

182654

RECEIVED

JAN 26 2010

SC Court of Appeals

SUPPLEMENTAL RECORD ON APPEAL

APPEAL FROM LEE COUNTY
Common Pleas Court

Richard L. Booth, Special Referee

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

SUPPLEMENTAL RECORD ON APPEAL

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

The Korn Law Firm
Attorney for the Respondent
1300 Pickens Street
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817

RECEIVED
JAN 26 2010
SC Court of Appeals

SUPPLEMENTAL RECORD ON APPEAL

**APPEAL FROM LEE COUNTY
Common Pleas Court**

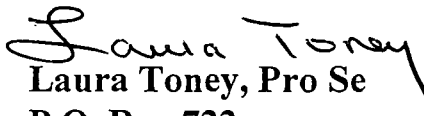
Richard L. Booth, Special Referee

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


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

**The Korn Law Firm
Attorney for the Respondent
1300 Pickens Street
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817**

INDEX

Foreclosure Complaint.....	4
Answer.....	14
Foreclosure Decree.....	18
Order of Reference.....	29
Order Dissolving TRO filed April 2, 2007.....	33
Application for Temporary Restraining Order.....	38
59(e).....	49
Application for Temporary Order filed July 23, 2007.....	52
Ex Parte Order March 23, 2007.....	57
Plaintiff's Motion for Summary Judgment.....	62
Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment.....	75
Motion for Reconsideration April 25, 2007.....	80
Order for Reconsideration of Decision and for Stay of Enforcement of the Order filed April 25, 2007.....	83
HUD Settlement Statement.....	91
Affidavit of Letia Benjamin.....	94
Affidavit of Chomie Neil.....	97
Affidavit of Service by Mail filed April 10, 2007.....	138

LETTERS

January 11, 2006.....	140
March 3, 2006.....	141
April 19, 2006.....	142
May 31, 2006.....	143
August 25, 2006.....	144
September 15, 2006.....	145
September 21, 2006.....	146
September 27, 2006.....	147
September 28, 2006.....	148
February 28, 2007.....	149
March 8, 2007.....	150
May 21, 2007.....	151
July 26, 2007.....	152
November 2, 2007.....	153

CERTIFICATES OF MAILING

June 16, 2006.....	155
December 12, 2007.....	156

TRANSCRIPTS

February 2, 2007.....	158
March 15, 2007.....	160
October 18, 2007.....	176

BANKRUPTCY DOCUMENTS

Schedule B Case No. 06-05381-dd.....	190
U.S. Bankruptcy Court Order February 15, 2007.....	193
U.S. Bankruptcy Court Order February 26, 2007.....	198
U.S. Bankruptcy Court Order March 27, 2007.....	203
U.S. Bankruptcy Court Order May 15, 2007.....	204

NOTICES OF HEARING

September 28, 2006.....	207
January 24, 2007.....	208

CERTIFICATE OF SERVICE.....210

Foreclosure Complaint March 15, 2007.....	212
Answer.....	254
Foreclosure Decree.....	223
Appellant's Proposed Order.....	233
Foreclosure Complaint July 21, 2007.....	246
Transcript of February 6, 2007.....	258
Transcript of March 27, 2007	
RESPONDENT.....	160-175
Transcript of October 18, 2007	
FOR RESPONDENT.....	176-188
Transcript of March 27, 2007	
APPELLANT.....	263-294
Transcript of October 18, 2007	
APPELLANT.....	296-322
Exhibit #1-Letter of Rescission.....	324
Exhibit #6-Affidavit of Cheryl Scott Jones.....	328
Exhibit #7-Affidavit of Laura Toney.....	330
Exhibit #8-Affidavit of Michael May.....	332
Exhibit #9-Affidavit of Letia Benjamin.....	335
Exhibit #10-Attorney Preference Disclosures.....	337
Exhibit #11-HUD Statement-----	340
Exhibit #12-Forgery Report.....	344

CERTIFICATE OF COUNSEL.....366

COMPLAINT

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.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

C/A NO:

05-CP-31-169

(Please Print) J. Scott Walls

Submitted By: Korn Law Firm, PA

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 SCRCP, 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

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)

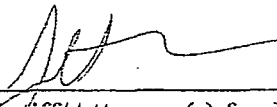
CERTIFICATE OF EXEMPTION
FROM ADR

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).

