TONEY
PRO SE
Post Office Box 722
Bishopville, South Carolina 29010
(803) 484-6609

Bishopville, South Carolina

August 17th 2005

Transcript of Proceeding February 6, 2007

1.

1 (Plaintiff's Exhibit Numbers One through Eight were
2 marked into the record.)

3 MR. MURRELL: If it please the court, this matter is
4 a foreclosure action pertaining to certain real
5 property located in Lee County, South Carolina.
6 The case was referred to the Honorable Judge
7 Coffey as Special Referee due to an earlier
8 order of recusal by the Lee County Master-In-
9 Equity. The case arises by virtue of a loan as
10 to certain real property. As far as today's
11 hearing, there should appear in the record a
12 notice of hearing dated January 24, 2007, which
13 afforded notice of today's hearing to the
14 attorney for Ms. Toney Jay David Weeks,
15 Esquire, and I would submit a copy of that as
16 Plaintiff's Exhibit One into evidence. I have
17 also ... would also advise the court as to two
18 previous bankruptcy filings by the debtor
19 insofar as they would have any impact upon this
20 action. The first case being Case Number 2006-
21 5381-BD, which was filed November 27th of 2006,
22 which state a previous hearing in this matter.
23 And I would ask for the court to take judicial
24 notice of that case, as well as all filings
25 therein, and specifically would submit into

1 evidence as Plaintiff's Exhibit Two Schedule B
2 from the debtor, Laura Toney's, Chapter 13 Plan
3 which affirmatively states under oath Schedule
4 B, Item 21, that there were no refunds,
5 counterclaims or set-offs in existence and
6 would submit to the court under the doctrine of
7 judicial estoppel she is precluded from
8 asserting any counterclaims in this action due
9 to an adjudication in a prior action. I have
10 also made the court aware that a second
11 bankruptcy was filed in this matter. I'm
12 sorry, the second bankruptcy was actually the
13 one that I just cited. There was a previous
14 one as 2006-4333. Both bankruptcy actions have
15 been dismissed by order of the court, and there
16 is no stay in effect. And under the new
17 bankruptcy rules, there was no stay in effect
18 as to the second case filing. As appears in
19 the court record, there was a complaint filed
20 which set forth a cause of action for
21 foreclosure. There was an answer and
22 counterclaims asserted by the defendant. And
23 I have submitted both through filing with the
24 court, as well as here today, affidavits in
25 support of the motion for summary judgment,

1 including the affidavit of the mortgage broker,
2 Latea Benjamin. And attached thereto is a copy
3 of the attorney and insurance preference
4 checklist signed by Ms. Toney, as well as the
5 contemporaneous notes indicating that Ms. Toney
6 did select the attorney of her own choosing at
7 the time that she applied for the loan. I've
8 also submitted into evidence, both in terms of
9 filing, as well as here today, a affidavit on
10 behalf of my client, Michelle Jones, as
11 Plaintiff's Exhibit Four setting forth the debt
12 herein. I would ask leave of the court to
13 update those figures with any further
14 advancements they may have performed. Let me
15 run through the exhibits list. The notice of
16 hearing is Number One. The schedule of
17 personal property from the bankruptcy filing is
18 Exhibit Number Two. The affidavit of Latea
19 Benjamin has been submitted as Plaintiff's
20 Exhibit Number Three. And the affidavit on
21 behalf of the plaintiff by Michelle Jones is
22 Plaintiff's Exhibit Number Four. As
23 Plaintiff's Exhibit Number Five, I would submit
24 a copy of the adjustable rate note which sets
25 forth the terms of this particular loan.

1 That's Plaintiff's Exhibit Five. I would
2 submit as Plaintiff's Exhibit Six, as well as
3 ask the court to take judicial notice as a
4 matter of public record in Lee County, the
5 original mortgage which was filed in Book 361
6 at Page 79. I would also ask the court to take
7 judicial notice and submit as Plaintiff's
8 Exhibit Seven a copy of the assignment of
9 mortgage whereby the security instrument was
10 assigned unto the plaintiff in this action. I
11 have also shown to the court a filed copy of
12 the closing attorney, Michael Mays', affidavit
13 which sets forth, among other particulars, that
14 the defendant was afforded the good faith
15 estimate at the time of closing. And I would
16 submit into evidence as Plaintiff's Exhibit
17 Eight a signed copy of the HUD settlement
18 statement signed by the defendant. I would ask
19 leave of court to submit a updated and current
20 attorney's fee affidavit. And that is the
21 plaintiff's case, Your Honor.

22 JUDGE COFFEY: Okay. We'll accept all those exhibits
23 into evidence and I will be glad to accept an
24 affidavit as to your attorney's fees. And do
25 you have a proposed order prepared for the

Transcript of Proceeding March 27, 2007

.

1.

1 (WHEREUPON, ON MARCH 27, 2007 THE FOLLOWING
2 PROCEEDINGS WERE HELD:)

3 THE COURT: ALL RIGHT. WE'RE HERE ON THE MATTER OF
4 LASALLE NATIONAL BANK NATIONAL ASSOCIATION VERSUS LAURA
5 TONEY -- LAURA TONEY. THIS IS PURSUANT TO AN ORDER THAT I
6 SIGNED A FEW DAYS AGO GRANTING TEMPORARY RESTRAINING ORDER
7 AND THE ORDER INDICATING A HEARING TODAY AT 10 A.M.
8 MR. HENRY?

9 MR. HENRY: GOOD MORNING, YOUR HONOR.

10 THE COURT: GOOD MORNING.

11 MR. HENRY: MAY IT PLEASE THE COURT.

12 THE COURT: YES, SIR.

13 MR. HENRY: JOSEPH HENRY AND NATHANIEL ROBERSON ON
14 BEHALF OF MS. TONEY. THIS IS A MATTER IN WHICH WE ARE
15 SEEKING TO HAVE THE SALE OF MS. TONEY'S RESIDENCE HALTED.
16 THERE IS A PENDING ORDER FOR SALE PURSUANT TO A
17 FORECLOSURE ACTION THAT WAS BROUGHT BY MR. MURRELL AND THE
18 KORN LAW FIRM ON BEHALF OF LASALLE BANK. LASALLE
19 REFINANCED A LOAN ON MS. TONEY'S HOME BACK IN OCTOBER. I
20 BEG THE COURT'S INDULGENCE FOR A MOMENT. IT WAS OCTOBER 6
21 OF 2004, YOUR HONOR, I BELIEVE, AND AS A RESULT OF SOME
22 FAILURES ON THE PART OF THE BANK ACCORDING TO MY CLIENT TO
23 DELIVER TO HER THE REQUIRED DISCLOSURES PURSUANT TO THE
24 FEDERAL TRUTH IN LENDING ACT SHE SENT TO THE BANK A NOTICE
25 THAT SHE WAS EXERCISING HER RIGHTS OF RESCISSION ON THAT

1 LOAN PURSUANT TO THE TRUTH IN LENDING ACT SECTION 15 USC
2 1635. THE BANK HAD -- AS A RESULT OF RECEIVING THAT
3 NOTICE THE BANK WAS REQUIRED TO TAKE CERTAIN DEFINITIVE
4 ACTS WITHIN A 20-DAY TIME PERIOD FROM THE DATE OF RECEIPT.
5 WE HAVE A CERTIFIED LETTER THAT WAS SENT TO THE BANK.
6 THERE IS A DATE ON THIS THAT THE BANK RECEIVED IT, AND IT
7 WAS SIGNED BY MR. TOM NELSON, AND ACCORDING TO MS. TONEY
8 THERE HAS NEVER BEEN A RESPONSE FROM THE BANK.

9 THE IMPORTANCE OF THAT, YOUR HONOR, IS THIS. THE
10 FEDERAL TRUTH IN LENDING ACT SAYS THAT IF THE CREDITOR
11 RECEIVES A NOTICE AND DOES NOT RESPOND WITHIN THE
12 PRESCRIBED TIME THAT CREDITOR LOSES THE SECURITY INTEREST
13 THAT THE CREDITOR HAS IN THE FILE. THAT IS IMPORTANT
14 BECAUSE AT THE POINT THAT THE BANK FILED THIS FORECLOSURE
15 ACTION IT HAD MORE THAN 20 DAYS HAD ELAPSED SINCE THE BANK
16 RECEIVED MS. TONEY'S RESCISSION LETTER, AND THERE'S BEEN
17 NO RESPONSE FROM THE BANK DURING THE PRESCRIBED 20-DAY
18 TIMEFRAME. THEREFORE, THE BANK'S SECURITY INTEREST IN
19 THAT PROPERTY IS VOIDED AT THAT POINT. ONCE THE BANK'S
20 SECURITY INTEREST IS VOIDED, THE BANK HAS NOTHING TO
21 FORECLOSE, AND I WOULD HAND UP A COPY OF THE RELEVANT
22 PROVISIONS OF THE ACT.

23 THE COURT: ALL RIGHT.

24 MR. MURRELL: YOUR HONOR, AS LONG AS THE COURT TAKES
25 JUDICIAL NOTICE OF THE ENTIRETY OF THE ACT I HAVE NO

1 OBJECTION.

2 THE COURT: ALL RIGHT.

3 MR. MURRELL: ALTHOUGH, I WOULD NOTE THIS MATTER HAS
4 BEEN PASSED UPON BY PREVIOUS ORDER OF THE COURT.

5 MR. HENRY: YOUR HONOR, WE'RE NOT AWARE OF THE COURT
6 HAVING THE AUTHORITY TO PASS UPON AN ISSUE THAT WAS NOT
7 PROPERLY BROUGHT BEFORE THE COURT'S ATTENTION. THIS
8 MATTER -- THERE WAS A REQUIRED RESPONSE FROM THE CREDITOR
9 WITHIN 20 DAYS. THAT WAS NOT DONE. THERE WAS NOTHING FOR
10 THE COURT TO PASS UPON. EVERYTHING HAPPENED BY OPERATION
11 OF LAW FROM THAT POINT. THERE WAS NOTHING FOR THE COURT
12 TO ACTUALLY RULE ON IN THAT ISSUE. THE COURT HAD MOVED IT
13 WAS IRRELEVANT TO ANY COURT PROCEEDINGS.

14 ONCE THE 20-DAY TIMEFRAME PASSED THE ONLY RELEVANCE
15 OF IT IS THE ENFORCEMENT OF THE RESCISSION. THERE IS NO
16 RULING THAT THE COURT HAD TO MAKE TO CAUSE THE RESCISSION
17 TO TAKE EFFECT. THE RESCISSION IS EFFECTIVE PURSUANT TO
18 THE LAW. THERE IS NOTHING THAT HAD TO BE DONE IN
19 FURTHERANCE OF THE RESCISSION RIGHT BEING EXERCISED. ALL
20 THE CREDITOR NEEDED IS NOTICE FROM THE DEBTOR. ONCE THE
21 CREDITOR RECEIVED THAT NOTICE, THAT RESCISSION IS IN
22 EFFECT, AND IF THE CREDITOR FAILS TO RESPOND THAT
23 TERMINATES THE CREDITOR'S RIGHT OF HAVING ANY KIND OF
24 SECURITY IN THE PROPERTY UPON WHICH TO FORECLOSE.

25 THE ONLY THING THAT THE CREDITOR DID IS IGNORE THE

1 RESCISSION, TRIED TO PROCEED WITH THE FORECLOSURE WHICH
2 WAS AN IMPROPER PROCEEDING AT THAT POINT BECAUSE THERE WAS
3 NOTHING FOR THEM TO FORECLOSE ON. THEY HAD RECEIVED THE
4 NOTICE. THEIR RIGHTS TO THE PROPERTY HAD BEEN TERMINATED.
5 THERE WAS NOTHING FOR THEM TO FORECLOSE ON. THEY WERE
6 FORESTALLED FROM THE FORECLOSURE SIMPLY BY VIRTUE OF THE
7 FACT OF RECEIVING THAT RESCISSION NOTICE AND FAILING TO
8 RESPOND.

9 THEY HAD AFFIRMATIVE DUTIES UNDER THE TRUTH IN
10 LENDING ACT ONCE THEY RECEIVE THE RESCISSION. THEY FAILED
11 TO CARRY OUT THE AFFIRMATIVE DUTIES THEREBY LOSING THEIR
12 SECURITY INTEREST AND THEREBY LOSING THE RIGHT OF
13 FORECLOSURE, AND THAT'S REALLY WHAT THE PROCEEDING IS ALL
14 ABOUT.

15 THE COURT: ALL RIGHT.

16 MR. HENRY: THANK YOU.

17 THE COURT: ALL RIGHT. MR. MURRELL?

18 MR. MURRELL: YOUR HONOR, IF I COULD HAND UP A SHORT
19 RETURN WHICH I PREPARED UPON RECEIVING THIS NOTICE ON
20 MONDAY MORNING, AND, OF COURSE, I HAVE EXPRESSED TO THE
21 COURT MY OBJECTION TO THE EX-PARTE'ING OF THE APPLICATION
22 AND THE ORDER PRESENTED BOTH IN TERMS OF DUE PROCESS AND
23 IN TERMS OF --

24 THE COURT: MR. MURRELL, ANYTHING THAT YOU'VE DONE
25 OVER THE PHONE THAT'S NOT A PART OF THE RECORD NEEDS TO BE

1 AND WOULD HAND UP A COPY OF THE ORDER DATED FEBRUARY 26 OF
2 WHICH I ONLY HAVE ONE COPY WHICH MAKES A SPECIFIC FINDING
3 THAT MS. TONEY FILED HER BANKRUPTCY CASE IN BAD FAITH AND
4 WAS SUBSEQUENTLY BARRED FROM ANY FURTHER REFILINGS IN THE
5 SPACE OF ONE YEAR. I WOULD SUBMIT THAT IN THE RECORD.

6 YOUR HONOR, THE RIGHT OF RESCISSION TO WHICH
7 MR. HENRY ALLUDES IS AN EXPANDED AND ENHANCED RIGHT THAT
8 ONLY APPLIES IF THERE HAS BEEN NO DISCLOSURE MADE AS
9 REQUIRED AT THE TIME OF HEARING, AND, OF COURSE, I WOULD
10 ASK YOUR HONOR TO TAKE JUDICIAL NOTICE OF THE FILINGS IN
11 THE CASE IN CHIEF -- LASALLE BANK VERSUS LAURA TONEY,
12 2005-CP-31-169 -- WHEREIN THE COURT MADE A SPECIFIC
13 FINDING AS TO THESE ISSUES. I WOULD ASK YOUR HONOR TO
14 LOOK AT THE ANSWER WHICH ALSO CONTAINED COUNTERCLAIMS,
15 ALTHOUGH IT WASN'T STYLED AS SUCH BY WHICH SHE
16 SPECIFICALLY ALLEGES, PARAGRAPH 19, THAT THE PLAINTIFFS
17 HAD THE DUTY -- THE DEFENDANT HAD THE DUTY OF DISCLOSING
18 TRUE AND ACCURATE INFORMATION --

19 THE COURT: MR. MURRELL?

20 MR. MURRELL: YES, YOUR HONOR?

21 THE COURT: CAN YOU KEEP UP?

22 THE COURT REPORTER: NO.

23 MR. MURRELL: I'LL BE HAPPY TO SLOW DOWN, YOUR HONOR.

24 PARAGRAPH 19 --

25 THE COURT: LET ME FIND WHERE YOU ARE. PARAGRAPH 19

1 OF THE?

2 MR. MURRELL: OF THE ANSWER FILED BY MS. TONEY.

3 THE COURT: HER ANSWER?

4 MR. MURRELL: YES, YOUR HONOR. THE MIDDLE OF THE
5 SECOND PAGE IT HAS COUNTERCLAIM ALTHOUGH IT DOESN'T HAVE A
6 SUMMONS AND IT'S NOT STYLED AS A COUNTERCLAIM ON THE
7 PLEADING ITSELF.

8 THE COURT: ALL RIGHT. YES, SIR.

9 MR. MURRELL: NINETEEN -- THAT THE PLAINTIFFS OWED
10 THE DEFENDANT THE DUTY OF DISCLOSING TRUE AND ACCURATE
11 INFORMATION REGARDING THE TRANSACTION OF THIS MATTER
12 PURSUANT TO THE TRUTH IN LENDING LAWS. PARAGRAPH 20 --
13 THAT THE PLAINTIFFS FAILED TO PROVIDE A GOOD FAITH
14 ESTIMATE OF THE PROPERTY IN ISSUE.

15 (WHEREUPON, THE COURT REPORTER SPEAKS WITH MR.
16 MURRELL.)

17 MR. MURRELL: THE FOLLOWING PARAGRAPH, YOUR HONOR,
18 PARAGRAPH 20, ALLEGES THAT THE PLAINTIFF FAILED TO PROVIDE
19 A GOOD FAITH ESTIMATE OF THE PROPERTY AT ISSUE, AND THEN
20 THE FOLLOWING PARAGRAPH 21 ALLEGES THAT SHE WAS NOT
21 PROVIDED HER OPPORTUNITY TO SELECT HER REPRESENTATIVE OF
22 HER CHOICE AT CLOSING, DURING CLOSING, AND THEN PARAGRAPH
23 21, THAT THE DEFENDANT FORWARDED A LETTER OF RESCISSION
24 DATED JUNE 12, 2005.

25 SO, YOUR HONOR, IT'S APPARENT THAT ALL THESE ISSUES

1 WERE RAISED IN THE FORECLOSURE CASE IN CHIEF. I WOULD
2 ALSO ASK YOUR HONOR TO TAKE JUDICIAL NOTICE OF THE
3 SUBSEQUENT FORECLOSURE DECREE WHICH MAKES SPECIFIC
4 FINDINGS ON THESE ISSUES AS WELL AS THE DOCUMENTS AND
5 EXHIBITS WHICH HAVE BEEN FILED OF RECORD UPON WHICH ITS
6 FINDINGS ARE BASED. SPECIFICALLY, THE AFFIDAVIT OF THE
7 CLOSING ATTORNEY MICHAEL MAY WHO STATED UNDER OATH THAT
8 THOSE DOCUMENTS HAD BEEN PROVIDED AND A COPY OF THE
9 ACKNOWLEDGEMENT OF THOSE DOCUMENTS SIGNED BY MS. TONEY WAS
10 ATTACHED TO HIS AFFIDAVIT.

11 THE COURT: WHICH EXHIBIT IS THAT?

12 MR. MURRELL: LET ME HAND THAT UP TO YOUR HONOR. IT
13 WAS FILED AND SERVED UPON OPPOSING COUNSEL WELL IN ADVANCE
14 OF HEARING.

15 THE COURT: OPPOSING COUNSEL AS IN?

16 MR. MURRELL: OPPOSING COUNSEL MR. DAVID WEEKS WHO IS
17 REPRESENTING MS. TONEY IN THE CASE IN CHIEF.

18 THE COURT: ALL RIGHT.

19 MR. MURRELL: JUST ONE SECOND, YOUR HONOR. I AM
20 PROVIDING A COPY OF MR. MAY'S AFFIDAVIT, FILED AFFIDAVIT
21 TO OPPOSE, TO MR. HENRY, AND LET ME OBTAIN A COPY FOR YOU
22 AS WELL. THEREFORE, THERE WAS NO DOUBT BASED UPON THE
23 EVIDENCE PRESENTED AT HEARING THAT THOSE DOCUMENTS WERE
24 PROVIDED TO MS. TONEY AT CLOSING, AND SHE WAS ONLY
25 ENTITLED TO THE STANDARD THREE-DAY RIGHT OF RESCISSION

1 WHICH SHE SIGNED A COPY OF AND WHICH SHE DID NOT EXERCISE
2 IN THAT TIME PERIOD.

3 YOUR HONOR, IN THIS CASE MS. TONEY MADE APPROXIMATELY
4 THREE PAYMENTS BEFORE SHE QUIT MAKING HER PAYMENTS AND
5 SOME YEARS LATER ATTEMPTED TO RESCIND THE LOAN. IT WAS
6 WELL OUTSIDE OF THE TIME PROVIDED FOR UNDER THE FEDERAL
7 RULES, THE FEDERAL LAW, AND THE COURT MADE A SPECIFIC
8 FINDING AS TO THAT POINT IN THE FORECLOSURE DECREE. THE
9 DECREE WHICH WAS FILED ON MARCH 15, 2007 IS RES JUDICATA
10 AS TO THAT MATTER, AND MS. TONEY CANNOT NOW FILE A NEW
11 ACTION AND ATTEMPT TO RELITIGATE THE ISSUES WHICH WERE
12 SPECIFICALLY HEARD.

13 JUST AS IMPORTANTLY, YOUR HONOR, AND ALSO SUBMITTED
14 IN TO THE COURT RECORD AS EXHIBIT NO. 2 IS A COPY OF HER
15 SCHEDULE B IN HER THIRD BANKRUPTCY FILING WHICH UNDER ITEM
16 21 SPECIFICALLY REQUIRES MS. TONEY TO DECLARE ANY
17 CONTINGENT AND UNLIQUIDATED CLAIMS OF EVERY NATURE
18 INCLUDING TAX REFUNDS, COUNTERCLAIMS TO THE DEBTOR, AND
19 SET-OFF CLAIMS. MS. TONEY AFFIRMATIVELY STATED UNDER OATH
20 THAT SHE HAD NO SUCH CLAIMS TO DECLARE, AND, CERTAINLY,
21 SHE DID NOT RAISE ANY OF THESE ISSUES IN THE BANKRUPTCY
22 COURT WHEREBY THE TRUSTEE COULD HAVE MADE A DETERMINATION
23 IF, IN FACT, HER FINANCIAL SITUATION WAS WHOLLY DIFFERENT
24 FROM WHAT SHE WAS CLAIMING IN HER FILES.

25 SHE CANNOT TAKE ONE STANCE IN BANKRUPTCY COURT AND

1 SEEK THE PROTECTION OF BANKRUPTCY COURT FOUR TIMES AND
2 THEN COME INTO THIS COURT AND SEEK A -- TAKE AN OPPOSITE
3 STANCE. SHE IS JUDICIALLY ESTOPPED FROM DOING THAT, AND
4 THAT WAS ONE OF THE BASES UPON WHICH THE PRIOR COURT
5 ENTERED ITS DECISION. AS I SAID, THEY NOT ONLY FOUND THAT
6 PROCEDURALLY BUT ALSO SUBSTANTIVELY UNDER THE AFFIDAVIT OF
7 THE CLOSING ATTORNEY AS WELL AS THE MORTGAGE BROKER
8 LETITIA BENJAMIN WHO HAD ATTACHED TO HER AFFIDAVIT A COPY
9 OF THE EXECUTED ATTORNEY PREFERENCE SELECTION EXECUTED BY
10 MS. TONEY AT THE TIME SHE APPLIED FOR HER LOAN
11 APPLICATION.

12 SO, YOUR HONOR, WITH THIS MATTER HAVING BEEN FULLY
13 LITIGATED AND PLEAD BY PRIOR -- IN A PRIOR JUDICIAL
14 PROCEEDING, I WOULD ASK YOUR HONOR TO RESCIND THIS ORDER
15 AND ANY FURTHER PROCEEDING BE HELD BEFORE THE APPROPRIATE
16 HEARING OFFICER WHO HAS BEEN PROVIDED REQUISITE AUTHORITY
17 TO HEARING THIS CASE UNDER ORDER OF JUDGE THOMAS COOPER OF
18 THE CIRCUIT COURT.

19 THE COURT: ALL RIGHT. MR. HENRY?

20 MR. HENRY: BRIEFLY IN RESPONSE, YOUR HONOR.

21 THE COURT: WELL, BEFORE YOU RESPOND, LET ME RAISE --
22 MR. MURRELL, IN REVIEW OF THE FILE I NOTICE THERE ARE
23 DUPLICATE ORDERS OF REFERENCES IN THE FILE.

24 MR. MURRELL: THAT'S CORRECT, YOUR HONOR. THIS
25 MATTER WAS INITIALLY REFERRED MANDATORILY TO JUDGE

1 MASTER-IN-EQUITY OUTSIDE OF THIS COUNTY, YOUR HONOR, IT
2 WOULD BE OUR POSITION THAT THE MASTER-IN-EQUITY IN -- THE
3 MASTER-IN-EQUITY IN LEE COUNTY DID NOT HAVE A CONFLICT
4 BECAUSE HE WAS NOT IN A POSITION WHERE HE HAD REPRESENTED
5 MS. TONEY ON ANY MATTERS RELATED TO THIS FORECLOSURE, NOR
6 WAS HE IN ANY POSITION TO REPRESENT EITHER SIDE OF THIS
7 ISSUE. HIS ONLY DUTY WOULD HAVE BEEN A DISCLOSURE OF HIS
8 PRIOR REPRESENTATION, AND AT THIS POINT THERE WOULD HAVE
9 BEEN A DETERMINATION AS TO WHETHER HE WOULD BE A PERSON
10 WHO COULD MAKE A DECISION UNBIASED IN THIS CASE. THERE
11 WAS REALLY NO ACTIVE CONFLICT. HE WAS NOT IN A
12 REPRESENTATIVE CAPACITY OF EITHER PARTY, NOR REPRESENTED
13 MS. TONEY IN REFERENCE TO ANY ISSUE RELATED TO A
14 FORECLOSURE TO MY KNOWLEDGE.

15 THEREFORE, HE SHOULD HAVE HEARD THIS MATTER IN THE
16 COUNTY WHERE THE PROPERTY IS SITUATED AND WHERE MS. TONEY
17 LIVED, AND IF THE MATTER WENT OUTSIDE OF THE COUNTY IT
18 SHOULD HAVE GONE OUT TO SUMTER COUNTY OR FLORENCE WHICH
19 WAS CLOSER WHICH WOULD BE IN KEEPING WITH THE STATUTORY
20 REQUIREMENT THAT THE VENUE CHANGE TO THE NEXT ADJOINING
21 COUNTY. WE'RE NOT IN THE NEXT ADJOINING COUNTY WHEN WE GO
22 ALL OF THE WAY DOWN TO MANNING. THEREFORE, THAT ORDER OF
23 REFERENCE WE BELIEVE WAS INAPPROPRIATE.

24 SECONDLY, THE ISSUE RELATING TO THE RESCISSION WE DO
25 NOT BELIEVE WAS A MATTER THAT HAD TO BE LITIGATED -- HAD

1 TO BE LITIGATED IN THE COURT BECAUSE RESCISSION OPERATES
2 PURSUANT TO THE STATUTE. THE STATUTE SAYS RESCISSION IS
3 AUTOMATIC ONCE THE PERSON SENDS NOTICE. WE HAVE NOTHING
4 IN THE RECORD THAT SHOWS THAT THE CREDITOR EVER RESPONDED
5 TO THE RESCISSION NOTICE, AND THAT'S WHAT TRIGGERS THE
6 FORFEITURE OF THE CREDITOR'S RIGHT TO FORECLOSE. ONCE THE
7 NOTICE IS GIVEN, THE CREDITOR HAS AFFIRMATIVE DUTIES
8 PURSUANT TO THE STATUTE THAT THEY HAVE TO EXERCISE WITHIN
9 20 DAYS. THAT'S CLEAR-CUT. THERE IS NO AMBIGUOUSNESS.
10 THERE IS NOTHING TO BE DETERMINED. THE COURT HAS NO --
11 THERE WAS NOTHING FOR THE COURT TO DO WITH THAT EXCEPT
12 ENFORCE THE RESCISSION RIGHTS.

13 FURTHERMORE, MS. TONEY'S POSITION IS THAT SHE NEVER
14 RECEIVED THOSE DISCLOSURES THAT WERE PUT IN THE LETTER OF
15 RESCISSION.

16 THE COURT: WHAT DISCLOSURES ARE YOU TALKING ABOUT?

17 MR. HENRY: THE DISCLOSURES FOR THE CHOICE OF
18 ATTORNEYS.

19 THE COURT: SHE SIGNED THE -- SHE SIGNED THAT.

20 MR. HENRY: THERE IS CASELAW THAT SAYS EVEN WHEN
21 THAT'S THE CASE THERE'S ONLY THE PRESUMPTION THAT IT WAS
22 SENT. FURTHERMORE --

23 THE COURT: WAIT A MINUTE NOW. SHE HAD A LAWYER AT
24 THE CLOSING. THEY HAVE ALL OF THE LOAN FOLKS WHO
25 PARTICIPATE IN THE CLOSING, AND THEY PROVIDED THESE

1 DOCUMENTS SAYING THAT SHE SIGNED THEM SELECTING THE
2 ATTORNEY OF HER PREFERENCE, AND YOU TAKE THE POSITION THAT
3 NONE OF THIS HAPPENED?

4 MR. HENRY: ON THE DAY OF THE CLOSING, YOUR HONOR,
5 THAT MAY HAVE BEEN THE CASE, BUT THERE WAS NOT A PRIOR
6 DETERMINATION THAT SHE HAD. SHE'S SUPPOSED TO RECEIVE A
7 CLOSING PACKET PRIOR TO THE DAY OF THE CLOSING. THAT
8 NEVER HAPPENED.

9 THE COURT: HOW DO I KNOW THAT?

10 MR. HENRY: THERE WAS NOTHING IN THE RECORD
11 INDICATING THAT. THOSE ARE COPIES THAT SHE RECEIVED AT
12 THE CLOSING ON THE DAY OF THE CLOSING. THOSE ARE NOT
13 DOCUMENTS THAT WERE FORWARDED TO HER PRIOR TO THE CLOSING
14 WHICH WOULD GIVE HER THE OPPORTUNITY TO EXERCISE AN
15 INFORMED DECISION WHICH IS WHAT THE TRUTH IN LENDING ACT
16 REQUIRES. THE DOCUMENT IS SIGNED 10/6/04. THERE IS
17 NOTHING THAT SHOWS SHE RECEIVED THIS DOCUMENT PRIOR TO THE
18 DATE OF CLOSING. THEREIN LIES A VIOLATION, AND ONCE THE
19 VIOLATION OCCURS YOU HAVE THE THREE-YEAR TIMEFRAME IN
20 WHICH TO EXERCISE YOUR RIGHT OF RESCISSION WHICH IS
21 EXACTLY WHAT MS. TONEY DID. THE RECORD IS DEVOID OF ANY
22 EVIDENCE OF ANY RESPONSE FROM THE CREDITOR ONCE THAT
23 LETTER WAS SENT.

24 THE COURT: YOU'RE SAYING IF YOU HAVE A LOAN CLOSING
25 AND IF YOU DON'T GET THE CLOSING PAPERS A DAY BEFORE THE

1 CLOSING YOU CAN CANCEL THE LOAN WITHIN THREE YEARS?

2 MR. HENRY: THAT'S CORRECT, YOUR HONOR.

3 THE COURT: AND WHAT PROVISION OF WHAT YOU HANDED UP
4 TO ME SAYS THAT?

5 MR. HENRY: THIS IS A CASE THAT INTERPRETS THE TRUTH
6 IN LENDING ACT. I'LL HAND THAT UP AS SOON AS OPPOSING
7 COUNSEL HAS HAD AN OPPORTUNITY TO LOOK AT IT.

8 THE COURT: IT INTERPRETS WHAT PROVISION OF THE -- IT
9 INTERPRETS WHAT YOU HANDED UP TO ME?

10 MR. HENRY: IT IS THE RIGHT OF RESCISSION OF THE
11 TRUTH IN LENDING ACT.

12 MR. MURRELL: YOUR HONOR, IN THIS CASE IT APPEARS
13 THAT THE RIGHT OF RESCISSION WAS EXERCISED WITHIN TWO
14 DAYS, NOT THREE, AND, AGAIN, IN THIS CASE THEY'RE ALLEGING
15 AN EXPANDED RIGHT OF RESCISSION BEING NOT PROVIDED THE
16 DOCUMENTS AT ALL.

17 THE COURT: ALL RIGHT.

18 MR. MURRELL: AND I WOULD NOTE THAT HER DRIVER'S
19 LICENSE IS ATTACHED --

20 THE COURT: ALL RIGHT. MR. HENRY HAS THE FLOOR RIGHT
21 NOW. I'LL BE HAPPY TO HEAR FROM YOU WHEN IT'S YOUR TURN.

22 MR. MURRELL: THANK YOU, YOUR HONOR.

23 THE COURT: GO AHEAD.

24 MR. HENRY: THE CASELAW SAYS THAT THE PACKET HAS TO
25 BE A FULL AND COMPLETE PACKET OF ALL DISCLOSURE. SHE HAS

1 TO HAVE THE OPPORTUNITY TO REVIEW THOSE DISCLOSURES PRIOR
2 TO MAKING HER DECISION ON THE DAY OF CLOSING. IF SHE
3 RECEIVES THE DOCUMENTS ON THE DAY OF THE CLOSING SHE'S IN
4 THE MIDDLE OF THE TRANSACTION AT THE TIME THE DISCLOSURE
5 THE BEING MADE. THAT WAS INEFFECTIVE DISCLOSURE. SHE HAS
6 NOT HAD TIME TO READ THOSE DISCLOSURES, TO ANALYZE THOSE
7 DISCLOSURES, AND MAKE A DETERMINATION AS TO WHETHER OR NOT
8 SHE AGREES WITH EVERYTHING IN IT. SHE MAY WANT A
9 DIFFERENT ATTORNEY, BUT AT THE DAY OF THE CLOSING THAT'S
10 PRETTY HARD TO COME UP WITH. THE AVERAGE PERSON WHO GOES
11 INTO A CLOSING IS NOT GOING TO KNOW THAT THEY HAVE THAT
12 RIGHT. SO, THAT'S WHY THE FEDERAL TRUTH IN LENDING ACT
13 WAS ENACTED TO ALLOW THE CONSUMER TO EXERCISE AN INFORMED
14 DECISION. I BEG THE COURT'S INDULGENCE ONE MOMENT.

15 FURTHER, YOUR HONOR, ONCE THE LETTER OF RESCISSION IS
16 SENT, THE CREDITOR HAS TO RAISE ANY DEFENSES THAT IT HAS
17 TO THE RESCISSION AT THAT TIME. FAILURE TO DO SO IN THE
18 EXPIRATION OF 20 DAYS PUTS THEM IN STATUTORY DEFAULT.
19 THEY DON'T HAVE RIGHT TO RAISE THOSE ISSUES NOW. THIS
20 FORECLOSURE ACTION IS WELL AFTER THE 20-DAY EXPIRATION.
21 THEREFORE, THE ALLEGED ALLEGATION THAT WE DEALT WITH THIS
22 IN BANKRUPTCY COURT IS IMMATERIAL AND IRRELEVANT TO THESE
23 PROCEEDINGS. IT WAS IRRELEVANT ON THE BANKRUPTCY
24 PROCEEDING.

25 THE COURT: WHAT IS YOUR RESPONSE TO MR. MURRELL'S

1 ARGUMENT THAT NONE OF WHAT YOU'RE SAYING APPLIES WHERE
2 THERE IS A THREE-DAY RIGHT OF RESCISSION AND THE BORROWER
3 HAS BEEN GIVEN THAT NOTICE AND ELECTED NOT TO RESCIND AND
4 HAS AFFIRMED THE ACCEPTANCE OF IT BY MAKING PAYMENTS?

5 MR. HENRY: FAILURE TO GIVE THE NOTICES THAT ARE
6 REQUIRED AND GIVING THE TIME FOR THE PERSON TO REVIEW IS A
7 VIOLATION, AND THAT'S THE POSITION THAT WE TAKE THAT EVEN
8 IF MR. MURRELL HAS SOMETHING THAT SHOWS SHE RECEIVED IT ON
9 THE DAY OF CLOSING, THAT'S IMMATERIAL. WHAT MR. MURRELL'S
10 CLIENT FAILED TO DO IS TO ACT PURSUANT TO THE STATUTE OF
11 THE TRUTH IN LENDING ACT. THE TRUTH IN LENDING ACT SAYS
12 YOU HAVE 20 DAYS ONCE YOU RECEIVED A LETTER OF RESCISSION.
13 THEY RECEIVED A LETTER OF RESCISSION. I DON'T CARE WHAT
14 THEY DID AFTER THAT. THE FAILURE TO RESPOND TO THAT
15 LETTER OF RESCISSION, THOSE FACTS HAVE BEEN DISTINGUISHED.
16 SO, THEY CAN COME IN HERE AND TRY TO PRESENT THAT AS A
17 JUSTIFICATION AFTER THE FACT, YOUR HONOR, BUT THAT
18 JUSTIFICATION IS WITHOUT MERIT.

19 THE COURT: WHAT PART OF THIS CASE SAYS WHAT YOU'RE
20 NOW SAYING?

21 MR. HENRY: I'M SORRY?

22 THE COURT: WHAT PART OF THIS CASE THAT YOU HANDED UP
23 TO ME SAYS WHAT YOU'RE NOW SAYING?

24 MR. HENRY: THE CASE -- THERE'S SOME OTHER RESEARCH
25 THAT I'VE DONE, YOUR HONOR, THAT TALKS ABOUT RESCISSION --

1 THE COURT: ALL RIGHT. SO, THE VIOLATION HERE IS
2 THAT THEY ONLY GAVE HER TWO DAYS INSTEAD OF THREE?

3 MR. HENRY: THAT'S CORRECT.

4 THE COURT: SO, HOW DOES THAT APPLY TO THIS
5 PARTICULAR CASE INVOLVING MS. TONEY?

6 MR. HENRY: WELL, YOUR HONOR, THE ACT WAS PRETTY
7 SPECIFIC AS TO HOW -- THE ACT WAS PRETTY SPECIFIC. IF
8 YOU'LL LOOK AT THE LANGUAGE OF THE ACT ITSELF IT SAYS THAT
9 IT EXPIRES THREE YEARS AFTER CONSUMMATION THAT A PERSON'S
10 RIGHT OF RESCISSION --

11 THE COURT: EXPIRES --

12 MR. HENRY: -- EXPIRES THREE YEARS AFTER CONSUMMATION
13 OF THE TRANSACTION. FURTHER, THERE IS CASELAW THAT SAYS
14 THAT A PERSON WHO HAS A -- WHO HAS BEEN FORECLOSED BUT IS
15 STILL WITHIN THE RIGHT OF RECOUPMENT PERIOD WHICH IS THE
16 ONE YEAR FOLLOWING THE FORECLOSURE AND FORECLOSURE SALE
17 THEY CAN STILL EXERCISE THE RIGHT OF RESCISSION EVEN THEN.
18 SO, THE RIGHT OF RESCISSION IS NOT STAYED BY THE
19 FORECLOSURE SALE. IF YOU HAVE A ONE-YEAR RIGHT OF
20 RECOUPMENT, YOU CAN EXERCISE YOUR RIGHT OF RESCISSION EVEN
21 DURING THAT PERIOD. IT IS A VERY CONSUMER FRIENDLY ACT
22 YOUR HONOR.

23 THE COURT: WHAT IF SHE WAS GIVEN THE THREE-DAY RIGHT
24 OF RESCISSION AND ACKNOWLEDGED THAT SHE HAD THE THREE DAY
25 -- TO MIDNIGHT OF THE THIRD DAY TO RESCIND AND SHE DIDN'T

1 DO IT, SHE DIDN'T EXERCISE THAT RIGHT?

2 MR. HENRY: IF YOU ARE GIVEN THAT ACT AT CLOSING,
3 YOUR HONOR, THAT'S NOT EFFECTIVE NOTICE.

4 THE COURT: YOU'RE SUPPOSED TO BE GIVEN THAT --

5 MR. HENRY: YOU HAVE A RIGHT --

6 THE COURT: YOU'RE SUPPOSED TO BE GIVEN THAT BEFORE
7 THE CLOSING?

8 MR. HENRY: YOU'RE SUPPOSED TO RECEIVE THE CLOSING
9 PACKET A FEW DAYS BEFORE CLOSING. YOU'RE NOT SUPPOSED TO
10 COME TO THE CLOSING AND HAVE ALL OF THESE DOCUMENTS SHOVED
11 UNDER YOUR NOSE AND BE ASKED TO EXERCISE AN INFORMED
12 DECISION ON THE DAY ~~OF CLOSING~~.