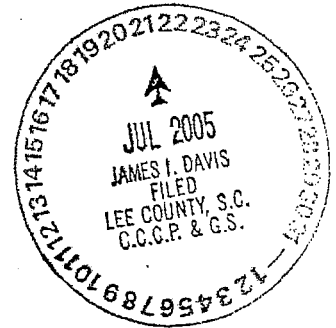
IN THE COURT OF COMMON PLEAS

SUMMONS 05-CP-31-169

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY REQUESTED



F25-02718

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.

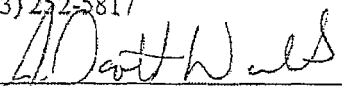
KORN LAW FIRM, P.A.

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 States 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.

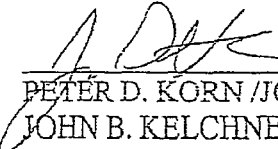
(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(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

2
STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

) IN THE COURT OF COMMON PLEAS

) 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,)

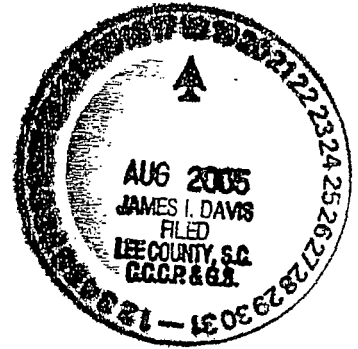
) Plaintiff,)

) vs.)

) Laura Toney,)

) Defendant (s).)

ANSWER



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

Certified as a True Copy

James I. Davis
Clerk, Court of Common
and General Sessions, Lee
County, South Carolina

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.

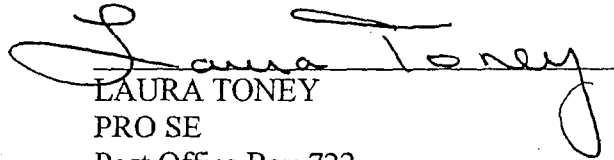
21. That the Plaintiffs did not provide Defendant an opportunity to select the representative of her choice to act in her behalf at the closing of the loan.

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

FORECLOSURE DECREE

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,

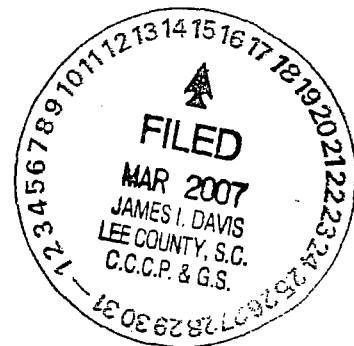
DEFENDANT(S).

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 SCRPC, 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.

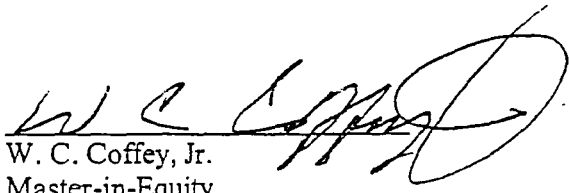
This conveyance is made subject to any and all existing reservations, easements, right-of-way, zoning ordinances, and restrictive or protective covenants that may appear of record or on the premises.

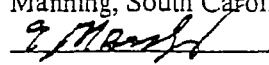
This being the same property most recently to Laura Toney by deed from Milton Toney dated December 4, 1992 and recorded December 4, 1992 in Book V-5 at page 205 in the Lee County, South Carolina Records.

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

file copy

KORN LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS
POST OFFICE BOX 12369
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817
FACSIMILE (803) 252-5827

March 30, 2006

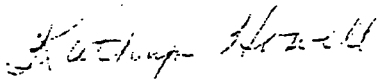
The Honorable James I. Davis
Clerk of Court
P. O. Box 387
Bishopville, SC 29010-0387

Re: LaSalle Bank National Association, as Trustee for registered holders of
Structured Asset Securities Corporation, Structured Asset Investment
Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 v. Laura
Toney
2005-CP-31-169

Dear Mr. Davis:

Enclosed please find an original and one copy of an Order for Mandatory Reference.
Please place the order before the Presiding Judge for signature and kindly return a
clocked copy in the enclosed envelope. Thank you for your assistance and please do not
hesitate to contact me if there are any questions.