13 THE COURT: WELL, YOU HAVE THREE DAYS FOLLOWING THE
14 CLOSING, I THOUGHT.

15 MR. HENRY: THREE DAYS FOLLOWING THE CLOSING, YES,
16 THAT'S CORRECT, IF YOU WANT TO EXERCISE IT WITHIN THE
17 THREE-DAY TIMEFRAME, YES, BUT IF THEY FAIL TO GIVE IT TO
18 YOU IN TIME TO MAKE A INFORMED DECISION IT EXTENDS YOU TO
19 THREE YEARS. AND IN THIS CASE --

20 THE COURT: SPECIFICALLY, WHAT LAW SAYS THAT?

21 MR. HENRY: I'M SORRY?

22 THE COURT: WHICH PROVISION OF WHAT LAW SAYS THAT YOU
23 HAVE WHATEVER YOU'RE TELLING ME NOW?

24 MR. HENRY: I BEG THE COURT'S INDULGENCE. YOUR
25 HONOR, SECTION F, SUBSECTION F, OF THE TRUTH IN LENDING

1 ACT WHICH IS ON THE SECOND PAGE OF WHAT I HANDED UP, IT
2 READS AS FOLLOWS: TIME LIMIT FOR EXERCISE OF RIGHT. AN
3 OBLIGOR'S RIGHT OF RESCISSION SHALL EXPIRE THREE YEARS
4 AFTER THE DATE OF CONSUMMATION OF THE TRANSACTION OR UPON
5 THE SALE OF THE PROPERTY WHICHEVER OCCURS FIRST. SO, SHE
6 HAD THREE YEARS IN WHICH THE EXERCISE HER RIGHTS AND
7 ACTUALLY GOES BEYOND THAT IF SHE'S FORECLOSED OR SHE'S IN
8 A RECOUPMENT PERIOD. SHE HAS ANOTHER YEAR.

9 THE COURT: WELL, YOU READ IT SAYS NOTWITHSTANDING
10 THE FACT THAT THE INFORMATION AND FORMS REQUIRED OF THIS
11 SECTION OR ANY OTHER DISCLOSURES REQUIREMENT OF THIS PART
12 HAS NOT BEEN DELIVERED TO THE OBLIGOR. I MEAN, YOU'RE
13 SAYING THAT EVEN IF SHE'S GIVEN THE THREE-DAY RIGHT --
14 NOTICE OF RIGHT OF RESCISSION SHE STILL HAS THREE YEARS OR
15 SHE HAS THREE YEARS ONLY IF THEY DIDN'T GIVE HER THE
16 THREE-DAY RIGHT OF RESCISSION?

17 MR. HENRY: I'M SORRY, YOUR HONOR. I DIDN'T QUITE
18 HEAR THE LAST PART.

19 THE COURT: IT SEEMS THAT YOU'RE TELLING ME THAT IF
20 ANY LOAN THAT A PERSON TAKES OUT THEY HAVE THREE YEARS TO
21 CANCEL IT.

22 MR. HENRY: THAT WOULD BE MY READING, YOUR HONOR, IF
23 THEY'RE NOT PROVIDED THE PROPER DISCLOSURE LETTER.

24 THE COURT: IF NOT PROVIDED WITH WHAT DISCLOSURE
25 LETTER?

1 MR. HENRY: THE DISCLOSURE THAT THE ACT SPECIFICALLY
2 SAYS THEY'RE SUPPOSED TO RECEIVE AND THEY'VE ENUMERATED AS
3 TO WHAT --

4 THE COURT: THE LAWYER HERE SAID THAT SHE WAS GIVEN
5 ALL OF THOSE DISCLOSURE LETTERS.

6 MR. HENRY: THE LAWYER IN THIS CASE THAT I HAD SAID
7 THE SAME THING, ALSO, BUT THE COURT SAYS IT'S REBUTTABLE
8 PRESUMPTION AND IF SHE'S NOT GIVEN THOSE THINGS AND EVEN
9 THE LANGUAGE YOU JUST READ FROM THIS STATUTE SAYS
10 NOTWITHSTANDING A RULE OF EVIDENCE WRITTEN ACKNOWLEDGMENT
11 OF RECEIPT OF ANY DISCLOSURE IS REQUIRED UNDER THIS
12 SUBCHAPTER BY A PERSON TO WHOM INFORMATION, FORMS, AND A
13 STATEMENT IS REQUIRED TO BE GIVEN. IN OTHER WORDS, THE
14 PERSON WHO IS GOING TO RECEIVE IT PURSUANT TO THIS SECTION
15 DOES NO MORE THAN CREATE A REBUTTABLE PRESUMPTION OF
16 DELIVERY. EVEN IF SHE SIGNS SOMETHING SAYING SHE RECEIVED
17 IT, THAT'S A REBUTTABLE PRESUMPTION, YOUR HONOR. THAT'S
18 NOT DEFINITIVE.

19 THE COURT: ALL RIGHT. AND IT'S REBUTTABLE NOW BY
20 YOU?

21 MR. HENRY: I'M SORRY?

22 THE COURT: IT IS REBUTTABLE AND IT'S NOW BEING
23 REBUTTED BY YOU?

24 MR. HENRY: BY ME AND BY THE PRIOR THINGS THAT
25 MS. TONEY DID WHEN SHE SAID SHE DIDN'T RECEIVE THOSE

1 DOCUMENTS.

2 THE COURT: OKAY. OKAY.

3 MR. HENRY: AND THE COUNTERCLAIM SHE FILED IN THIS
4 SUIT, YOUR HONOR. AND JUST BRIEFLY, YOUR HONOR, IN
5 FURTHERANCE OF THAT, MS. TONEY ASSERTED THOSE RIGHTS AGAIN
6 IN SUITS THAT WERE BEING FILED AGAINST HER. THERE WAS A
7 WHOLE LOT OF EFFORT TO TALK ABOUT THE BANKRUPTCY
8 PROCEEDINGS. MS. TONEY'S POSITION IS THAT THE BANKRUPTCY
9 PROCEEDING WAS A MEANS OF PROTECTING HER RIGHTS BECAUSE
10 SHE DID NOT HAVE REPRESENTATION. ACCORDING TO MS. TONEY,
11 MR. WEEKS NEVER SHOWED UP AT ANY OF THE HEARINGS IN THIS
12 MATTER. SO, SHE WAS NOT -- THERE WAS NO ADVOCATE PRESENT
13 ON HER BEHALF FOR THESE PROCEEDINGS. SO, THERE WERE -- IT
14 IS MY UNDERSTANDING THAT THERE WAS SOME CORRESPONDENCE,
15 BUT I DON'T THINK THERE WAS ANY ACTIVE REPRESENTATION ON
16 BEHALF OF MR. WEEKS.

17 THE COURT: LET ME ASK YOU THIS. HOW DO YOU GET TO
18 BE HER LAWYER TODAY IF SHE ALREADY HAS A LAWYER?

19 MR. HENRY: SHE DOES NOT HAVE AN ATTORNEY IS MY
20 UNDERSTANDING AND THAT'S --

21 THE COURT: MR. WEEKS IS THE ATTORNEY OF RECORD.

22 MR. HENRY: MR. WEEKS WAS THE ATTORNEY OF RECORD FOR
23 THE FORECLOSURE PROCEEDINGS, BUT MY UNDERSTANDING IS HE
24 NEVER PARTICIPATED IN ANY OF THE PROCEEDINGS. I CALLED
25 MR. WEEKS' OFFICE IN FURTHERANCE OF TRYING TO MAKE SURE

1 THAT HE WAS NOT INVOLVED IN THE CASE, AND MY UNDERSTANDING
2 WAS THAT THEY DIDN'T HAVE ANYTHING TO DO WITH THE CASE.

3 THE COURT: DON'T YOU HAVE TO HAVE A SUBSTITUTION OF
4 COUNSEL OR SOMETHING? YOU JUST CAN'T -- THERE IS A
5 LAWYER. WHAT I SEE IN THE FILE IS THERE IS A NOTICE BY
6 MR. WEEKS THAT HE REPRESENTS HER, AND NOW YOU'RE HERE
7 REPRESENTING HER WITHOUT THERE BEING ANY SUBSTITUTION OF
8 COUNSEL OF ANY KIND.

9 MR. HENRY: THE MATTER THAT MR. WEEKS WAS GOING TO BE
10 INVOLVED IN IS OVER. MS. TONEY CAME TO ME TO REPRESENT
11 HER ON THE SEPARATE ISSUE OF TRYING TO STOP THE
12 FORECLOSURE SALE. THE FORECLOSURE ACTION SUBSEQUENT TO
13 THE FORECLOSURE IS OVER. SO, WHATEVER REPRESENTATION
14 THERE WOULD HAVE BEEN WOULD HAVE TERMINATED BY NOW.

15 THE COURT: WELL, MR. MURRELL SAYS THAT, WELL, THERE
16 IS THE SAME CASE INVOLVING THE SAME PARTIES, THE SAME
17 ISSUES PRESENTED ALREADY IN EXISTENCE, AND THAT THIS
18 SHOULD BE DISMISSED UNDER RULE 12 BECAUSE YOU CAN'T HAVE
19 TWO CASES GOING ON INVOLVING THE SAME THING.

20 MR. HENRY: IF THAT WERE THE CASE, YOUR HONOR, I
21 WOULD BE INCLINED TO AGREE WITH MY ESTEEMED COLLEAGUE.
22 HOWEVER, I DO NOT BELIEVE THAT IS THE SITUATION BECAUSE
23 THIS IS A SEPARATE ISSUE.

24 THE COURT: HE POINTED OUT FROM WHAT HE READ FROM HER
25 ANSWER THAT SHE RAISED THE SAME ISSUE THAT YOU'RE NOW

1 RAISING IN HER ANSWER AND THAT THE JUDGE ADDRESSED THE
2 SAME ISSUE IN THE FORECLOSURE ORDER.

3 MR. HENRY: THERE IS A QUESTION -- THERE IS A
4 CORRELATION BETWEEN THE ISSUES, BUT THIS IS A SEPARATE
5 MATTER, YOUR HONOR. IT IS SEPARATE BECAUSE NOW YOU HAVE A
6 SUBSTANTIVE ATTEMPT TO ENFORCE A RESCISSION. WHAT THE
7 FORECLOSURE WAS WAS A FORECLOSURE BY A CREDITOR SAYING
8 THAT WE'RE GOING FORWARD WITH TAKING THE PROPERTY THAT WE
9 HAVE A RIGHT TO FORECLOSE ON. WHAT WE'RE DEALING WITH IS
10 THE FACT THAT THERE WAS A TERMINATION OF THEIR SECURITY
11 INTEREST WHICH REALLY SHOULD HAVE FORESTALLED THEM FROM
12 EVEN FILING A FORECLOSURE ACTION. THIS ACTION THAT SHE'S
13 FILING NOW IS SUBSTANTIVE ENFORCEMENT OF HER RESCISSION.
14 THE RESCISSION WASN'T MENTIONED IN HER FORECLOSURE BECAUSE
15 THE RESCISSION IS A DEFENSE THAT SHE WOULD HAVE HAD TO
16 RAISE AN AFFIRMATIVE DEFENSE IN THAT ACTION, BUT IT DOES
17 NOT NEGATE THE FACT THAT SHE CAN BRING A SEPARATE ACTION
18 TO ENFORCE HER RIGHTS AND IN THIS CASE THAT'S WHAT'S
19 HAPPENED.

20 THE COURT: ALL RIGHT.

21 MR. HENRY: AND LAURA TONEY FILED THIS ACTION PRO SE.
22 THIS IS THE ANSWER THAT MR. MURRELL --

23 THE COURT: SO WHAT? SO WHAT?

24 MR. HENRY: SHE WAS NOT REPRESENTED, YOUR HONOR. YOU
25 CAN'T BE REPRESENTED --

1 THE COURT: THE LAW DOESN'T --

2 MR. HENRY: -- AND FILE PRO SE.

3 THE COURT: IT DOESN'T MATTER -- EXCUSE ME. GO
4 AHEAD.

5 MR. HENRY: I'M SORRY. THE RULES DO NOT ALLOW YOU TO
6 REPRESENT YOURSELF IF YOU HAVE AN ATTORNEY. YOU ARE
7 EITHER REPRESENTED OR YOU'RE PRO SE. SHE FILED PRO SE.

8 THE COURT: SHE FILED -- HER FILING OF IT PRO SE WAS
9 PRIOR TO THE NOTICE BY THE LAWYER THAT HE REPRESENTS HER.

10 MR. HENRY: I DON'T KNOW. I WASN'T PRIVY TO THESE
11 TRANSACTIONS, YOUR HONOR. SO, I CAN'T --

12 THE COURT: BUT YOU'RE SPEAKING AS IF YOU HAVEN'T
13 LOOKED THROUGH THE FILE.

14 MR. HENRY: WELL, I'VE LOOKED THROUGH THE FILE, BUT
15 THE FILE THAT I HAVE DOESN'T RELATE TO MR. WEEKS'
16 REPRESENTATION. I AM NOT INVOLVED IN THE FORECLOSURE.
17 ~~THIS IS AN ACTION SUBSEQUENT TO THE FORECLOSURE.~~

18 THE COURT: WELL, I SAY THE FILE. I AM REFERRING TO
19 THE FORECLOSURE FILE WHERE SHE'S FILED HER PRO SE ANSWER
20 AND WHERE MR. WEEKS FILED A NOTICE OF REPRESENTATION. I
21 AM NOT SURE WHAT FILE YOU'RE REFERRING TO. I AM REFERRING
22 TO THE COURT FILE NUMBER 19788, LASALLE BANK NATIONAL
23 VERSUS LAURA TONEY IN THE CASE NUMBER 2005-31-169 IN WHICH
24 SHE FILED AN ANSWER PRO SE AND THEN LATER MR. WEEKS
25 NOTIFIED THE COURT THAT HE WAS HER LAWYER. HER ANSWER PRO

1 SE WAS FILED IN AUGUST OF 2005. MR. WEEKS FILED A NOTICE
2 THAT HE REPRESENTED HER JANUARY 11, 2006.

3 MR. HENRY: AND AS I STATED EARLIER, YOUR HONOR, THAT
4 MATTER HAS BEEN CONCLUDED AND MY UNDERSTANDING IS THAT IT
5 IS NOW ON THE JUDGMENT ROLL. THEREFORE, IT IS NOT AN
6 ACTIVELY LITIGATED MATTER. SO, THIS IS AN ENTIRELY
7 SEPARATE AND DIFFERENT MATTER.

8 THE COURT: HAVEN'T YOU FILED A NOTICE ASKING HIM
9 TO --

10 MR. HENRY: YOUR HONOR, I BELIEVE I HAVE THE ANSWER
11 TO YOUR QUESTION. ACCORDING TO MY CLIENT SHE TERMINATED
12 THE SERVICES OF MR. WEEKS. SO, SHE'S NOT --

13 THE COURT: HOW CAN SHE DO THAT? HOW CAN SHE
14 TERMINATE THE SERVICES OF A LAWYER WITHOUT THE COURT BEING
15 INVOLVED IN THAT PROCESS? ONCE A LAWYER FILES AN ANSWER,
16 THEN IT'S NOT UP TO -- IT'S NOT BETWEEN THE PARTIES
17 ANYMORE AS TO WHETHER OR NOT THAT LAWYER IS RESPONSIBLE
18 FOR REPRESENTATION. THE COURT MUST APPROVE ANY WITHDRAWAL
19 OF COUNSEL OR SUBSTITUTION OF COUNSEL OR APPROVE HER
20 REVERTING BACK TO REPRESENTING HERSELF.

21 MR. HENRY: YOUR HONOR, I BELIEVE IT IS WELL
22 RESPECTED IN THE RULES OF OUR COURT THAT THE CLIENT
23 ACTUALLY IS THE PERSON WHO OWNS THE CASE. THE CLIENT
24 DETERMINES WHETHER OR NOT SHE WANTS TO BE REPRESENTED. IF
25 SHE FIRES THE LAWYER, ~~IT IS~~ INCUMBENT UPON THE LAWYER TO

1 IT IS ALSO SOMEWHAT SURPRISING THAT THEY WOULD SAY
2 THAT THE ISSUE OF RESCISSION HAS NOTHING TO DO WITH THE
3 BANKRUPTCY COURT. I WOULD ALSO HAND UP TO THE COURT
4 SCHEDULE D OF HER BANKRUPTCY FILING WHEREBY SHE
5 ACKNOWLEDGED THAT MY CLIENT HAD A MORTGAGE LIEN SECURING
6 THE PROPERTY. AT NO TIME IN BANKRUPTCY DID SHE TAKE AN
7 ADVERSE POSITION. IT IS NOW, APPARENTLY, HER POSITION
8 THAT SHE'S ENTITLED TO A LOAN OF \$76,500 WITH NO NEED TO
9 REPAY IT AND THAT'S NOT A MATTER WHICH SHE WAS REQUIRED TO
10 BRING BEFORE BANKRUPTCY COURT.

11 IN FACT, SHE, APPARENTLY, FEELS SHE'S ENTITLED TO
12 TAKE AN ENTIRELY OPPOSITE POSITION FROM BANKRUPTCY.
13 CERTAINLY, THE FACT NOT ONLY THAT THE BANKRUPTCY COURT HAS
14 PASSED UPON THESE ISSUES BASED UPON HER FILINGS UNDER OATH
15 UNDER PENALTY OF PERJURY AND THAT THE COURT HAVING
16 REQUISITE JURISDICTION AND AN ORDER OF REFERENCE HAS
17 SPECIFICALLY MADE A FINDING ON THESE ISSUES, THE ISSUE OF
18 THE RIGHT OF RESCISSION AND WHETHER OR NOT IT WAS A
19 THREE-DAY OR A THREE-YEAR WAS A QUESTION OF FACT. THE
20 FORECLOSURE DECREE SETS FORTH IN FINITE DETAIL BASED UPON
21 THE AFFIDAVITS AND BASED UPON THE ATTACHMENTS TO THE
22 AFFIDAVITS THAT THE THREE-DAY RIGHT OF RESCISSION -- THE
23 DOCUMENTS WERE DELIVERED. THEY WERE EXECUTED AND
24 ACKNOWLEDGED BY MS. TONEY AND THAT SHE DID NOT CANCEL THE
25 LOAN WITHIN THE REQUISITE THREE DAYS. TO THE CONTRARY,

1 IN LITIGATION HE CANNOT LATER CHANGE THOSE FACTS WHEN THE
2 INITIAL VERSION NO LONGER SUITS HIM. IT IS CERTAINLY
3 CONCEIVABLE THE PARTIES MAY WANT TO PRESENT NOVEL LEGAL
4 THEORIES WHICH MAY REQUIRE CHANGING ONE'S PREVIOUS LEGAL
5 THEORY. HOWEVER, THE TRUTH-SEEKING FUNCTION OF THE
6 JUDICIAL PROCESS IS UNDERMINED IF PARTIES ARE ALLOWED TO
7 CHANGE POSITIONS AS TO THE FACTS OF THE CASE UNLESS UPHELD
8 BY NEWLY-DISCOVERED EVIDENCE.