Very truly yours,



Kathryn Howell
Senior Paralegal

cc: W. David Weeks, Esq.

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,

v.

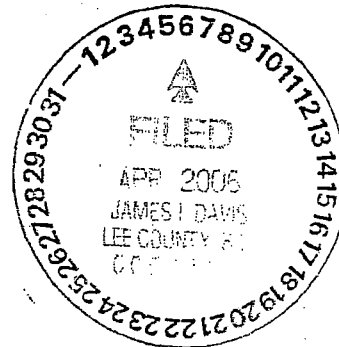
Laura Toney,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No. 2005-CP-31-169

ORDER FOR MANDATORY REFERENCE



It appearing that this action is one for the foreclosure of a mortgage and as such, pursuant to Rule 53 of the SCRCPP, may be mandatorily referred to The Honorable Robert D. Jennings, Master in Equity for the above-entitled county, and that the Master in Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

IT IS ORDERED that this case be referred to The Honorable Robert D. Jennings, Master in Equity, to direct entry of final judgment in this action under Rule 53 (b), SCRCPP. Any appeal from the final judgment entered by the Master in Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

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,

v.

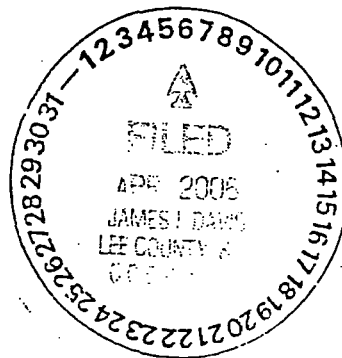
Laura Toney,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No. 2005-CP-31-169

ORDER FOR MANDATORY REFERENCE

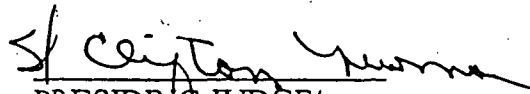


It appearing that this action is one for the foreclosure of a mortgage and as such, pursuant to Rule 53 of the SCRCPP, may be mandatorily referred to The Honorable Robert D. Jennings, Master in Equity for the above-entitled county, and that the Master in Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

IT IS ORDERED that this case be referred to The Honorable Robert D. Jennings, Master in Equity, to direct entry of final judgment in this action under Rule 53 (b), SCRCPP. Any appeal from the final judgment entered by the Master in Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Attachment A

Order for Mandatory Reference
2005-CP-31-169
Page 2 of 2


PRESIDING JUDGE/
CLERK OF COURT

April 6, 2006
Beaufort, SC

I SO MOVE:


H. Guyton Murrell
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Laura Toney,

PLAINTIFF,

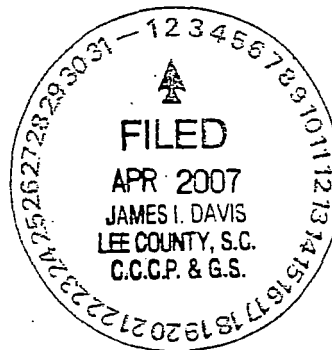
vs.

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,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A NO:2007-CP-31-66

**ORDER DISSOLVING TEMPORARY
RESTRAINING ORDER**



This is an action seeking to stay a foreclosure sale scheduled for April 2, 2007 in a separate action, LaSalle Bank v. Laura Toney, Case No. 2005-CP-31-168. This present action was commenced upon an Application for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction filed March 22, 2007. A Summons, verified Complaint and affidavit were also filed on March 22, 2007. Based upon the representations set forth in the application and complaint, this Court issued an Order Granting Temporary Restraining Order filed March 23, 2007 that provided for the foreclosure sale to be stayed pending a hearing to be held March 27, 2007.

Appearing at the hearing were the Plaintiff herein Laura Toney and her attorneys in the present action Joseph Henry and Nathaniel Roberson. Appearing on behalf of the Defendant LaSalle Bank was its counsel of record in the pending foreclosure action, H. Guyton Murrell. At the hearing, attorney Murrell submitted a Return to the Application for Injunction and Restraining Order and the Court received evidence and heard arguments from both parties.

At the commencement of the proceedings, the Court took judicial notice of the pleadings, evidence and orders filed of public record in the pending foreclosure action, LaSalle Bank v. Laura Toney, Case No. 2005-CP-31-168. The Court took judicial notice of the four (4) Chapter 13 Bankruptcy filings by the Plaintiff Laura Toney and the Orders and filings therein.

The record in the pending foreclosure action reflects that Laura Toney is represented by attorney David Weeks. There is a letter dated January 11, 2006 to the Lee County Clerk of Court

and to opposing counsel confirming his representation of the mortgagor and requesting that any future correspondence be addressed to his law office. Pursuant to Rule 11(c) S.C.R.C.P., an attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the court, and not otherwise. The Rule further provides that written notice of change of attorney must be served as provided by Rule 5. The Court finds that this rule has not been complied with in this matter.

As to the issue of the continuing jurisdiction of the hearing officer over any matters related to the foreclosure action, Rule 53(c) S.C.R.C.P. provides that once a matter has been referred, the master of special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. In the foreclosure action, the case was initially referred to the Lee County Master-in-Equity. The Lee County Master-in-Equity notified the moving party and the Clerk of Court in writing that he had a conflict that precluded his hearing the matter. The foreclosure action was subsequently referred to the Clarendon County Master-in-Equity, the Honorable W.C. Coffey, Jr., by Order of Reference executed the Honorable Thomas Cooper filed June 16, 2006. Although the hearing was held outside of Lee County, the Order of Reference was without any language limiting the authority of Judge Coffey or requiring Judge Coffey to hear the case within Lee County. Therefore, Judge Coffey sat with the same authority to adjudicate the foreclosure action as a circuit judge.

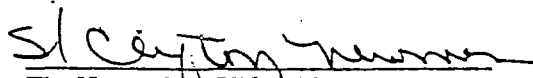
As to the contention in this action that the foreclosure is a separate matter, Rule 12(b) S.C.R.C.P. provides that every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto. A review of the pending foreclosure action shows that the pending case involves the same claims between the same parties. The foreclosure action has been referred to Judge Coffey and he has jurisdiction over the case.

The Court further notes that a Notice of Motion pursuant to Rule 59(e) S.C.R.C.P. was filed on March 23, 2007 in the foreclosure action. The Temporary Restraining Order was signed by this Court on the same day. The findings in the Temporary Restraining Order are based on the representation that in the application and Complaint of a Bankruptcy proceeding that imposed an automatic stay on the foreclosure action. The Court has taken judicial notice of the Order filed February 15, 2007 wherein the Honorable John Waites, U.S. Bankruptcy Judge for the District of South Carolina, ruled that no automatic stay existed under the last Chapter 13 Bankruptcy filed by the debtor Laura Toney. Those issues are part and parcel of the foreclosure proceeding and must be heard by the judge with the requisite jurisdiction under the Order of Reference.

THEREFORE, IT IS ORDERED that the Temporary Restraining Order issued by this Court on March 22, 2007 and filed on March 23, 2007 is hereby rescinded and the stay imposed thereby is dissolved,

IT IS FURTHER ORDERED that this case is dismissed with prejudice due to the pending foreclosure action on the identical issues.

IT IS SO ORDERED.


The Honorable Clifton Newman
Presiding Judge 3rd Judicial Circuit

Williamsburg, South Carolina

April 2, 2007

COUNTY OF LEE

Laura Toney

Plaintiff(s)

CIVIL ACTION COVERSHEET

07 - CP - 31 - 66

vs.

LaSalle Bank National Association et al

Defendant(s)

(Please Print)

Submitted By: Joseph Henry
Address: 1708 B Richland Street
Columbia, SC 29201SC Bar #: 007898
Telephone #: 803-929-3484
Fax #: 803-929-3485
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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed 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) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ 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) <i>Injunction</i>
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 Pendens (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) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650)			

Submitting Party Signature: Joseph HenryDate: March 23, 2007

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

STATE OF SOUTH CAROLINA

COUNTY *Lee*

Laura Toney, Plaintiff

vs.