9 YOUR HONOR, WITH FOUR BANKRUPTCY FILINGS IT SEEMS
10 LIKE IF SHE GOT AN ADVERSE POSITION SHE WOULD HAVE AT SOME
11 POINT TAKEN THAT POSITION. SHE DIDN'T. WE ATTEMPTED TO
12 FOLLOW THE LETTER OF THE LAW THROUGH WITHOUT A VERY LONG
13 AND TORTUROUSE PROCESS AND WE'RE MERELY ASKING THE COURT
14 TO ALLOW US TO EXERCISE OUR RIGHT AS PROVIDED FOR BY LAW.
15 AGAIN, THE EVIDENCE CLEARLY ESTABLISHES THAT ALL THE
16 REQUIREMENTS REQUIRED UNDER THE TRUTH IN LENDING WERE
17 PROPERLY DONE AT CLOSING. THE AFFIDAVIT OF THE -- THE
18 ONLY NOTICE THAT'S REQUIRED PRIOR TO CLOSING IS THE
19 ATTORNEY OF PREFERENCE WHICH THE AFFIDAVIT OF THE MORTGAGE
20 BROKER AND THE ATTACHMENT SIGNED BY MS. TONEY CLEARLY
21 ESTABLISHES SHE WAS AFFORDED PRIOR TO CLOSING. SHE,
22 AGAIN, ACKNOWLEDGED THAT SHE HAD BEEN PROVIDED THAT RIGHT
23 AT CLOSING AS WELL. HER I.D. IS ATTACHED TO IT, AND,
24 AGAIN, YOUR HONOR, YOU KNOW, THIS REALLY IS A MATTER
25 THAT'S MORE APPROPRIATE HEARD BY THE HEARING OFFICER WHO

1 HEARD THIS CASE FOR APPROXIMATELY A YEAR AND HALF TO TWO
2 YEARS OF REFERENCE THAT WAS DELAYED BY THE BANKRUPTCY
3 FILINGS AND DELAYS AS REQUESTED BY THE OPPOSING COUNSEL.

4 ALTHOUGH, IT'S NOT OF THE RECORD FORMALLY I WOULD
5 ALSO NOTE UNDER OATH AS AN OFFICER OF THE COURT THAT
6 ATTORNEY WEEKS ALSO RESPONDED TO DISCOVERY AND SIGNED OFF
7 ON DISCOVERY ON BEHALF OF MS. TONEY AS WELL AS REQUESTED
8 AN EXTENSION TO THE DISCOVERY AND THERE IS NOT JUST THAT
9 SINGLE NOTE. THERE IS A CHAIN OF LETTERS FROM MR. WEEKS
10 CONFIRMING THAT HE WAS HER ATTORNEY. I WOULD ALSO STATE
11 TO THE COURT THAT SUBSEQUENT TO HEARING MR. WEEKS
12 REQUESTED PAY-OFF AND REINSTATEMENT QUOTES FROM MY
13 ATTORNEY -- I MEAN FROM MY CLIENT WHICH I PROVIDED TO HIM
14 AS HER ATTORNEY, AND, CERTAINLY, GIVEN THE FACT THAT HE
15 SPECIFICALLY INSTRUCTED THE COURT AND MYSELF TO CORRESPOND
16 DIRECTLY TO HIM AND NOT TO MS. TONEY AS A PRO SE
17 DEFENDANT, THAT'S THE FASHION IN WHICH WE PROCEEDED, YOUR
18 HONOR.

19 THE COURT: ALL RIGHT. ANYTHING FURTHER, MR. HENRY?

20 MR. HENRY: JUST BRIEFLY, YOUR HONOR. THERE ARE TWO
21 THINGS I'D LIKE TO POINT OUT. A, THAT THERE IS NOT AN
22 INCONSISTENCY IN MS. TONEY'S POSITION FROM THE BANKRUPTCY
23 PROCEEDING AND TODAY. THIS IS MERELY IN FURTHERANCE OF
24 THOSE THINGS THAT SHE RAISED IN THE BANKRUPTCY, AND I
25 WOULD ASK THE COURT TO TAKE JUDICIAL NOTICE OF THE

1 LANGUAGE OF THE TRUTH IN LENDING ACT. WHEN AN OBLIGOR
2 EXERCISES HIS RIGHT TO RESCIND UNDER SUBSECTION A OF THIS
3 SECTION HE IS NOT LIABLE FOR ANY FINANCIAL OR OTHER CHARGE
4 AND ANY SECURITY INTEREST GIVEN BY THE OBLIGOR INCLUDING
5 ANY SUCH INTEREST ARISING BY PROVISION OF LAW BECOMES VOID
6 UPON SUCH RESCISSION. ONCE THE RESCISSION WAS GIVEN THAT
7 VOIDED ANY INTEREST AND THERE IS NOTHING ELSE FOR THEM TO
8 EVEN DEAL WITH. THE COURT -- THEY HAD NO BASIS FOR GOING
9 TO COURT IN THE FIRST PLACE.

10 I WOULD ALSO ASK THE COURT TO ALLOW ME TO PUT
11 MS. TONEY UNDER OATH BRIEFLY TO LET HER CLARIFY FOR THE
12 RECORD WHEN SHE DID THIS TERMINATION OF MR. WEEKS IF THE
13 COURT WOULD INDULGE ME.

14 THE COURT: TO LET HER CLARIFY WHEN SHE TERMINATED
15 MR. WEEKS?

16 MR. HENRY: FOR THE RECORD I WOULD LET HER TESTIFY AS
17 TO WHEN HER TERMINATION OF MR. WEEKS' SERVICES WAS
18 ENACTED.

19 THE COURT: AND THAT'S RELATIVE TO WHAT ISSUE?

20 MR. HENRY: THE COURT WANTED TO KNOW AS TO WHEN --
21 HOW I GOT INVOLVED IN THE CASE WHEN SHE HAD AN ATTORNEY.
22 I WANTED TO CLARIFY FOR THE RECORD WHAT ACTUALLY TOOK
23 PLACE.

24 THE COURT: ALL RIGHT. WHAT DO YOU SAY ABOUT THAT,
25 MR. MURRELL?

1 A THROUGH THE FORECLOSURE PROCEEDINGS?

2 Q YES, MA'AM.

3 A HE TOLD ME -- MR. WEEKS SAID THERE WAS NO POINT IN
4 GOING TO THE FORECLOSURE PROCEEDINGS BECAUSE THE LOAN WAS
5 RESCINDED, AND, PLUS, I WAS IN BANKRUPTCY. THERE WAS A
6 MOTION TO EXTEND ON MY STAY. THE JUDGE DID NOT RULE UNTIL
7 FEBRUARY 28. THE FORECLOSURE HEARING WAS HELD FEBRUARY
8 16.

9 Q SO, NEITHER YOU NOR MR. WEEKS WENT TO THE FORECLOSURE
10 HEARING?

11 A NO.

12 Q AND YOU INDICATED EARLIER OR DID YOU SUBSEQUENTLY
13 TERMINATE THE SERVICES OF MR. WEEKS?

14 A YES, I DID.

15 Q WHEN WAS THAT?

16 A AT LEAST TWO, TWO AND A HALF WEEKS.

17 Q WAS THAT PRIOR TO YOUR COMING TO MY OFFICE?

18 A YES.

19 MR. HENRY: THANK YOU. NO FURTHER QUESTIONS.

20 THE COURT: ANY QUESTIONS YOU WANT TO ASK HER, SIR?

21 MR. MURRELL: BRIEFLY, YOUR HONOR.

22 CROSS-EXAMINATION

23 BY MR. MURRELL:

24 Q MS. TONEY, MR. WEEKS REPRESENTED YOU IN THE
25 FORECLOSURE ACTION?

1 A DID HE REPRESENT HE?

2 Q YES, MA'AM, AS YOUR ATTORNEY?

3 A HE WAS MY ATTORNEY AT THE TIME, YES.

4 Q AND YOU DIDN'T TERMINATE THE SERVICES UNTIL AFTER THE
5 FORECLOSURE HEARING HAD CONCLUDED?

6 A NO.

7 Q OKAY. AND DID YOU FILE FOUR BANKRUPTCIES WITHIN THE
8 SPACE OF SIX MONTHS?

9 A YES, I DID.

10 MR. HENRY: OBJECTION, RELEVANCE.

11 THE WITNESS: I WAS TRYING TO SAVE MY HOME.

12 THE COURT: OBJECTION OVERRULED. OVERRULED.

13 Q OKAY. PLEASE CONTINUE.

14 A I WAS TRYING TO SAVE MY HOME BECAUSE WHEN I WROTE YOU
15 ALL THE LETTER TO RESCIND MY LOAN YOU IGNORED MY LETTER.
16 YOU PROCEEDED TO FORECLOSURE. SO, MY ONLY OPTION WAS TO
17 FILE BANKRUPTCY IN ORDER TO SAVE MY HOME. SO, I HAD TO DO
18 IT REPEATEDLY IN HOPES OF SAVING MY HOME BECAUSE MY
19 RESCISSION LETTER WAS IGNORED BY YOU AND THE BANK.

20 Q BUT YOU RAISED THAT ISSUE IN YOUR ANSWER THAT YOU
21 FILED WITH THE COURT YOURSELF, DIDN'T YOU?

22 A YES.

23 Q OKAY. SO, YOU HAD THE OPTION OF COMING TO COURT AND
24 HANDLING THAT ISSUE?

25 A WELL, I WAS IN BANKRUPTCY. I THOUGHT BEING IN

1 FILED IN BANKRUPTCY COURT WERE TRUE AND CORRECT TO THE
2 BEST OF HER KNOWLEDGE.

3 MR. HENRY: AGAIN, YOUR HONOR, THAT HAS NOTHING TO DO
4 WITH THE TERMINATION OF HER ATTORNEY.

5 THE COURT: I'LL OVERRULE THAT OBJECTION. HE CAN ASK
6 THIS LAST QUESTION.

7 Q MA'AM, WERE THE DOCUMENTS THAT YOU FILED IN
8 BANKRUPTCY COURT IN YOUR FOUR CASES TRUE AND CORRECT TO
9 THE BEST OF YOUR KNOWLEDGE?

10 A WELL, I DID IT PRO SE. I LISTED MY HOUSE AS AN
11 ASSET. I MIGHT HAVE MADE A MISTAKE BECAUSE I MADE A LOT
12 OF MISTAKES.

13 Q THAT ORDER OF FEBRUARY 26, '07 AND THE PRIOR ORDER AS
14 WELL --

15 MR. HENRY: YOUR HONOR?

16 THE COURT: YES, SIR.

17 MR. HENRY: I BELIEVE THOSE ISSUES HAVE ALREADY BEEN
18 LITIGATED AND ALL WE'RE HERE TO TO DO IS DETERMINE WHETHER
19 OR NOT --

20 MR. MURRELL: YOUR HONOR, THIS DEALS WITH ATTORNEY
21 REPRESENTATION.

22 THE COURT: ALL RIGHT.

23 Q MS. TONEY, YOU APPEARED AT BOTH OF THESE HEARINGS --
24 BOTH THE HEARING AND THE FEBRUARY 15TH ORDER WHERE THEY
25 DENIED YOUR MOTION FOR STAY AS WELL AS THE SUBSEQUENT

1 HEARING ON A RULE TO SHOW CAUSE WHERE THE COURT DISMISSED
2 YOUR CASE FOR PREJUDICE; IS THAT CORRECT?

3 A YES.

4 Q AND --

5 MR. HENRY: YOUR HONOR?

6 THE WITNESS: MAY I SPEAK, YOUR HONOR?

7 MR. MURRELL: I GOT ONE MORE QUESTION, YOUR HONOR.

8 ON THE ORDER DATED FEBRUARY 15 --

9 MR. HENRY: YOUR HONOR, WE'D JUST ASK THE COURT A
10 QUESTION.

11 THE COURT: YES, SIR?

12 MR. HENRY: ARE WE -- I DON'T KNOW HOW FAR THIS IS
13 GOING, YOUR HONOR, BUT I WOULD -- THE ISSUE OF WHETHER OR
14 NOT SHE HAD AN ATTORNEY I THINK HAS ALREADY BEEN DECIDED.
15 I DON'T THINK THAT --

16 THE COURT: IT'S BEEN DECIDED?

17 MR. HENRY: NOT DECIDED, BUT IT'S ALREADY BEEN
18 EXPLORED FOR THE RECORD. I THINK THAT WE'RE GETTING INTO
19 RETRYING THE CASE.

20 THE COURT: ALL RIGHT. LET ME HEAR THE QUESTION.
21 THEN I'LL HEAR WHETHER OR NOT IT'S AN APPROPRIATE
22 QUESTION.

23 Q MA'AM, ISN'T IT TRUE THAT IN THIS FEBRUARY 15TH ORDER
24 THE COURT NOTED THAT THEY WERE DENYING YOUR MOTION FOR
25 STAY BUT NOT DISMISSING YOUR CASE BECAUSE YOU REPRESENTED

TRANSCRIPT OF PROCEEDING OCTOBER 18, 2007

1.

1 Mr. Weeks, what is your position relative to
2 this motion?

3 MR. WEEKS: Judge, that motion was not filed
4 by me in my representation of Ms. Toney. This is
5 for the Court's information. This whole
6 procedure has gone at some points where Mrs.
7 Toney has filed certain items herself, and at
8 some point had hired Mr. Joe Henry and
9 Mr. Nathaniel Roberson in an action that I think
10 Judge Newman basically said was about the same
11 with this action. I don't know what happened
12 with the disposition of that motion or whether or
13 not that is an issue that's properly before you
14 today. I don't know that Judge Newman resolved
15 all those at that time, but I'm not prepared to
16 argue on that motion simply because I think that
17 my Rule 60 motion would probably incorporate
18 everything that's read in that motion. But that
19 was Mr. Roberson and Mr. Joe Henry who practice
20 in Columbia. And at some point, there was also a
21 point where Ms. Toney represented herself in
22 filing certain petitions before the Bankruptcy
23 Court, and I was not a party to those or had no
24 input into that litigation at all.

25 JUDGE BOOTH: I note that in some litigation

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1 noticed that the things that were asked for in
2 this hearing are based upon three points, one
3 being that the Plaintiff was in Bankruptcy Court
4 at the time, but appearing on the foreclosure,
5 which is, we would be dealing with that with our
6 Notice of Motion and motion.

7 The second issue was that the foreclosure
8 was improperly referred to the Master-in-Equity
9 in a county other than the Defendant's county of
10 residence and the property's location, and was
11 therefore heard in an improper venue. I don't
12 have any argument, I mean, I think it was very
13 clear that the attorneys in Lee County had
14 conflicts, and so as a result, this matter was
15 referred to Clarendon County because of that, so
16 I don't have any argument on that.

17 And the last issue that the Plaintiff's
18 security interest in the property was
19 extinguished when the Plaintiff failed to respond
20 to a Notice of Recision filed by the Defendant
21 within the time allotted by the Truth in Lending
22 Act, which I think goes to the merits of the
23 litigation and not specifically to the motion as
24 we're prepared to argue today.

25 So as to Issue Number 2 and Issue Number 3,

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1 we certainly wouldn't be in position to argue on
2 those issues today, because they go to the actual
3 merits of the case. As to the bankruptcy issue,
4 which is Item Number 1, then we certainly are
5 going to address that. So I'm not sure whether
6 there was a Memorandum of Law of anything filed
7 by Mr. Joseph Henry or Mr. Nathaniel Roberson.
8 If so, I'm not made privy to that. I do have a
9 copy of a motion accepting the file, but I was
10 not involved at all with any of those matters
11 that were, that led to the filing of this motion,
12 and that was purely as a result of Ms. Toney's
13 retaining those two individuals to, I guess, file
14 a Rule 59 motion.

15 JUDGE BOOTH: Well, the order of Judge
16 Newman takes judicial notice, basically the Court
17 of Common Pleas has taken judicial notice of the
18 bankruptcy order ruling that no automatic stay
19 existed under the last Chapter 13 Bankruptcy, his
20 order being filed February 15, so there's really
21 no question to argue as to whether or not there
22 was a stay; is that correct?

23 MR. WEEKS: Well, there is, purely, our
24 argument on that, Judge, which you'll hear from
25 us, is that because a determination as to whether

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1 or not a stay was in place had not been made at
2 the time that the Summary Judgment Hearing was
3 scheduled, that that issue was an undecided issue
4 at that time. It was, as a matter of fact, under
5 the advisement of the Bankruptcy Judge who was
6 going to make a determination as to whether or
7 not a stay would be imposed in the action. I
8 mean, for them to have gone forward with that
9 still being a pending, hanging question, and to
10 the detriment of my client, and of course,
11 prejudice her ruling, and I understand that the
12 Judge did ultimately make a ruling, but that
13 ruling was after the Summary Judgment Hearing was
14 set and was ruled on by Judge Coffey, and we
15 think that that was an error and should not have
16 been, that whole matter should not have even been
17 heard until a determination had been made as to
18 what the Bankruptcy Court would have done on Ms.
19 Toney's motion that was, she represented herself
20 at that time.

21 JUDGE BOOTH: I understand.

22 MR. WEEKS: Yes, sir.

23 JUDGE BOOTH: My confusion on this
24 particular very limited point is between the
25 wording in Judge Newman's order that makes it

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1 stay. So there was no stay, and her request to
2 impose a stay was denied. Judge Newman's initial
3 ex parte injunction was issued because of the
4 misrepresentation by Ms. Toney that there was a
5 stay in effect as was her grievance filed against
6 me that I had consciously violated the automatic
7 stay in Bankruptcy Court. And Judge Newman's
8 order made a specific finding that there was no
9 stay in effect based upon the very specific and
10 explicit bankruptcy order. There was also a
11 finding in the Bankruptcy order that the last
12 Chapter 13 had been filed in bad faith, and there
13 was a ban imposed against any further filings of
14 Chapter 13 actions.

15 JUDGE BOOTH: All right. What -- tell me,
16 in the copies of the Bankruptcy order I have, on
17 February 26, 2007, Judge Waites ordered that
18 debtor's Chapter 13 case be dismissed subject to
19 the Court retaining jurisdiction to consider
20 dismissal with prejudice and other sanctions
21 pursuant to 11 U.S.C. 105 and 28 U.S.C. 1927, and
22 this Court's, meaning the Bankruptcy Court's,
23 inherent authority to regulate litigants and
24 address improper conduct. That was done after
25 the filing of the fourth bankruptcy is what I

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1 restraining order should have been put in place
2 and been in place until such time as this first
3 motion had been dealt with by the Court. Of
4 course, as Your Honor know, and everything that,
5 every motion that we got since it has been
6 referred was of course, the motion itself was
7 back before the Master, and the Master, of
8 course, couldn't rule because, or would not rule,
9 could have ruled, would not rule because he
10 didn't feel comfortable doing so because of --

11 JUDGE BOOTH: How did the thing manage to go
12 forward without that temporary restraining order
13 being heard?

14 MR. WEEKS: Well, that's the issue, Judge.
15 I think that is the issue. We don't think it
16 should have gone forward.

17 JUDGE BOOTH: Well, I understand, but I'm
18 just curious how it did.

19 MR. WEEKS: They just went on and did it.

20 MR. MURRELL: Your Honor, procedurally since
21 it was heard, since no judge within the county
22 would hear, or special referee within the county
23 would hear the case, it was heard by the nearest
24 available judge, which was Judge Coffey in
25 Clarendon, but the sale was to be done by the

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1 what Mr. Murrell claims is the dilatory practices
2 of bad faith through the multiple filings within
3 the Bankruptcy Court. Again, Ms. Toney was a pro
4 se litigant in the Bankruptcy Court, and so as a
5 result, I can't speak, my hands are sort of tied
6 in this particular situation. I can't speak to
7 that, but Ms. Toney can speak to that, but I
8 can't speak to that simply because I didn't
9 represent her in the Bankruptcy Court. As it
10 relates to the grievances that were filed, of
11 course, I have nothing to do with those
12 grievances.