LaSalle Bank National Associates,
Defendant.

IN THE CIRCUIT COURT FOR THE

JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO.

2007-CP 31-66

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.

Joseph Henry

Plaintiff/Attorney(s) for Plaintiff(s)

Joseph Henry, P.C.
1708-B Richmond Street
Columbia, S.C. 29201

LaSalle Bank National Association

Defendant/Attorney(s) for Defendant(s)

The Korn Law Firm
1300 Pickens Street
Columbia, S.C. 29201

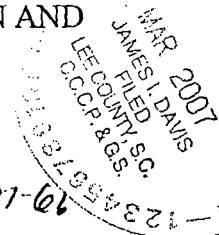
Date: *March 22, 2007*

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
Laura Toney,)
 PLAINTIFF,)
)
v.)
)
LaSalle Bank National Association,)
As Trustee for the registered holders)
of Structured Asset Investment Loan)
Trust, Mortgage Pass-Through)
Certificates, Series 2004-11)
 DEFENDANT(S).)
_____)

IN THE COURT FOR THE THIRD
JUDICIAL CIRCUIT

APPLICATION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND
PERMANENT INJUNCTION

CIVIL CASE NO.: 07-CP-31-61



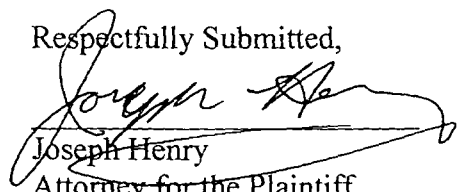
The Plaintiff moves for a temporary injunction and requests a hearing for a preliminary injunction and permanent injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and based on the Summons and Verified Complaint, and Affidavit which has been filed in this matter alleging that the Plaintiff will suffer immediate and irreparable harm unless her application for Temporary Injunction be granted.

1. In support of her application for a preliminary injunction and hearing date, the Plaintiff states:
 - (1) That the Defendant will perform the threatened acts, as more fully set forth the Verified Complaint, unless enjoined;
 - (2) That the Defendant's action, if carried out, will result in irreparable injury to Plaintiff;
 - (3) That a temporary restraining order and preliminary injunction is the least restricted means of enjoining the Defendants.
2. In support of her application, Plaintiff incorporates by reference the allegations of the verified complaint and the facts as set forth in the witness affidavits attached as Exhibit A.
3. That the Plaintiff pursuant to the Notice of Recission is not obligated to provide the Defendant Bank with an amount sufficient to cover any expenses incurred by the Defendant in the event the Defendant is found to have been erroneously restrained and enjoined.
4. That specifically, Plaintiff was not provided the disclosures as required by the Truth In Lending Act at the time of the closing of the transaction that is the subject of this action. That the disclosures in question are required by the Truth In Lending and are material to the validity of the transaction and that such non-disclosure is a violation of the Truth In Lending which triggered Plaintiff's right to a three year recission period as opposed to the normal three day window. That the right of recission was exercised within the three year period which required Defendants to take certain specific action within 20 days of receiving the recission

- letter. That more than twenty days have elapsed since the rescission was received by Defendant as evidenced by the return receipt and Defendant has not responded. That Defendant's failure to respond to the rescission notice nullified Defendant's security interest in the property thereby negating Defendant's right of foreclosure.
5. Bank has refused and continues to refuse to acknowledge the rescission of the loan transaction by Plaintiff and extinguishment of its security interest by operation of law, and the Plaintiff is informed and believes that Defendant has proceeded with this wrongful foreclosure action in further violation of the Truth In Lending and is liable to Plaintiff for damages to be determined by the court.
 6. Plaintiff is informed and believes that Defendants, in violation of Plaintiff's venue rights, moved the foreclosure proceedings to an improper foreign venue where neither Plaintiff resided nor the property was situated.
 7. That Plaintiff is informed and believes that the Defendant has sealed the court records of the proceedings and Plaintiff is unable to obtain copies of the relevant documentation relating to the foreclosure action.
 8. That sale of the property is imminent and will forever deprive Plaintiff of the rights granted to her by the Truth In Lending Act and will constitute an immediate and irreparable harm upon Plaintiff as she will be wrongfully deprived of valuable property rights.

WHEREFORE, the Plaintiff requests that the court ~~enter a temporary restraining order against the Defendant and those persons acting with or on behalf of Defendant, and set a hearing within ten days of the issuance of the Temporary Restraining Order, and after hearing the evidence, issue a permanent injunction during the pendency of this action.~~

Respectfully Submitted,



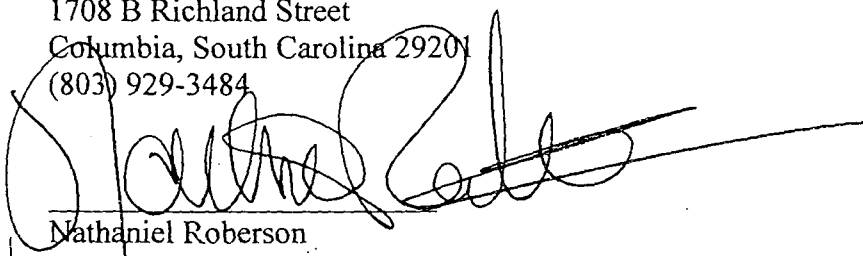
Joseph Henry

Attorney for the Plaintiff

1708 B Richland Street

Columbia, South Carolina 29201

(803) 929-3484



Nathaniel Roberson

Attorney for the Plaintiff

1708 Richland Street

Columbia, S.C. 29201

(803) 252-4449

Columbia, South Carolina
March 22, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

Laura Toney,
PLAINTIFF,)

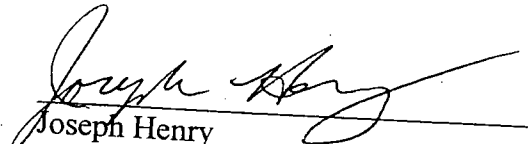
v.)

LaSalle Bank National Association,)
As Trustee for the registered holders)
of Structured Asset Investment Loan)
Trust, Mortgage Pass-Through)
Certificates, Series 2004-11)
DEFENDANT(S).)

IN THE COURT FOR THE THIRD
JUDICIAL CIRCUIT

2007-CP-31-66
SUMMONS

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in the
above-entitled action, a copy of which is hereby served upon you, and to serve a copy of
your Answer upon the Attorney for the Plaintiff, Joseph Henry, Attorney at Law, 1708 B
Richland Street, Columbia, South Carolina 29201, within (30) days after the date of
service, exclusive within the time aforesaid, judgment by default for the relief demanded
in the Petition shall be entered against you.


Joseph Henry
Attorney for the Plaintiff
1708 B Richland Street
Columbia, S.C. 29201
803-929-3484

Columbia, South Carolina
March 22, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT FOR THE THIRD
	)	JUDICIAL CIRCUIT
COUNTY OF LEE	)	
	)	
Laura Toney,	)	
PLAINTIFF,	)	
	)	COMPLAINT
v.	)	
	)	
LaSalle Bank National Association,	)	
As Trustee for the registered holders	)	CIVIL CASE NO.: 07- CP-31-66
of Structured Asset Investment Loan	)	
Trust, Mortgage Pass-Through	)	
Certificates, Series 2004-11	)	
DEFENDANT(S).	)	
	)	

Now comes the Plaintiff, Laura Toney, who will show unto the court as follows:

1. That the Plaintiff, Laura Toney is a citizen and resident of Lee County, South Carolina and has been for more than one (1) year prior to the commencement of this action.
2. That, Defendant LaSalle Bank National Association, is a corporation organizing and existing by virtue of the laws of a State other than South Carolina and the United States of America.
3. That on or about October 6, 2004, Defendant refinanced Plaintiff's mortgage on her home located in the County of Lee, State of South Carolina.
4. That during the closing on Plaintiff's loan, Plaintiff was not provided with the disclosures mandated by the federal Truth In Lending Act.
5. That Defendant's failure to provide Plaintiff with the necessary disclosures is a material violation of the federal Truth In Lending Act.
6. That the disclosures which were not provided include but are not limited to the choice of attorney notification, settlement statement, copy of Note and Mortgage, etc...
7. That a lender's failure to provide these disclosures triggers a three (3) year Right of Recission for the borrower.
8. That pursuant to the Right of Recission contained in the Truth In Lending Act, Plaintiff sent, by certified letter return receipt requested, a Notice of Recission

to Defendant. (see attached copy letter dated June 14, 2005 and copy of receipt dated June 16, 2005)