13 JUDGE BOOTH: But those aren't included in
14 here.

15 MR. WEEKS: Oh, those aren't included, okay.
16 But those other two items, Judge, are not matters
17 that I had any particular participation in, and
18 so as a result, I think it would be improper for
19 me to even try to talk about that. I will say as
20 it relates to any other expenses that the
21 question as to whether or not the Plaintiff in
22 this action should have gone forward, and as a
23 result of going forward, incur these additional
24 expenses beyond the Summary Judgment motion,
25 particularly when there are two motions that are

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1 but the bottom line is that that motion was still
2 pending and had not been officially ruled on by
3 the Court at a time that the Summary and Motion,
4 the hearing for the Motion on Summary Judgment
5 was scheduled. That Motion for Summary Judgment
6 was scheduled on February 6, 2007. At that time,
7 the question of whether or not my client would
8 prevail on her pro se litigation in the
9 Bankruptcy Court was still a question, was still
10 an issue. And so, therefore, the question of
11 whether or not an automatic stay would be imposed
12 was also an issue. What happened is the
13 Master-in-Equity proceeded with that hearing
14 fully aware of the fact that there was a question
15 as to whether or not an automatic stay would be
16 put in place. The Bankruptcy Court issued its
17 order on the 15th of February, which would have
18 been approximately nine days after the actual
19 Summary Judgment Hearing, and of course, at that
20 time made the determination that my client's
21 motion for an automatic stay would not be
22 granted. Our position, of course, is that while
23 that issue was still outstanding and was very
24 much known to the Master-in-Equity who was
25 hearing the case that that was an issue that was

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1 there was a notation that was made, an affidavit
2 by Cheryl Scott, from my office -- I think it's
3 attached to the motion -- where she had made,
4 this was a day that I was in the General
5 Assembly. She made contact with the
6 Master-in-Equity's office and spoke with someone
7 in that office named Linda, and the conversation
8 with Linda, the purpose of that conversation was
9 to get further dates, and I guess to try to see
10 if--

11 MR. MURRELL: I'm sorry to interrupt, but I
12 don't think I've got that.

13 MR. WEEKS: You've never gotten that?
14 That's not attached to the motion?

15 MR. MURRELL: I did not see a statement from
16 anyone at your office that they had contacted the
17 Judge's office, because the Judge had confirmed
18 with me that I had given you notice.

19 MR. WEEKS: Right, and I'm talking about in
20 terms of trying to get the hearing itself
21 rescheduled. I thought it was attached to the
22 motion.

23 MR. MURRELL: It was my understanding the
24 motion was based upon that you would have been
25 granted a continuance if it had been asked for,

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1 of Service. There's no affidavit or anything
2 accompanying it to me.

3 MR. WEEKS: Okay, maybe that affidavit
4 wasn't attached, but even if it wasn't, Judge, I
5 of course would ask the Court to take note of
6 Section 2-1-150 of the South Carolina Code of
7 Laws which do exempt me in my capacity from being
8 called to court on any issue while the General
9 Assembly is in session, and in fact, the General
10 Assembly was in session on that time. Judge, as
11 it relates to, I would call the Court's attention
12 to a case called McTronics versus the South
13 Carolina Department of Revenue, which is a
14 procedural administrative law judge case, but the
15 Court discusses, I think very clearly, this whole
16 question of whether or not a party can proceed
17 under Rule 60B. And of course, in this
18 particular case, it says very clearly under the
19 rule that a party may be relieved from a final
20 order for mistake, inadvertence, surprise or
21 excusable neglect, and that the standard of
22 review from the Court's case is in determining
23 whether to grant such a motion that the Court
24 would consider four factors. Those four factors,
25 of course, are outlined in New Hampshire

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1 Insurance Company versus Bay, and a copy of that
2 case, which I will submit to the Court which we
3 have, essentially says that the Judge should
4 consider four things: The promptness with which
5 relief is sought, the reasons for the failure to
6 act promptly, the existence of a meritorious
7 defense, and the prejudice to the other party.
8 And of course, Judge, under that standard, I
9 think it's very clear that my client's Motion for
10 a Reconsideration should be granted by the Court
11 as we analyze these particular parts of the
12 standard of review that our courts have made law
13 that's good law. Even though the Bay case is a
14 1993 case, it is still good law, and I believe in
15 the memorandum of law that even the counsel for
16 the Plaintiffs submitted to the Court, I think it
17 sort of relies on these same factors. In this
18 particular case, Judge, of course, there is a
19 question of good faith, and I think in this
20 particular case, regardless of what counsel has
21 said about my client operating in bad faith and
22 being dilatory, that in this particular case,
23 there was no attempt on my client's part to
24 thwart the judicial system, and where that is not
25 the case, then certainly, this Court can find a

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1 basis to rule. And of course, in the continued
2 discussion in this particular case, the Court
3 says this is consistent with South Carolina's
4 policy favoring the disposition of issues on
5 their merits rather than on technicalities. And
6 of course, that's good law, and of course has
7 been good law. In this particular case, Judge,
8 the whole hearing itself should not have been
9 scheduled, it should not have been in place
10 because of the very issue of whether or not my
11 client's, there had not been a judicial
12 determination as to whether or not, in fact, she
13 could rely on a potential finding of an automatic
14 stay. Normally, Judge, that probably would not
15 be a concern, but in this particular case, it's
16 very significant, because everything that my
17 client attempted to do in trying to deal with
18 this case sort of was dependent upon that. Judge,
19 we don't think that this hearing should have even
20 taken place, but even if the hearing had taken
21 place, one of the other prongs is that whether or
22 not there was a meritorious defense, and of
23 course, this is where we have some significant
24 differences. My client's position, of course,
25 was that she rescinded the loan pursuant to

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1 certain federal statutes back in 2005, and that
2 as a result of her rescinding the loan through
3 what she considered to be a legal process, and
4 the due legal process for rescision, based on any
5 rights that she might have had under the contract
6 when she took out the loan, that the bank refused
7 to respond with the specified period of time, and
8 so therefore, under those particular federal
9 statutes, she would have been in position to
10 rescind a loan, and if necessary, if the Court
11 had decided that she should pay back X amount, a
12 determination would have to be made by a court as
13 to the amounts of anything she'd have to pay back
14 on the loan. This was not the case in her
15 paperwork. We're not arguing whether or not she
16 would have prevailed on the merits. The question
17 is whether or not she had a meritorious defense
18 which is a prong of what the Court looks at in
19 analyzing whether or not she would be entitled to
20 a reconsideration. In our particular case, we
21 think, regardless of what anybody else would have
22 thought about the significance of her defense,
23 that she, in fact, had one. Now, this Court goes
24 forward and says that in determining a
25 meritorious defense, that a meritorious

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1 defense -- and it uses the analogy of Graham
2 versus the Town of Loris, which says this: "A
3 meritorious defense need not be perfect nor one
4 which can be guaranteed to prevail at a trial.
5 It need be only one which is worthy of a hearing
6 or a judicial inquiry, because it raises a
7 question of law deserving of some investigation
8 and discussion or a real controversy as to real
9 facts arising from conflicting or doubtful
10 evidence." And we think that at least on the
11 basis of the pleadings that were filed by my
12 client, which she did pro se at the time, she was
13 pro se, she at least raises a defense, a
14 meritorious defense. Whether or not she would
15 have prevailed on that is, of course, a question
16 that we never will be able to have answered now,
17 simply because the Court proceeded to go forward
18 and grant the Summary Judgment. There's some
19 notion that was made, Judge, about some, she did
20 raise the issue in her pleadings about not
21 signing certain documents, the Truth in Lending,
22 Attorney Preference, that were submitted, made a
23 part of the record, and of course, she certainly
24 had the right to sort of explore that, and
25 there's some issues as to whether or not a

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1 ratification could have taken place, because she
2 actually went to a closing, and in fact, a
3 closing did take place, and there was an exchange
4 of funds. But under those federal statutes,
5 which certainly, the central statutes that are in
6 issue which are raised specifically as a result
7 of the foreclosure action against her, she never
8 got an opportunity to actually discuss that and
9 to deal with those issues before a court. And so
10 as a result, she was prejudiced by it. I know,
11 Your Honor, that we certainly would have been in
12 position to argue all of these things early on
13 except for the grievance which she filed, which
14 we did not have anything to do with, but still,
15 we think that she didn't just give up all of her
16 rights by not being dilatory when she filed those
17 grievances. I presume that she was doing what
18 she thought she needed to do without the advice
19 of this counsel, but what she needed to do to
20 protect her home, and that's why we're here
21 today. So, I honestly think, Judge, if you
22 consider the analysis that the Court made in this
23 particular case, that you have a very similar
24 kind of situation, that this isn't excusable
25 neglect, and that's sort of the way that that

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1 goes. There's been some issue, Judge, because
2 she did not sign certain documents, that those
3 documents were signed, that there's probably
4 forgery that took place. I, you know, I don't,
5 obviously, she had some pretty strong convictions
6 about this thing, and obviously, she feels that
7 she, you know, those things weren't provided to
8 her earlier, that somebody signed those things,
9 that those are certainly issues that would have
10 had to have been considered, whether or not they
11 would have been considered in the Summary
12 Judgment hearing, or whether or not they would be
13 dealt with in a subsequent hearing based upon the
14 merits itself is a question that we don't know
15 the answer to and won't know the answer to unless
16 Your Honor grants the reconsideration in those
17 parameters I defined. So, we certainly want to
18 offer up those cases and make them a part of the
19 record and would indicate that upon her finding
20 that an order was issued that she very quickly
21 did what she needed to do promptly to try to get
22 the Court to reconsider this thing, that there
23 certainly is a meritorious defense in this
24 particular case, and that, you know, other than
25 the prejudice that the Defendant, the Plaintiff

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(803) 528-0022 * MissyCR@bellsouth.net

1 would not have been able to gain possession of
2 the property as quickly as the Plaintiff thought
3 he would. But there's no other prejudice to the
4 Plaintiff beyond that, and waiting a few days
5 until the Bankruptcy Court issued this order,
6 making a determination of the stay, would not
7 have prejudiced them in any way whatsoever. And
8 so as a result, I mean, you're talking about nine
9 days later when an order finally came out, those
10 nine or ten days certainly would not have, you
11 know, certainly would not have allude to any kind
12 of prejudice on the part of, towards the
13 Plaintiff in this particular action.

14 Essentially, what's happening now is because she
15 was denied that right. She's been kicked out of
16 her house, her house has been sold, her
17 property's been sold, and she's sort of out now,
18 and she feels very strongly about that, and I ask
19 to put her position on the record to say that the
20 issue of her not being able to actually present
21 these matters before a court, whether or not the
22 impact of her presenting them would have made a
23 difference, is certainly something that we think
24 would have taken place in this particular case.
25 As a result, she didn't get that opportunity.

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1 And we think that because of that, there
2 certainly should be a finding on the part of this
3 Court as to that there is a need, at least for
4 reconsideration, and that a matter of Summary
5 Judgment should be fully explored on its merits.
6 That's essentially where we're going with this,
7 Judge. That's essentially our position on it.
8 I'd like the Court's indulgence for just one more
9 minute to make sure there's not anything else
10 that I want to add.

11 JUDGE BOOTH: All right, when you say
12 reconsideration, are you meaning reconsideration,
13 or are you meaning vacation?

14 MR. WEEKS: Well, we mean vacating and
15 having the issue of Summary Judgment being dealt
16 with by the Court; that's what we're talking
17 about.

18 JUDGE BOOTH: I mean, you're still arguing
19 under Rule 60, even though you're saying
20 reconsideration--

21 MR. WEEKS: That's right. I said
22 reconsideration -- I understand. I am speaking
23 specifically about the Summary Judgment.

24 JUDGE BOOTH: All right. Let me give you a
25 minute to check your notes.

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1 MR. WEEKS: All right. Let me check to make
2 sure, Judge.

3 (Off the record from 1:29 p.m. to 1:32 p.m.)

4 JUDGE BOOTH: Mr. Weeks is referring to an
5 affidavit of Leticia Benjamin notarized on August
6 24, 2006 to which is attached based on her
7 affidavit what she represents to be a copy of a
8 Preliminary Consumer Protection Form Checklist
9 off of where she selected the attorney and the
10 insurance agency in this matter, and it's part of
11 the record.

12 MR. MURRELL: There are also some client
13 notes attached to the back of that.

14 JUDGE BOOTH: Some client notes, too.

15 MR. WEEKS: Right. Okay, Judge, give me
16 just one more minute, I'm sorry.

17 (Off the record from 1:33 p.m. to 1:34 p.m.)

18 MR. WEEKS: My client wanted me to put on
19 the record, and that is because Judge Coffey
20 relied on the affidavit of Attorney Insurance
21 Preference Checklist that was signed by Leticia
22 Benjamin in coming to its conclusion that my
23 client had, in fact, signed these documents.
24 This is the main document that was in dispute,
25 and my client said she didn't find it and

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1 somebody else found it for her, and she wanted an
2 opportunity to present that at the Summary
3 Judgment Hearing just to show to the Court that,
4 in fact, there were some documents there that she
5 didn't sign. She did not get that opportunity to
6 do that.

7 JUDGE BOOTH: So this is one more aspect of
8 showing that there exists the possibility of a
9 meritorious defense?

10 MR. WEEKS: That's exactly right. I mean,
11 that goes to that issue on meritorious defense.
12 And that's the only thing I have, Judge.

13 JUDGE BOOTH: Okay. Mr. Murrell?

14 MR. MURRELL: Your Honor, I have submitted a
15 Memorandum of Law opposing the Motion to
16 Reconsider, so I'll merely hit the highlights of
17 that point, but I would note that this is in the
18 record with supporting case law. A review of the
19 decree shows that although the motion incorrectly
20 states that this was a Judgment by Default, it
21 was not a Judgment by Default. The Court decided
22 it upon the evidence that was of record as well
23 as under the Doctrine of Judicial Estoppel based
24 upon Ms. Toney's representations under oath under
25 penalty of perjury that were submitted in her

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1 bankruptcy case. There's certainly a long line
2 of cases whereby if a defendant in a foreclosure
3 action or any other collection action submits
4 bankruptcy schedules under penalty of perjury
5 stating that they have no claims, setoffs or
6 other causes of action to declare as assets, then
7 they will be estopped from asserting those in a
8 later action, whether it be as a defense or a
9 setoff or a counterclaim to a foreclosure action
10 or like action.

11 JUDGE BOOTH: Well, you've got to be
12 consistent between courts.

13 MR. MURRELL: You cannot be, I think what
14 the term is, chameleonic litigants. You can't
15 have a different version of facts based upon what
16 your argument is in different courts. You're
17 going to be held to what you represent in one
18 court if you're in a subsequent court. Certainly
19 that's true in a case where a Chapter 13 Trustee
20 where they are, the powers of the Bankruptcy
21 Court are far reaching, and certainly the
22 violation of an automatic stay can bring severe
23 penalties. That's why it is something that is
24 very stringently looked at and very strong
25 measures are taken to comply with the far

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1 MR. WEEKS: That's right. It would have
2 stopped the process.

3 JUDGE BOOTH: But I expect that to be
4 addressed in your proposed orders, and I don't
5 think that should be capable of, you know, too
6 many viewpoints. It either is or it isn't. On
7 your 60B-1, the existence of a meritorious
8 defense is clearly, I guess I need to address at
9 least your position relative to a few things.
10 I'm not taking testimony on the existence for
11 meritorious defense, but your position, Mr.
12 Weeks, seems to be primarily based on
13 irregularities and execution of documents and
14 recision.

15 MR. WEEKS: That's right.

16 JUDGE BOOTH: Are there any other grounds
17 for the meritorious defense not, just in a
18 general description?

19 MR. WEEKS: I think that was -- included
20 with that, Judge, was the fact that there were
21 certain documents that were executed that she
22 didn't sign.

23 JUDGE BOOTH: She says she didn't execute.

24 MR. WEEKS: And I understand, that's
25 included, and I think our pure, when we deal with

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1 the issue of meritorious defense, I think those
2 are primary areas that we have some arguments
3 for.

4 JUDGE BOOTH: Now, in dealing with a
5 meritorious defense to a foreclosure action, I
6 need to, basically what you are saying -- and I
7 don't want to be putting words in your mouth, but
8 I want to get straight how this applies -- you
9 are telling me that there is no meritorious
10 defense assertable based on whether or not she
11 complied with the covenants of the note in terms
12 of making payments and failing to make payments?

13 MR. WEEKS: Right.

14 JUDGE BOOTH: But your meritorious defense
15 claim goes to whether or not there was ever an
16 enforceable contract in place to begin with?

17 MR. WEEKS: Or whether or not there was an
18 enforceable recision of the contract.

19 JUDGE BOOTH: All right, but you have
20 alleged, or at least alluded to the possibility
21 that there were some forgeries in documentation
22 obtained by the mortgage broker prior to the
23 closing itself?

24 MR. WEEKS: That's correct.

25 MR. MURRELL: That's been raised in this

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1 motion for the first time, and that was never an
2 issue before the Court.

3 MR. WEEKS: It's an issue raised in the
4 pleading.

5 JUDGE BOOTH: My concern is whether or not
6 that actually goes to whether or not there was an
7 enforceable contract in place that would then be
8 subject to foreclosure. That might subject the
9 broker to some sanction if that were true. But
10 whether or not that preliminary consumer
11 protection disclosure, or it may expose somebody
12 to some damages under the Consumer Protection
13 Code. But whether that actually goes to the
14 heart of the enforceability of a note and
15 mortgage contract, I have some concerns about.
16 As far as the rescision goes, how do you, from a
17 meritorious defense standpoint, how would you
18 address the issue of the date of the rescision
19 notice versus the date of the closing?

20 MR. WEEKS: I believe, Judge, under that
21 federal statute, I believe it's, I think if she
22 decides to rescind the loan --

23 JUDGE BOOTH: You're talking about
24 Regulation Z?

25 MR. WEEKS: Right, I think, I guess, I don't

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1 have the name of the exact--

2 MR. MURRELL: Your Honor, I think their
3 position has been she didn't get the three-day
4 right of notice, therefore it never told.

5 JUDGE BOOTH: Okay. So, it was never, it
6 was a factual issue of whether or not she
7 received notice of the right --

8 MR. MURRELL: That's correct, and I had
9 submitted affidavits showing the executed
10 documents, and there was never anything submitted
11 contrary to that.

12 MR. WEEKS: And whether or not when she sent
13 a letter at some point to the bank rescinding the
14 loan, whether or not they timely responded, and
15 whether or not there was an extended period of
16 time based on the--

17 JUDGE BOOTH: Well, as far as that goes, if
18 there was a -- I can tell you my understanding.
19 Again, you got two bases for Truth in Lending
20 recision. There's one under Federal Regulation
21 Z, and there's one on the South Carolina Consumer
22 Protection Code. And both of them are identical
23 in terms of the compliance with that. And
24 whether or not the time period expires is based
25 on a timely notice, and there's a lot of case law

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1 that goes about with that. But again, at this
2 point, all I'm trying to do is see whether you
3 have something you could allege, not whether
4 you'd prevail on it. But if there's no
5 likelihood of prevailing, then it's not a
6 meritorious defense.

7 MR. WEEKS: Well, the other part of the
8 issue, Judge, is that if, in fact, we were to
9 prevail on the principle advanced by Ms. Toney
10 that the bank would no longer have a security
11 interest in the real estate, and so therefore,
12 foreclosure couldn't take place. We think that
13 that would have been sufficient enough to at
14 least raise the issue.

15 MR. MURRELL: Your Honor, although it's not
16 reached, it's a two-tier examination, if there
17 had been an expanded right of rescission, which the
18 Court made a determination there was not, she
19 would still have to repay the money. And in this
20 case, there has not been any showing that she has
21 the wherewithal or the willingness to repay the
22 money.

23 JUDGE BOOTH: I hadn't gotten to that point
24 yet, but I'm perfectly comfortable in my own mind
25 that while, in cases with banks across the

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1 regarding the motions?

2 MR. WEEKS: Judge, just, I know the question
3 has been raised as to whether or not there was an
4 affidavit by Laura Toney in the file, and I have
5 in my hand a copy of an affidavit. I don't know
6 if Mr. Murrell has that in his file or not, and I
7 must confess, I'm not exactly sure where it came
8 from.

9 MR. MURRELL: Was that filed?

10 MR. WEEKS: Well, I, I don't know. It's an
11 affidavit of Laura Toney that, of course, it's
12 not signed. I mean, it's typed. It's not a
13 notarized signature, but, and I don't know
14 whether this was pro se entered into evidence
15 prior to the time that we got involved or not.

16 JUDGE BOOTH: All right. Let me ask one of
17 the questions I want clarification on so I'll
18 know when I read your proposed orders. Mr.
19 Weeks, 60B1 allows for mistake and for excusable
20 neglect. Now, a mistake, or is it your position
21 that under 60B1, you should be given relief from
22 this Summary Judgment, because there was
23 excusable neglect or because of the mistake of
24 the understanding of the fact of the bankruptcy
25 filing and its affect? Which one of these two is

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EXHIBIT #1
LETTER OF RESCISSION

2.

June 14, 2005

P.O. Box 722
Bishopville, SC 29010

Owen Federal Bank FSB
P.O. Box 24737
West Palm Beach, Florida 33416-4737

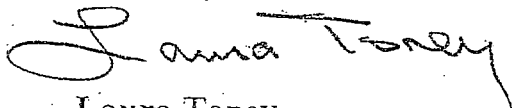
RE: Loan Number:0040789935/ Laura Toney/ 251-11-6990
Property Location: 729 Chatmon Street, Bishopville, SC

To Whom It May Concern:

This letter is to inform you that I wish to rescind my loan with Owen Federal Bank because of several federal disclosure violations during the processing of the loan. I did not receive any disclosures required by federal law prior to the closing of the loan.

Please adhere to my request. My attorney will be contacting you in the near future.

Sincerely,



Laura Toney

Cc: Owen Federal Bank
Loan Resolution Department
12650 Ingenuity Dr.
Orlando, Florida 32826
ATTENTION: ODESSA BRAITHWAITE

- ☒ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Owen Federal Bank
P.O. Box 24737
West Palm Beach
Florida
33416-4737

2. Article Number

(Transfer from service label)

PS Form 38

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

JUN 16 2005

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- ☒ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Owen Federal Bank
Resolution Dept.
12650 Ingenuity Dr.
Orlando, Florida
32826

2. Article Number

(Transfer from service label)

7004 2530 0006 1747 2334

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

TOM NELSON

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

UNITED STATES POSTAL SERVICE

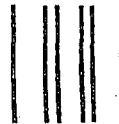


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Laura Toney
P.O. Box 722
Bishopville, SC
29610

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Laura Toney
P.O. Box 722
Bishopville, SC
29610

08



EXHIBIT #6

AFFIDAVIT OF CHERYL SCOTT JONES

2.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
)
LaSalle Bank National Association)
As Trustee for the registered holders)
Of Structured Asset Securities)
Corporation, Structured Asset)
Investment Loan Trust, Mortgage Pass-))
Through Certificates, Series 2004-11)
)
Plaintiff,)
vs.)
)
Laura Toney)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2005-CP-31-169

**AFFADAVIT OF
CHERYL SCOTT-JONES**

I, Cheryl Scott-Jones, an employee of Weeks Law Office, LLC, do hereby make the following statement on the above captioned matter: on February 6, 2007 I called the Korn Law Firm and left a message for the Legal Assistant for H. Guyton Murrell, Crystal, to advise her about rescheduling the hearing that was set for 2:00 p.m. that day. I then called the Master-In-Equity, William Coffey, Jr. and spoke with Linda to advise her of the same and get other dates to reschedule the hearing.



Cheryl Scott-Jones
Paralegal for Weeks Law Office, LLC

Sumter, South Carolina

April 17, 2007

EXHIBIT #7
AFFIDAVIT OF LAURA TONEY

2.

ORIGINAL FILED

07 APR 16 PM 1:09

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
2007 APR 16 PM 1:11

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Laura Ann Toney

CHAPTER 7

BANKRUPTCY NO. 07-01978

Debtor(s)

I, Laura Toney, is requesting to withdraw my petition in the above referenced case because of the following:

1. After research, I realized that my income will not qualify for a Chapter 7.
2. I rescinded the loan with LaSalle Bank in June 2005. LaSalle Bank does not have any security interest in my home. I inadvertently placed it on the list of debts. This case is being litigated in State Court.
3. I have received offers to buy my homes. After the sale of my homes in which Countrywide and Chase have a security interest, I will be able to pay both mortgages in full.
4. I have arranged a repayment plan with (2) of the creditors.
5. I will be attempting to arrange a repayment plan with the others.

CC: Trustee: *Ryan Hovis*
All creditors

Enclosures: Letter of Rescission to LaSalle Bank

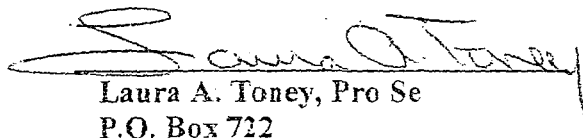

Laura A. Toney, Pro Se
P.O. Box 722
Bishopville, SC 29010

EXHIBIT #8
AFFIDAVIT OF MICHAEL MAY

2.

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as Trustee
for the registered holders of Structured Asset
Securities Corporation, Structured Asset
Investment Loan Trust, Mortgage Pass-Through
Certificates, Series 2004-11,

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S),

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF MICHAEL MAY

C/A NO:2005-CP-31-169



F25-02718

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

My name is Michael May and I am an attorney licensed to practice in the State of South Carolina. My area of practice is real estate closings. I performed a real estate closing for Laura Toney on October 6, 2004 for the purpose of refinancing the debt encumbering her property located at 729 Chatman Street, Bishopville, SC. The disbursement date for the refinance was October 12, 2004. A copy of the HUD Settlement Statement showing the disbursement of the loan proceeds is attached as Exhibit "A".

I personally attended and conducted the closing. For the convenience of the customer Laura Toney, the closing was conducted at the office of the mortgage broker, LAB Financial Services at 1833 Holman Road, Sumter, SC. Laura Toney attended the closing and I verified her identity through her Drivers License. A copy of the Drivers License is attached as Exhibit "AA".

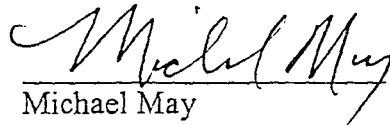
I reviewed and explained with Laura Toney the documents that needed to be executed to complete the loan closing. I specifically reviewed and explained the Good Faith Estimate of Charges with Laura Toney and provided her a copy of the document at closing. I personally witnessed Laura Toney sign the Good Faith Estimate of Charges acknowledging that she had received a complete copy of the document. A copy of the Good Faith Estimate of Charges signed by Laura Toney is attached as Exhibit "B".

I specifically reviewed and explained the Truth in Lending Disclosure Statement with Laura Toney and provided her a copy of the document at closing. I personally witnessed Laura Toney sign the Truth in Lending Disclosure Statement acknowledging that she had received a

complete copy of the document. A copy of the Truth in Lending Disclosure Statement signed by Laura Toney is attached as Exhibit "C".

I specifically reviewed and explained the Attorney Preference Disclosure and Attorney/Insurance Preference checklist with Laura Toney at the closing. I verified with Laura Toney that she had been advised by her mortgage broker prior to closing of her right to select the attorney of her choice close the loan. I personally witnessed Laura Toney initial the Attorney Preference Disclosure confirming that she had been advised by her mortgage broker prior to closing of her right to have an attorney of her choice close the loan. A copy of the Attorney Preference Disclosure initialed by Laura Toney is attached as Exhibit "D". I further verified with Laura Toney that after being informed of her right to the attorney of her choice by her broker, she had no preference and had requested assistance from the lender in selecting an attorney. I also confirmed with Laura Toney that the lender had provided a list of attorneys and that she selected my law firm from that list. I personally witnessed Laura Toney sign the Attorney/Insurance Preference Checklist confirming that she had been informed of the right, had no preference, and had selected my firm from a proposed list. A copy of the Attorney/Insurance Preference Checklist signed by Laura Toney is attached as Exhibit "E".

I also reviewed and explained with Laura Toney her right under federal law to cancel the loan within three (3) business days. I specifically reviewed and explained the Notice of Right to Cancel with Laura Toney and provided her two (2) completed copies of the document at closing. I personally witnessed Laura Toney sign the Notice of Right to Cancel acknowledging that she had been advised of this right and received a complete copy of the document. The form also acknowledged that she had received a copy of the Truth in Lending Disclosure Statement. A copy of the Notice of Right to Cancel signed by Laura Toney is attached as Exhibit "F".


Michael May
Attorney at Law

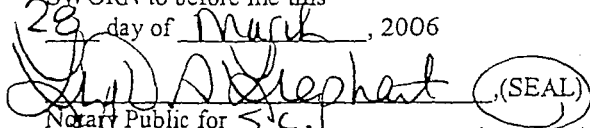
SWORN to before me this
28 day of March, 2006
 (SEAL)
Notary Public for S.C.
My Commission Expires 2.22.15

EXHIBIT #9

AFFIDAVIT OF LETIA BENJAMIN

2.

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as Trustee
for the registered holders of Structured Asset
Securities Corporation, Structured Asset
Investment Loan Trust, Mortgage Pass-Through
Certificates, Series 2004-1 I,

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S),

IN THE COURT OF COMMON PLEAS

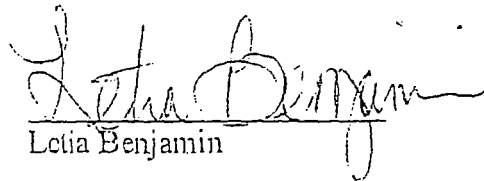
AFFIDAVIT

C/A NO:2005-CP-31-169

F25-02718

PERSONALLY appeared before me, Letia Benjamin, who first being duly sworn,
deposes and says:

I am employed with LAB Financial Services and was the mortgage broker on this loan.
Attached is a copy of the attorney preference executed by Laura Toney when she applied for a
loan and the customer notes. The customer notes were kept in the ordinary course of business
and confirm that Laura Toney selected the closing attorney and confirmed her selection on the
attorney preference form.


Letia Benjamin

SWORN to before me this
24th day of August, 2006

Notary Public for
My Commission Expires 8/24/06

(SEAL)

JEREMY S. WALLS
Notary Public for South Carolina
My Commission Expires 6-1-09



EXHIBIT #10
ATTORNEY PREFERENCE DISCLOSURES

2.

Mr. Toney due to changes on
insurance you need to sign
and fill in another form and you can't
it by or you for it back: to 428-442

LAB FINANCIAL SERVICES
1833 HOLMAN ROAD SUMTER, SC 29153
PH 803-428-2050 FAX 803-428-4470
ATTORNEY/INSURANCE PREFERENCE
CHECKLIST

DATE: 10-3-04

1. I(WE) HAVE BEEN INFORMED BY THE LENDER THAT I(WE) HAVE
A RIGHT TO SELECT LEGAL COUNSEL TO REPRESENT ME(US) IN ALL
MATTERS OF THIS TRANSACTION RELATING TO THE CLOSING OF THE
LOAN.

X → A. I SELECT Ratchford & Mayo
ATTORNEY'S NAME

X Laura Toney BORROWER'S SIGNATURE

B. HAVING BEEN INFORMED OF THIS RIGHT, AND HAVING NO PREFERENCE, I
ASKED FOR ASSISTANCE FROM (THE LENDER) AND WAS REFERRED TO A LIST
OF ACCEPTABLE ATTORNEYS. FROM THAT LIST I SELECT:

I SELECT _____
ATTORNEY'S NAME

BORROWER'S SIGNATURE

2. I(WE) HAVE BEEN INFORMED BY (THE LENDER) THAT I
(WE) HAVE A RIGHT TO SELECT AN INSURANCE AGENT
TO FURNISH REQUIRED HADZARD INSURANCE IN
CONNECTION WITH THIS MORTGAGE TRANSACTION.

→ A. I SELECT Terrenceville Ins. Co. Inc.
INSURANCE AGENT'S NAME

X Laura Toney BORROWER'S SIGNATURE

B. HAVING BEEN INFORMED OF THIS RIGHT, AND HAVING NO PREFERENCE, I
ASKED FOR ASSISTANCE FROM (THE LENDER) AND WAS REFERRED TO A LIST
OF QUALIFIED AGENTS. FROM THE LIST I SELECT:

I SELECT _____
INSURANCE AGENT'S NAME

BORROWER'S SIGNATURE

BORROWER'S SIGNATURE

ATTORNEY INSURANCE PREFERENCE CHECK LIST

Borrower Name(s):
LAURA TONEY

Lender:
Finance America, LLC
16802 Aston Street
Irvine, CA 92606

Property Address:
729 CHATMAN ST
BISHOPVILLE, SC 29010-0115

Date:
10/06/04

1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me(us) in all matters of this transaction relating to the closing of the loan.

(a) I select RATCHFORD & MAY LLC - SC

Borrower LAURA TONEY	Date	Borrower	Date
----------------------	------	----------	------

Borrower	Date	Borrower	Date
----------	------	----------	------

(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of acceptable attorneys. From that list I select

Ratchford & May LLC

Borrower <i>Laura Toney</i>	Date <i>10-6-04</i>	Borrower	Date
-----------------------------	---------------------	----------	------

Borrower	Date	Borrower	Date
----------	------	----------	------

2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required HAZARD / FLOOD insurance in connection with this mortgage transaction.

(a) I select LLOYDS OF LONDON INS

Borrower LAURA TONEY	Date	Borrower	Date
----------------------	------	----------	------

Borrower	Date	Borrower	Date
----------	------	----------	------

(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of qualified agents. From that list I select LLOYDS OF LONDON INS

Borrower LAURA TONEY	Date	Borrower	Date
----------------------	------	----------	------

Borrower	Date	Borrower	Date
----------	------	----------	------



EXHIBIT #11
HUD STATEMENTS

2.

TRU FIN-LENDING DISCLOSURE STATEMENT
(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

LENDER OR LENDER'S AGENT:

Finance America LLC

16802 Aston Street

Irvine, CA 92606

BORROWERS: LAURA TONEY

Preliminary ☒ Final

DATE: 10/06/04

LOAN NO.: 0040789935

Type of Loan: CONV

ADDRESS: 729 CHATMAN ST
CITY/STATE/ZIP: BISHOPVILLE, SC 29010-1215
PROPERTY: 729 CHATMAN ST
BISHOPVILLE, SC 29010-1215

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
9.061	\$ 138,968.90	\$ 72,524.90	\$ 211,493.80

PAYMENT SCHEDULE: SEE ATTACHED "GOOD FAITH ESTIMATE"

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE MONTHLY BEGINNING	NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE BEGINNING
024	580.92	12/01/2004			
335	587.97	12/01/2006			
001	581.77	11/01/2034			

DEMAND FEATURE: ☒ This loan does not have a Demand Feature. ☐ This loan has a Demand Feature as follows:

VARIABLE RATE FEATURE:

☒ This loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at:

729 CHATMAN ST, BISHOPVILLE, SC 29010-1215

ASSUMPTION: Someone buying this property ☒ cannot assume the remaining balance due under original mortgage terms.

☐ may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

FILING / RECORDING FEES: \$ 50.00

PROPERTY INSURANCE: ☒ Property hazard insurance in the amount of \$ 76,500.00 with a mortgage clause to the lender.

is a required condition of this loan. Borrower may purchase this insurance from any insurance company acceptable to the lender.

Hazard insurance ☐ is ☐ is not available through the lender at an estimated cost of N/A for a N/A year term.

LATE CHARGES: If your payment is more than 15 days late, you will be charged a late charge of \$ 5.00 % of the overdue payment.

PREPAYMENT: If you pay off your loan early, you

☐ may ☒ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

LAURA TONEY
LAURA TONEY

BORROWER DATE

BORROWER DATE

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BORROWER DATE

BORROWER DATE

Prepared 10/06/2004
Sales price N/A

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates - the actual charges may be more or less. Your transaction may not involve a fee for every item listed.

The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 or HUD-1A settlement statement that you will be receiving at settlement. The HUD-1 or HUD-1A settlement statement will show you the actual cost for items paid at settlement.

NUMBERS FROM HUD-1 OR HUD-1A FORM	DESCRIPTION OF CHARGES	ESTIMATED AMOUNT OR RANGE
901	* PREPAID INTEREST (8.265 %) 20 days @ 17.78 /day	\$355.60
801	* ORIGINATION FEE	
802	* DISCOUNT POINT(S)	
803	APPRAISAL FEE	
804	CREDIT REPORT FEE	
808-811	* UNDERWRITING/LENDER FEE	695.00
808-811	* APPLICATION FEE	
808-811	* PREPAY BUYOUT FEE	
808-811	* FLOOD CERTIFICATION	27.00
808-811	* TAX SERVICE FEE	
805	* BROKER FEE	2,100.00
806	BROKER CREDIT REPORT FEE	12.00
807	BROKER APPRAISAL FEE (POC) **	350.00
813	BROKER REVIEW APPRAISAL FEE	
1301	* BROKER APPLICATION FEE	
1302	* BROKER PROCESSING FEE	325.00
1303	* BROKER ADMINISTRATION FEE	
1304-1307	* BROKER COURIER FEE	22.50
1304-1307	BROKER SURVEY FEE	
1304-1307	BROKER NOTARY FEE	
	YIELD SPREAD PREMIUM (POC) (**) (***)	
1201	RECORDING FEES	50.00
1304-1307	STATE SPECIFIC FEE	
1304-1307	STATE TAX	
1101	* ATTORNEY/SETTLEMENT/SIGNING FEE	400.00
1108	TITLE INS/EXAM/BINDER	735.00
903	HAZARD INSUR(POC) **D @ CLOSING	
904	FLOOD INSURANCE	
1003	* COURIER FEE	50.00
1004	SURVEY FEE	
1001	LENDER'S CREDIT OF FEES	
1001		
813	APPRAISAL REVIEW FEE	
801-811	* DOCUMENT REDRAW FEE	
801-811	TX ATTORNEY DOC REVIEW FEE	
801-811	DOCUMENT PREPARATION FEE	
1001		
Prepaid Finance Charge		
Paid Outside of Closing (not included in total estimated charges)		
Paid By Lender (not included in total estimated charges)		
TOTAL EST. CHARGES		4,772.10

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, entitled "Settlement Costs," which has been provided to you by your mortgage broker or lender. If your application is to purchase residential real property, and the Lender will take a first lien on the property

☐ This Good Faith Estimate is being provided by
no lender has been obtained.

☐ Use of a particular provider of service is required and the estimate is based on charges of the provider. Please see attached Addendum

The undersigned acknowledges receipt of this Good Faith Estimate of Charges, and if applicable, the HUD Special Information Booklet, "Settlement Costs," and the "Consumer Handbook on ARM Mortgages."

APPLICANT _____ DATE: _____

S designates those costs to be paid by Seller.