9. That the receipt for the above-referenced letter was signed by Tom Nelson on June 16, 2005 who, upon information and belief, is an officer or employee of LaSalle Bank National Association with authority to accept such correspondence.
10. That the federal Truth In Lending Act provides that upon receipt of a notice that a borrower is electing to exercise the enhanced Right of Recission, the lending institution has twenty (20) days to respond to such notice.
11. That Defendant has not responded to Plaintiff's Notice of Recission of Loan Number 0040789935 and more than twenty (20) days have elapsed since Defendant's receipt of the notice forwarded by Plaintiff.
12. That Defendant filed a foreclosure action and obtained an Order of Foreclosure and right to sell Plaintiff's property in spite of the loss of its security interest in Plaintiff's property for failure to enter a timely response to Plaintiff's notice of exercise of her enhanced Right of Recission pursuant to the federal Truth In Lending Act:
13. Plaintiff is informed and believes that Defendant, in violation of Plaintiff's venue rights, moved the foreclosure proceedings to an improper foreign venue where neither Plaintiff resided nor the property was situated.
14. That Plaintiff is informed and believes that the Defendant has sealed the court records of the proceedings and Plaintiff is unable to obtain copies of the relevant documentation relating to the foreclosure action.
15. That Defendant's actions in foreclosing and seeking to sell Plaintiff's residence pose an immediate and irreversible threat of harm to Plaintiff's rights if it is not enjoined and restrained from proceeding with its current course of conduct.
16. That irreparable harm will result to Plaintiff and her interests in the property if court intervention does not require LaSalle Bank National Association to cease and desist from its current course of conduct.
17. That the Plaintiff is without sufficient funds with which to prosecute her action, and prays that this court grant unto her reasonable attorney fees and costs from LaSalle Bank National Association.

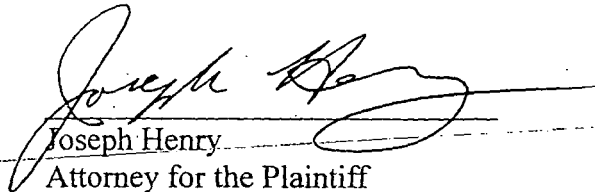
WHEREFORE, the Plaintiff prays as follows:

- I. That this court grant her application for a Temporary Restraining Order, for a

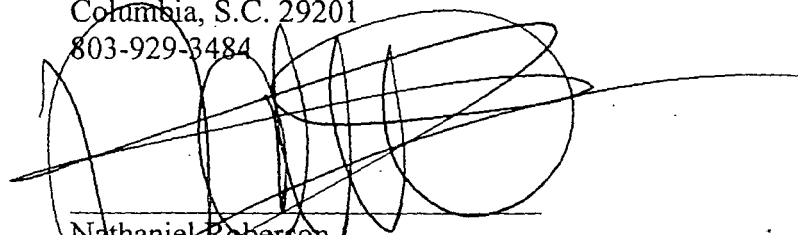
Preliminary Injunction and a Permanent Injunction and set a date as soon as possible for a hearing on the Temporary Restraining Order.

- II. That the court permanently enjoins LaSalle Bank National Association and /or others acting with or on behalf of the bank from seeking foreclosure and sale of Plaintiff's property.
- III. For reasonable attorney's fees and cost for the bringing of this action.
- IV. Order that LaSalle Bank National Association and/or those persons acting with or on behalf of the bank be temporarily enjoined and restrained from prosecuting and permanently enjoined and restrained from any acts in furtherance of the foreclosure and sale of Plaintiff's property.