I. Settlement Charges				Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. TOTAL SALES/BROKERS COM. based on price	@	% =			
Division of Commission (line 700) as follows:					
701.	to				
702.	to				
703. Commission paid at Settlement					
704.	to				
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	to				
802. Loan Discount	to				
803. Appraisal Fee	to	LAB Financial	<\$350.00>		"P.O.C."
804. Broker Courier Fee	to	LAB Financial		22.50	
805. Broker Fee	to	LAB Financial		2,100.00	
806. Broker Processing Fee	to	LAB Financial		325.00	
807. Broker Credit Report	to	LAB Financial		12.00	
808. Lender Fee	to	Finance America LLC		685.00	
809. Flood Certificate Fee	to	Finance America LLC		27.00	
810.	to				
811.	to				
812.	to				
813.	to				
814.	to				
815.	to				
900. Items Required By Lender To Be Paid in Advance					
901. Interest from 10/12/2004 to 11/1/2004 @		17.75 /day		355.60	
902. Mortgage Insurance Premium for	months to				
903. Hazard Insurance Premium for	years to				
904.	years to				
905.	years to				
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months@	per month			
1002. Mortgage Insurance	months@	per month			
1003. City property taxes	months@	per month			
1004. County property taxes	months@	per month			
1005. Annual assessments	months@	per month			
1006.	months@	per month			
1007.	months@	per month			
1008.	months@	per month			
1009.					
1100. Title Charges:					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to	First Title (392889)		355.00	
1103. Title examination	to				
1104. Title insurance binder	to	Ratchford and May		75.00	
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to	Ratchford and May		600.00	
(includes above item numbers:					
1108. Title insurance	to	Investors Title		217.50	
(includes above item numbers:					
1109. Lender's Coverage:		INS AMT:	76,500.00		
1110. Owner's Coverage:		INS AMT:			
1110a.					
1111. Courier/Wire Fee	to	Ratchford and May		35.00	
1112. Package Production and Transmittal Fee	to	Ratchford and May		45.00	
1113.	to				
1200. Government Recording and Transfer Charges					
1201. Recording Fees: Deed \$30.00; L-Mortgage(s) \$5.00; Releases				35.00	
1202. City/county tax/stamps: L-Mortgage(s)					
1203. State tax/stamps: L-Mortgage(s)					
1204.					
1205.					
1300. Additional Settlement Charges					
1301. Survey	to				
1302. Pest Inspection	to				
1303. Roof Inspection	to				
1304.	to				
1305.	to				
1306.	to				
1307.	to				
1308.	to				
1309.	to				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				4,709.60	

I have carefully reviewed the HUD - 1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD - 1 Settlement Statement.

Borrower

Borrower

HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

RATCHFORD & MAY, LLC

Settlement Agent

10/6/2004

Date:

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include imprisonment. For details see Title 18 U.S. Code Section 1001 and Section 1010.

include a 20040661

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EXHIBIT A PAGE 2 OF 2

EXHIBIT #12
FORGERY REPORT

2.



DIPLOMATE AMERICAN BOARD
OF FORENSIC DOCUMENT EXAMINERS

AMERICAN ACADEMY
OF
FORENSIC SCIENCES

MARVIN H. DAWSON, JR.
FORENSIC DOCUMENT EXAMINER

122 HOLLYRIDGE ROAD (29301)
POST OFFICE BOX 5066
SPARTANBURG, SOUTH CAROLINA 29304

(864) 439-1610
FAX (864) 439-2312
E-MAIL: DawsonMH@aol.com

AMERICAN SOCIETY
OF
QUESTIONED DOCUMENTS EXAMINERS

SOUTHEASTERN ASSOCIATION
OF FORENSIC DOCUMENT EXAMINERS

CURRICULUM VITAE

PRESENT POSITION

Forensic Document Examiner – Forensic Photographer – Private Consultant

Dawson Document Laboratory, LLC
122 Hollyridge Road (29301)
Post Office Box 5066 (29304)
Spartanburg, South Carolina
(803) 439-1610 Facsimile (864) 439-2312

EDUCATION

Master of Criminal Justice
University of South Carolina
Columbia, South Carolina

Bachelor of Arts
University of South Carolina
Columbia, South Carolina

FBI National Academy
121st Session
FBI Academy
Quantico, Virginia

Professional Certificate
University of Virginia
FBI Academy Campus
Quantico, Virginia

EMPLOYMENT

South Carolina Law Enforcement Division (SLED)
1972-1988

OIC, designed, developed and staffed SLED's Forensic Photography
1972-1977

Department Head (Lieutenant) designed, developed and staffed SLED's
Forensic Questioned Document Laboratory
1974-1988

Midlands Technical College, Adjunct Faculty
1987-1995

Department of Social Services, Division of Investigation
Forensic Document Examiner
1988-1999

Retired from the State of South Carolina, June 1999 having
served 27 ½ years in state law enforcement; 25 of which in
the laboratory as a forensic document examiner.

AREA OF EXPERTISE

Forensic Document Examiner *Board Certified by The American Board of Forensic
Document Examiners (ABFDE) Certification No.: 251*

Certified as a Law Enforcement Instructor by the South Carolina Criminal Justice
Academy (SCCJA) October 1986 through October 1999.

COURT TESTIMONY

Qualified and testified as an expert in the area of Forensic Document Examination over
three hundred (300) times in Federal, State and local courts as well as court martial, state
boards and regulatory proceedings.

ORGANIZATIONAL AFFILIATIONS

American Board of Forensic Document Examiners (ABFDE) Diplomate

*American Society of Questioned Document Examiners (ASQDE) Membership and
Credentials Chair (2005-2006), Membership and Credential Committee, Member
(2006 -2007)*

*American Academy of Forensic Sciences (AAFS) Document Section, Member
(1981 – Present)*

*Southeastern Association of Forensic Document Examiners (SAFDE) Charter Member,
Secretary (1994 – 1996)*

*FBI National Academy Associates (FBINA) State and National Associations. Member
Secretary/Treasurer South Carolina (1981-1984)
President of South Carolina Chapter (1987)*

International Association of Identification (IAI) Member
Regional Director (1980-1983)
President of South Carolina Chapter (1983)

American Society of Standards and Materials (ASTM) Member of E-30 Committee
(2004-2007)

TRAINING (PARTIAL LIST)

Examiner of Questioned Document Internship, Georgia Bureau of Investigation (GBI)
Atlanta, Georgia 1973 - 1974.

United States Secret Service Questioned Document Course, Washington, DC

Federal Bureau of Investigation, Quantico, Virginia
Questioned Document Course
Typewriter Seminar
Photography Course (Laboratory)
International Symposium (#1) on the Forensic Examination of Questioned
Documents, Quantico, Virginia
International Symposium (#2) on the Forensic Examination of Questioned
Documents, Albany, New York

Photocopy Workshops, Atlanta, Georgia, Washington, DC and Lansing, MI.

Advanced Study Course in the Examination of Medical Records, Miami, Florida

Typography Short Course, Atlanta, Georgia

Signature Workshop, Des Moines, Iowa

Daubert Workshop, Columbia, South Carolina

Constructing a Scientific Paradigm for Forensic Handwriting Identification Evidence,
Atlanta, Georgia

Print Quality Workshop, Montreal, Quebec

Cedar-Fox Workshop, Montreal, Quebec

Signature - Disguise of Signature Forgery Workshop, Part I, II, III and IV, Portland,
Oregon

Fine and Subtle Features of Handwriting Workshop, Part I and II, Atlanta, Georgia

Handwriting Workshop, Atlanta, Georgia

Examining Documents Requiring a Multi-Faceted Approach, Traverse City, Michigan

Forensic Examination of Computer Generated Documents, Traverse City, Michigan

Courtroom Testimony for Forensic Document Examiners, Traverse City, Michigan

Methods Used for Authenticating Questioned Documents, Traverse City, Michigan

Numerous other forensic document examiners workshops held in conjunction with or sponsored by the American Academy of Forensic Sciences, The American Society of Questioned Document Examiners, The Southeastern Association of Questioned Document Examiners and the American Board of Forensic Document Examiners.

Professional papers have been presented before the annual meetings of the Academy, Society and the Southeastern Association of Forensic Document Examiners.

10-03-07



INTERNATIONAL ASSOCIATION BOARD
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MARVIN H. DAWSON, JR.
FORENSIC DOCUMENT EXAMINER

AMERICAN SOCIETY
OF
QUESTIONED DOCUMENTS EXAMINERS

SOUTHEASTERN ASSOCIATION
OF FORENSIC DOCUMENT EXAMINERS

December 12, 2007

Facsimile and Federal Express

Ms. Laura A. Toney
Post Office Box 722
Bishopville, South Carolina 29010

Re: Signature Examination
Laura A. Toney
DDL File No: 75329

Results of Examination

The following documents were received for examination in this laboratory on December 10, 2007.

Questioned Document

- Q/1 Loan, Lab Financial Services (machine copy) dated 08-11-04).
- Q/2 Loan, Lab Financial Services (machine copy) dated 08-11-04).
- Q/3 Lab Financial Services Checklist (machine copy) dated 08-11-04).
- Q/4 Lab Financial Services Checklist (machine copy) dated 10-03-04).

Exhibits Q/1 thru Q/4 were submitted as bearing a questioned
"Laura Toney" signature.

Specimen Signatures

- K1.1 Lee County School District Statement of Physical and Mental Fitness (machine copy) dated 04-25-05.
- K1.2 Lee County School District Memorandum (machine copy) dated 04-22-05.
- K1.3 Lee County School District Continuing Contract (machine copy) dated 04-22-05.

K1.4 Lee County School District Miscellaneous Information Professional (machine copy) dated 04-22-05

K1.5 Machine copy of five (5) cancelled checks -

K1.6 Machine copy of twenty (20) cancelled checks -

K1.7 Machine copy of twenty (20) cancelled checks

K1.9 Lee Country Continuing 04-26-99

Exhibits K1.1 thru K1.9 were submitted as bearing signatures attributed to Laura A Toney (K/1).

Purpose of the Examination

The previously described documents were submitted for the purposes of determining, if possible, the authenticity or authorship of the "Laura Toney" signatures appearing on Exhibits Q/1 - Q/4.

Examination Limitations

When attempting to conduct a comparison of signatures on non-original documents, certain limitations are present. First, it is impossible to conduct a microscopic examination of the signature for evidence of any line quality defects associated with simulation and/or traced signatures. The reproduction process may distort the writing or mask evidence of simulation or tracing. In the case of faxed documents, the digitizing of the document during transmission disrupts the continuity of the signature as it is printed on the receiving machine.

Secondly, the possibility of a "*cut and paste*" fabrication cannot be eliminated based upon an examination of a copy. The product of modern photocopiers and fax machines is such that an authentic signature can be reproduced and pasted onto a document without leaving discernible evidence of this fabrication. It is also possible to insert a computer graphic (*scanned*) image of an authentic signature onto a document that was never signed in ink. Another process may involve the production of a signature through mechanical means, such as the use of a rubber stamp or offset printing process. The only reliable method to eliminate these possibilities is to examine the original inked signature.

Thus, it is not possible to conclusively identify the signed of a document when no inked original can be produced. However, it may be possible to eliminate a particular person as signing a document where only a photocopy exists or is available for examination.

附 錄

Sales Price: 129,200.00
 Sales Loan Amount: 129,200.00
 Total Loan Amount: 129,200.00
 Type of Loan: CONVERSIONAL
 Date Refused: 8/21/04
 Rep: 8,900 Term: 360

Borrower's Charges		Lender's Charges	
601 Loan Origination Fee	\$10	1101 Closing or Endorse Fee	\$
602 Loan Discount Fee	\$10	1102 Abstract or Title Search	\$
603 Appraisal Fee	\$ 350.00	1103 Title Examination	\$
604 Credit Report	\$ 12.00	1104 Title Insurance Binder	\$
605 Lender's Inspection Fee	\$	1106 Document Preparation Fee	\$
606 Mortgage Insurance Application Fee	\$	1108 Notary Fee	\$
607 Assumption Fee	\$	1107 Attorney Fees	\$
609 Mortgage Broker Fee	\$ 7,200.00	1109 Title Insurance	\$ 750.00
608 Old Account Fee	\$		
610 Title Related Service Fee	\$		
PROCESSING FEE	\$ 225.00		

5		8
4		
3	FOR GOVERNMENT TREASURY TRANSFER CHARGES.	
2	1941 DEPOSITION COST.	5

501 Interest for 22 day @ 4 1/2 %	537.24	1	2001 City/County Tax Stamps	8
502 Mortgage Insurance Premium		2	2002 State Tax Stamps	9
503 Holding Insurance Premium		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9
		3		0
		4		1
		5		2
		6		3
		7		4
		8		5
		9		6
		0		7
		1		8
		2		9

1001	Miss You From	24			1001 Survey	24	
	Ten & Alcott Res	24			1002 Post Inspection	24	
1002	Mfg Ins	24				24	
		24				24	
		24				24	
		24				24	
		24				24	
		24			TOTAL ESTIMATED SETTLEMENT CHARGES	24	\$,074.24

1. 1940-1941 1942-1943 1944-1945 1946-1947 1948-1949 1950-1951 1952-1953 1954-1955 1956-1957 1958-1959 1960-1961 1962-1963 1964-1965 1966-1967 1968-1969 1970-1971 1972-1973 1974-1975 1976-1977 1978-1979 1980-1981 1982-1983 1984-1985 1986-1987 1988-1989 1990-1991 1992-1993 1994-1995 1996-1997 1998-1999 2000-2001 2002-2003 2004-2005 2006-2007 2008-2009 2010-2011 2012-2013 2014-2015 2016-2017 2018-2019 2020-2021 2022-2023 2024-2025 2026-2027 2028-2029 2030-2031 2032-2033 2034-2035 2036-2037 2038-2039 2040-2041 2042-2043 2044-2045 2046-2047 2048-2049 2050-2051 2052-2053 2054-2055 2056-2057 2058-2059 2060-2061 2062-2063 2064-2065 2066-2067 2068-2069 2070-2071 2072-2073 2074-2075 2076-2077 2078-2079 2080-2081 2082-2083 2084-2085 2086-2087 2088-2089 2090-2091 2092-2093 2094-2095 2096-2097 2098-2099 2100-2101 2102-2103 2104-2105 2106-2107 2108-2109 2110-2111 2112-2113 2114-2115 2116-2117 2118-2119 2120-2121 2122-2123 2124-2125 2126-2127 2128-2129 2130-2131 2132-2133 2134-2135 2136-2137 2138-2139 2140-2141 2142-2143 2144-2145 2146-2147 2148-2149 2150-2151 2152-2153 2154-2155 2156-2157 2158-2159 2160-2161 2162-2163 2164-2165 2166-2167 2168-2169 2170-2171 2172-2173 2174-2175 2176-2177 2178-2179 2180-2181 2182-2183 2184-2185 2186-2187 2188-2189 2190-2191 2192-2193 2194-2195 2196-2197 2198-2199 2200-2201 2202-2203 2204-2205 2206-2207 2208-2209 2210-2211 2212-2213 2214-2215 2216-2217 2218-2219 2220-2221 2222-2223 2224-2225 2226-2227 2228-2229 2230-2231 2232-2233 2234-2235 2236-2237 2238-2239 2240-2241 2242-2243 2244-2245 2246-2247 2248-2249 2250-2251 2252-2253 2254-2255 2256-2257 2258-2259 2260-2261 2262-2263 2264-2265 2266-2267 2268-2269 2270-2271 2272-2273 2274-2275 2276-2277 2278-2279 2280-2281 2282-2283 2284-2285 2286-2287 2288-2289 2290-2291 2292-2293 2294-2295 2296-2297 2298-2299 2300-2301 2302-2303 2304-2305 2306-2307 2308-2309 2310-2311 2312-2313 2314-2315 2316-2317 2318-2319 2320-2321 2322-2323 2324-2325 2326-2327 2328-2329 2330-2331 2332-2333 2334-2335 2336-2337 2338-2339 2340-2341 2342-2343 2344-2345 2346-2347 2348-2349 2350-2351 2352-2353 2354-2355 2356-2357 2358-2359 2360-2361 2362-2363 2364-2365 2366-2367 2368-2369 2370-2371 2372-2373 2374-2375 2376-2377 2378-2379 2380-2381 2382-2383 2384-2385 2386-2387 2388-2389 2390-2391 2392-2393 2394-2395 2396-2397 2398-2399 2400-2401 2402-2403 2404-2405 2406-2407 2408-2409 2410-2411 2412-2413 2414-2415 2416-2417 2418-2419 2420-2421 2422-2423 2424-2425 2426-2427 2428-2429 2430-2431 2432-2433 2434-2435 2436-2437 2438-2439 2440-2441 2442-2443 2444-2445 2446-2447 2448-2449 2450-2451 2452-2453 2454-2455 2456-2457 2458-2459 2460-2461 2462-2463 2464-2465 2466-2467 2468-2469 2470-2471 2472-2473 2474-2475 2476-2477 2478-2479 2480-2481 2482-2483 2484-2485 2486-2487 2488-2489 2490-2491 2492-2493 2494-2495 2496-2497 2498-2499 2500-2501 2502-2503 2504-2505 2506-2507 2508-2509 2510-2511 2512-2513 2514-2515 2516-2517 2518-2519 2520-2521 2522-2523 2524-2525 2526-2527 2528-2529 2530-2531 2532-2533 2534-2535 2536-2537 2538-2539 2540-2541 2542-2543 2544-2545 2546-2547 2548-2549 2550-2551 2552-2553 2554-2555 2556-2557 2558-2559 2560-2561 2562-2563 2564-2565 2566-2567 2568-2569 2570-2571 2572-2573 2574-2575 2576-2577 2578-2579 2580-2581 2582-2583 2584-2585 2586-2587 2588-2589 2590-2591 2592-2593 2594-2595 2596-2597 2598-2599 2600-2601 2602-2603 2604-2605 2606-2607 2608-2609 2610-2611 2612-2613 2614-2615 2616-2617 2618-2619 2620-2621 2622-2623 2624-2625 2626-2627 2628-2629 2630-2631 2632-2633 2634-2635 2636-2637 2638-2639 2640-2641 2642-2643 2644-2645 2646-2647 2648-2649 2650-2651 2652-2653 2654-2655 2656-2657 2658-2659 2660-2661 2662-2663 2664-2665 2666-2667 2668-2669 2670-2671 2672-2673 2674-2675 2676-2677 2678-2679 2680-2681 2682-2683 2684-2685 2686-2687 2688-2689 2690-2691 2692-2693 2694-2695 2696-2697 2698-2699 2700-2701 2702-2703 2704-2705 2706-2707 2708-2709 2710-2711 2712-2713 2714-2715 2716-2717 2718-2719 2720-2721 2722-2723 2724-2725 2726-2727 2728-2729 2730-2731 2732-2733 2734-2735 2736-2737 2738-2739 2740-2741 2742-2743 2744-2745 2746-2747 2748-2749 2750-2751 2752-2753 2754-2755 2756-2757 2

MONTHLY PAYMENTS		MONTHLY PAYMENTS	
Downpayment	\$	Principal & Interest	\$ 550.00
Est. Closing Costs	\$ 8,837.00	Real Estate Taxes	\$
Est. Prepaid Items/Reserve	\$ 837.24	Flood & Hazard Insurance	\$
OTHER:	\$	Mortgage Insurance	\$
TOTAL EST. FUNDS NEEDED TO CLOSE	\$ 9,674.24	TOTAL MONTHLY PAYMENT	\$ 550.00

THIS SECTION TO BE COMPLETED BY LINGER ONLY IF A PARTICULAR PROVIDER OF SERVICE IS REQUIRED. USE ONLY IF PHYSICIAN PROVIDES A
 REQUEST AND THE CONSULT IS BASED ON REQUEST OF THE PROVIDER.

ITEM NO.	NAME & ADDRESS OF PROVIDER	TELEPHONE NO.	NATURE OF RELATIONSHIP
----------	----------------------------	---------------	------------------------

These statements are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, which is to be provided to you by your mortgage broker or lender. If your application is to purchase residential real property and the Lender will make a first lien on the property, the undersigned acknowledges receipt of the booklet "Settlement Costs and Your Homeownership" from the Lender, if available.

[illegible]

_____ Date _____ Applicant _____

姓名: 李德全 性别: 男 年龄: 45 民族: 汉族 籍贯: 湖南长沙
 身份证号: 43010119500101001X 联系电话: 13808888888
 电子邮箱: lidequan@example.com 职业: 教师
 工作单位: 长沙市第一中学 现住址: 长沙市岳麓区岳麓山南路100号
 邮政编码: 410000 婚姻状况: 已婚 子女情况: 有一个儿子, 现年12岁
 健康状况: 良好 血型: O型 过敏史: 无 其他信息: 无

2/9/2

FORM 100-1 (Rev. 1-25-60) 2/92

[illegible]

K1.4 Lee County School District Miscellaneous Information Professional (machine copy) dated 04-22-05

K1.5 Machine copy of five (5) cancelled checks -

K1.6 Machine copy of twenty (20) cancelled checks -

K1.7 Machine copy of twenty (20) cancelled checks

K1.9 Lee County Continuing 04-26-99

Exhibits K1.1 thru K1.9 were submitted as bearing signatures attributed to Laura A Toney (K/1).

Purpose of the Examination

The previously described documents were submitted for the purposes of determining, if possible, the authenticity or authorship of the "Laura Toney" signatures appearing on Exhibits Q/1 - Q/4.

Examination Limitations

When attempting to conduct a comparison of signatures on non-original documents, certain limitations are present. First, it is impossible to conduct a microscopic examination of the signature for evidence of any line quality defects associated with simulation and/or traced signatures. The reproduction process may distort the writing or mask evidence of simulation or tracing. In the case of faxed documents, the digitizing of the document during transmission disrupts the continuity of the signature as it is printed on the receiving machine.

Secondly, the possibility of a "cut and paste" fabrication cannot be eliminated based upon an examination of a copy. The product of modern photocopiers and fax machines is such that an authentic signature can be reproduced and pasted onto a document without leaving discernible evidence of this fabrication. It is also possible to insert a computer graphic (*scanned*) image of an authentic signature onto a document that was never signed in ink. Another process may involve the production of a signature through mechanical means, such as the use of a rubber stamp or offset printing process. The only reliable method to eliminate these possibilities is to examine the original inked signature.

Thus, it is not possible to conclusively identify the signed of a document when no inked original can be produced. However, it may be possible to eliminate a particular person as signing a document where only a photocopy exists or is available for examination.

LENDER OR LENDER'S AGENT:
LAS FINANCIAL SERVICES

THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND

☒ Preliminary ☐ Final

DATE: 8-11-07

LOANING: 00000301

Type of Loan: Conventional

BORROWER: LAURA TONEY
725 CHATMAN STREET
BISHOPVILLE, SC 29010

ADDRESS: 725 CHATMAN STREET
CITY STATE / ZIP: BISHOPVILLE, SC 29010
PROPERTY:

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total Payments The amount you will have paid after you have made all payments to Wholesaler.
7.520	124,865.23	122,462.76	308,329.09

PAYMENT SCHEDULE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE MONTHLY BEGINNING	NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE MONTHLY BEGINNING
358	850.91	3/01/04			
1	822.40	4/01/14			

DEMAND FEATURE: ☐ This loan does not have a Demand Feature. ☐ This loan has a Demand Feature as follows:

VARIABLE RATE FEATURE:

☐ This Loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at: 725 CHATMAN STREET
BISHOPVILLE, SC 29010

ASSUMPTION: Borrower buying this property ☐ Borrower assumes the remaining balance due under original mortgage terms
☐ May assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

PLANS / RECORDING FEES: \$

PROPERTY INSURANCE: ☐ Property hazard insurance in the amount of \$ with a term of 1 year. The charge is the higher of \$1000 or the actual cost of the insurance. Borrower may purchase this insurance from any insurance company acceptable to the lender.
Lender's insurance ☐ is ☐ is not available through the lender at an estimated cost of \$ for a year term.

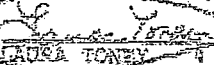
LATE CHARGES: If your payment is more than 5 days late, you will be charged a late charge of \$ of the previous payment.

PREPAYMENT: If you pay off your loan early, you ☐ may ☐ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

For your contract documents for any additional information regarding non-payment, default, required repayment to full before scheduled date, and prepayment rewards and penalties.

APPROVE SIGNATURE

By signing, the borrower is hereby acknowledging receipt and receiving a complete copy of this document.


LAURA TONEY

8-11-07
BORROWER / DATE

BORROWER / DATE

BORROWER / DATE

BORROWER / DATE

725 CHATMAN STREET

UNIT MORTGAGE DEEDS - 1000001-1221

Page 1 of 2

2/53

© 2007 LAS FINANCIAL SER. THE CONTENT OF THIS FORM IS WHOLLY PREPARED UNDER THE AUTHORITY OF THE UNITED STATES.

1/18/2007 01:01 8834254420
 Lender: LAB FINANCIAL SERVICES
 Address: ROUTE 11 BOX 72 HOLLIMAN ROAD
 SUMTER, SC 29153
 Appraisal: LAURA TONEY

LAB FINANCIAL SER.

PAGE 05

Loan Amount: 123,200.00
 Total Loan Amount: 123,200.00
 Type of Loan: CONVENTIONAL
 Date Prepared: 6/11/04
 Rate: 6.000 Term: 360

Property Address: 729 CHAYMAN STREET
 BISHOPVILLE, SC 29010

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The loan is based on estimates. The actual charges may be more or less. Your lender may not include a fee for every item listed. The numbers listed below are estimates only. The numbers listed in the numbered areas contained in the HUD-1 or HUD-1A settlement statement will show you the actual fees for items not at settlement.

Item	Amount	Item	Amount
801 Loan Origination Fee	\$ 0	1101 Closing & Escrow Fee	\$ 0
802 Loan Discount Fee	\$ 0	1102 Appraisal or Title Search	\$ 0
803 Approval Fee	\$ 350.00	1103 Title Examination	\$ 0
804 Credit Report	\$ 12.00	1104 Title Insurance Binder	\$ 0
805 Lender's Inspection Fee	\$ 0	1105 Document Preparation Fee	\$ 0
806 Mortgage Insurance Application Fee	\$ 0	1106 Notary Fee	\$ 0
807 Assumption Fee	\$ 0	1107 Attorney Fees	\$ 0
808 Mortgage Broker Fee	\$ 7,200.00	1108 Title Insurance	\$ 750.00
809 Old Account Fee	\$ 0		
810 Tax Related Services Fee	\$ 0		
PROCESSING FEE	\$ 225.00		

Item	Amount	Item	Amount
801 Interest for 33 day @ 2.42 per day	\$ 337.24	1201 Recording Fees	\$ 0
802 Mortgage Insurance Premium	\$ 0	1202 Chain of Title	\$ 0
803 Hazard Insurance Premium	\$ 0	1203 State Tax Stamps	\$ 0

Item	Amount	Item	Amount
1001 Notary Fee	\$ 0	1301 Survey	\$ 0
1002 Notary Fee	\$ 0	1302 Pest Inspection	\$ 0
1003 Notary Fee	\$ 0		
		TOTAL ESTIMATED SETTLEMENT CHARGES	\$ 0,074.24

Item	Amount	Item	Amount
Downpayment	\$ 0	Principal & Interest	\$ 550.91
Esc. Closing Costs	\$ 8,537.00	Real Estate Taxes	\$ 0
Esc. Prepaid Mortgage Insurance	\$ 537.24	Hood & Water Insurance	\$ 0
OTHER:	\$ 0	Mortgage Insurance	\$ 0
TOTAL EST. FUNDS NEEDED TO CLOSE	\$ 9,074.24	TOTAL MONTHLY PAYMENT	\$ 550.91

THIS SECTION TO BE COMPLETED BY LENDER ONLY IF A PARTICULAR PROVIDER OF SERVICE IS REQUIRED. USE OF THIS PARTICULAR PROVIDER IS required and the estimate is based on charges of the provider.

ITEM NO. NAME & ADDRESS OF PROVIDER TELEPHONE NO. NATURE OF RELATIONSHIP

These disclosures are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended. The actual settlement information can be found in the HUD-1 Settlement Statement, which is to be provided to you by your mortgage broker or lender. Your application is to purchase residential real property and the lender will take a first lien on the property. The undersigned acknowledges receipt of the best estimate of the charges and agrees to pay the same at settlement.

LAURA TONEY 5-11-04
 Applicant Date
 Appraiser Date
 Appraiser Date

☐ This Good Faith Estimate is being provided by a lender who has not been obtained.
 "B" designates those items to be paid by Borrower.

7728 (Rev. 10/03) 2196

Borrower Name(s): LAURA T TONEY		Lender: Finance America, LLC 16807 Aston Street Irvine, CA 92618	
Property Address: 410 NATURS LN ORANGEBURG, SC 29113-5054		Date: 10/20/04	
1. I (We) have been informed by the lender that I (we) have a right to select legal counsel to represent me(us) in all matters of this transaction relating to the closing of the loan. (a) I select RATCHFORD & MAY LLC SC			
Borrower	LAURA T TONEY	Date	Borrower
Borrower		Date	Borrower
(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of acceptable attorneys. From that list I select <i>Ratchford & May LLC</i>			
Borrower	<i>Laura T. Toney</i>	Date	Borrower
Borrower		Date	Borrower
2. I (We) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required HAZARD / FLOOD insurance in connection with this mortgage transaction. (a) I select TURBEVILLE INS AGENCY			
Borrower	<i>Laura T. Toney</i>	Date	Borrower
Borrower		Date	Borrower
(b) Having been informed of this right, and having no preference, I asked for assistance from the lender and was referred to a list of qualified agents. From that list I select TURBEVILLE INS AGENCY			
Borrower	LAURA T TONEY	Date	Borrower
Borrower		Date	Borrower

1055(60) (9/02)

YMF MORTGAGE FORMS (2003/21-1201)

0120



APR 1

DATA ID: 0040790180

Original Choose State Farm Ins.
Then Changed From 8-11-04
on 10-3-04 to Tuffville Ins.
Had MS. Toney to Sign New Form.

LAB FINANCIAL SERVICES

1533 HOLLAND ROAD SUMTER, SC 29153
PH 803-426-2950 FAX 803-426-4670

ATTORNEY/INSURANCE PREFERENCE CHECKLIST

DATE: 8-11-04

1. I(WE) HAVE BEEN INFORMED BY THE LENDER THAT I(WE) HAVE A RIGHT TO SELECT LEGAL COUNSEL TO REPRESENT ME (US) IN ALL MATTERS OF THIS TRANSACTION RELATING TO THE CLOSING OF THE LOAN.

A. I SELECT Ratchford & Mays, Columbia SC
ATTORNEY'S NAME

X Louise Toney
BORROWER'S SIGNATURE

BORROWER'S SIGNATURE

B. HAVING BEEN INFORMED OF THIS RIGHT, AND HAVING NO PREFERENCE, I ASKED FOR ASSISTANCE FROM (THE LENDER) AND WAS REFERRED TO A LIST OF ACCEPTABLE ATTORNEYS. FROM THAT LIST I SELECT:

I SELECT _____
ATTORNEY'S NAME

BORROWER'S SIGNATURE

BORROWER'S SIGNATURE

2. I(WE) HAVE BEEN INFORMED BY (THE LENDER) THAT I (WE) HAVE A RIGHT TO SELECT AN INSURANCE AGENT TO FURNISH REQUIRED HADZARD INSURANCE IN CONNECTION WITH THIS MORTGAGE TRANSACTION.

A. I SELECT State Farm Ins. Co.
INSURANCE AGENT'S NAME

X Louise Toney
BORROWER'S SIGNATURE

BORROWER'S SIGNATURE

B. HAVING BEEN INFORMED OF THIS RIGHT, AND HAVING NO PREFERENCE, I ASKED FOR ASSISTANCE FROM (THE LENDER) AND WAS REFERRED TO A LIST OF QUALIFIED AGENTS. FROM THE LIST I SELECT:

I SELECT _____
INSURANCE AGENT'S NAME

BORROWER'S SIGNATURE

BORROWER'S SIGNATURE

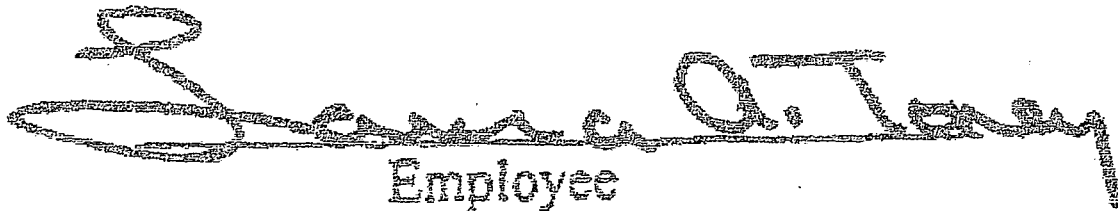
SPECIMEN SIGNATURES (K/1)


Employee's Signature

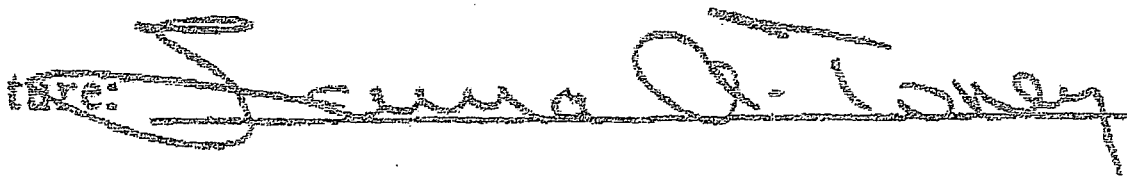
K1.1 Lee County School District Statement of Physical and Mental Fitness
(machine copy) 04-28-05


Teacher's Signature

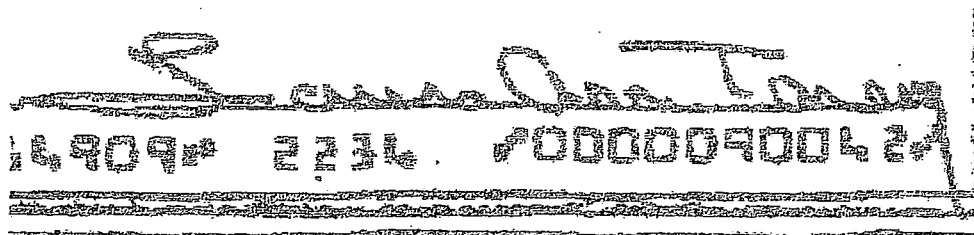
K1.2 Lee County School District Memorandum (machine copy) 04-22-05


Employee

K1.3 Lee County School District Continuing Contract (machine copy) 04-22-05


there:

K1.4 Lee County School District Miscellaneous Information Professional
(machine copy) 04-22-05


16909# 2236 700000900424

K1.5 Ck #2234 (machine copy) 06-18-04

27011-24209 CC 550000
L9049 2030

K1.6 Ck # 2030 (machine copy) 06-11-04

L9049 2223 000000140000

K1.7 Ck # 2223 (machine copy) 06-18-04

L6009 1637 000000073344

K1.7 Ck # 1637 (machine copy) 03-26-04

L4009 1583 000000124444

K1.8 Ck # 1583 (machine copy) 04-23-04

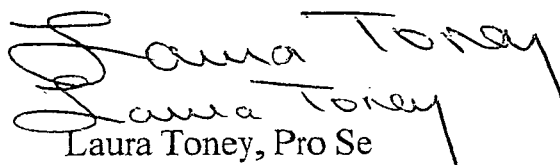
Jana O. Toney
(Employee)

K1.9 Lee County School District Contract 04-26-99

Certificate of Appellant

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

October 1, 2009

The image shows a handwritten signature in black ink. The signature is written in a cursive style and appears to read "Laura Toney". There are two distinct signatures, one above the other, both appearing to be the same name.

Laura Toney, Pro Se
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

THE STATE OF SOUTH CAROLINA

In The Court of Appeal

APPEAL FROM LEE COUNTY
Court of Common Pleas

Richard Booth, Master-In-Equity

Case No. 05-CP-31-169

LaSalle Bank

Respondent

RECEIVED

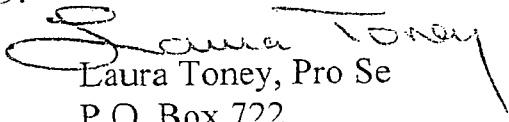
NOV 24 2009

SC Court of Appeals

Laura Toney v. Appellant

RECORD ON APPEAL
CERTIFICATE OF MAILING

I, Laura Toney, certify that I mailed a copy of the Supplemental Record on Appeal to and Record on Appeal to: The Korn Law Firm, 1300 Pickens Street, P.O. Box 11264, Columbia, SC 29211 by depositing it into the United States Post Office on November 24, 2009.


Laura Toney, Pro Se
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

November 24, 2009

P.O. Box 722
Bishopville, SC 29010

South Carolina Court of Appeals
Ms. Jeanette Barber, Clerk
P.O. Box 11629
Columbia, SC 29211

RECEIVED
NOV 24 2009
SC Court of Appeals

RE: LaSalle Bank National Association, as Trustee for the Registered
Holders of Structured Asset Investment Loan Trust, Mortgage Pass Through
Certificates, Series 2004-11-----Respondent

v.

Laura Toney-----Appellant

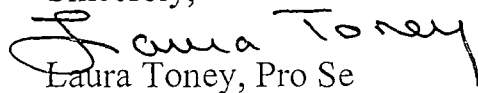
Dear Ms. Barber:

I am writing this letter to inform you that there were several items in the
Respondent's Designation of Matter that were not filed with the Lee County
Clerk of Court. The Lee County Clerk's Office had to call the Korn Law
Firm to have these documents faxed to them.

I am still including these items in the Record on Appeal, but I will be
informing the courts formally of this within the next few days.

Thank you for your indulgence into this matter.

Sincerely,


Laura Toney, Pro Se

RECEIVED
APR 14 2010
SC Court of Appeals

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEE COUNTY

Richard Booth, Master-In-Equity

Case No. 05-CP-31-169

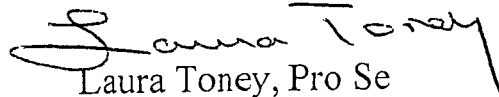
LaSalle Bank National Association, as Trustee for
The registered holders of Structured Asset Securities
Corporation, Structured Asset Investment Loan
Trust, Mortgage Pass-Through Certificates, Series
2004-11.

Respondent

Vs.

Laura Toney

CERTIFICATE OF SERVICE


Laura Toney, Pro Se
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

Korn Law Firm
P.O. Box 11264
1300 Pickens Street
Columbia, SC 29211

The Appellant, Laura Toney, certifies that she mailed copies of the corrected Record on Appeal to the Korn Law Firm addressed as follows: P.O. Box 11264, Columbia, SC 29211-1264 on April 13, 2010. The following corrected copies were mailed:

1. Signed Order of Reference
2. Corrected Index
3. Forgery Report.

RECEIVED

APR 14 2010

SC Court of Appeals

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEE COUNTY

Richard Booth, Master-In-Equity

Case No. 05-CP-31-169

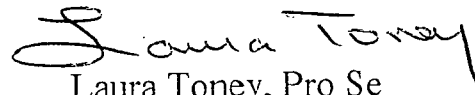
LaSalle Bank National Association, as Trustee for
The registered holders of Structured Asset Securities
Corporation, Structured Asset Investment Loan
Trust, Mortgage Pass-Through Certificates, Series
2004-11.

Respondent

Vs.

Laura Toney

CERTIFICATE OF SERVICE



Laura Toney, Pro Se

P.O. Box 722

Bishopville, SC 29010

(803) 459-6006

Korn Law Firm

P.O. Box 11264

1300 Pickens Street

Columbia, SC 29211

The Appellant, Laura Toney, certifies that she mailed copies of the corrected Record on Appeal to the Korn Law Firm addressed as follows: P.O. Box 11264, Columbia, SC 29211-1264 on April 14, 2010. The following corrected copies were mailed:

1. Signed Order of Reference
2. Corrected Index
3. Forgery Report.