AND FOR SUCH AND FURTHER RELIEF AS THIS COURT DEEMS JUST AND PROPER.


Joseph Henry

Attorney for the Plaintiff
1708 B Richland Street
Columbia, S.C. 29201
803-929-3484



Nathaniel Roberson
Attorney for the Plaintiff
1708 Richland Street
Columbia, S.C. 29201
803-252-4449

Columbia, South Carolina
March 22, 2007

STATE OF SOUTH CAROLINA)

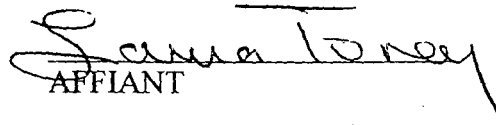
COUNTY OF LEE)

AFFIDAVIT OF LAURA TONEY

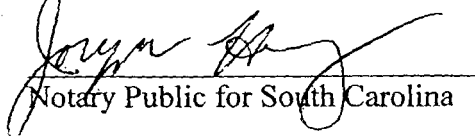
PERSONALLY APPEARED BEFORE ME, Laura Toney, who first being duly sworn deposes and says:

1. That she is over the age of eighteen (18);
2. That she is the Defendant in the above-referenced case;
3. That she was in bankruptcy on the date of the foreclosure hearing and, as a result, did not appear to defend the action;
4. That prior to the commencement of this action, she sent the mortgage lien holder a certified letter conveying her rescission of the loan transaction;
5. That the mortgage lien holder did not respond within the twenty(20) day timeframe allowed by law ;
6. That the mortgage lien holder's failure to respond to the rescission letter nullified their security interest in the foreclosed property;
7. That the lien holder proceeded with the foreclosure action without her presence and with knowledge of the defect in the notice requirement;
8. That the lien holder is seeking to have the property sold pursuant to the invalid court order obtained in the foreclosure action on April 2, 2007;
9. That she has been unable to obtain copies of documents from the foreclosure proceeding as the record has been sealed; and
10. That the extraordinary remedy of an injunction is appropriate as the sale of the property is imminent and will deprive her of all interest in the unique character of the property for which there is no adequate remedy at law.

FURTHER AFFIANT SAYETH NOT.


AFFIANT

Sworn and subscribed before me this 19th day of March 2007.


Notary Public for South Carolina

My Commission Expires: 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF) VERIFICATION

PERSONALLY APPEARED BEFORE ME Laura Toney

Who being duly sworn, deposes and says that he/she is the Plaintiff/ Defendant in the foregoing action, that he/she has read the contents of the foregoing Complaint and knows the same to be true of his/her own knowledge, except those matters alleged upon information and belief, and as to those he/she believes them to be true.

Laura Toney

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 35 DAY OF March 2007.

Theresa H. Reese
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 8/15/2014

June 14, 2005

**P.O. Box 722
Bishopville, SC 29010**

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

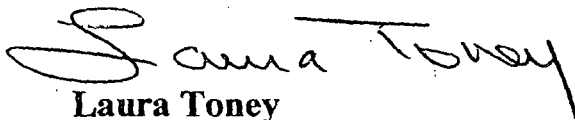
**RE: Loan Number:0040789935/ Laura Toney/ 251-11-6990
Property Location: 729 Chatmon Street, Bishopville, SC**

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**

SEND

- 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 lab)

PS Form 38

A. Signature

X

[Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

JUN 16 2005

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 lab)

7004 2510 0006 1747 2314

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Signature: Tom Nelson]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

TOM NELSON

JUN 16 2005

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
29010

GA



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
29010

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

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

C/A NO: 05-CP-31-169

CERTIFICATE OF SERVICE

PLAINTIFF)

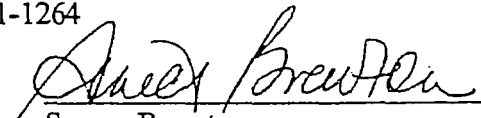
V.)

LAURA TONEY,)

DEFENDANT)

The undersigned hereby certifies he has served a copy of the **DEFENDANT'S NOTICE OF MOTION AND MOTION PURSUANT TO RULE 59(E)** in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon and return address clearly visible on March 23, 2007, addressed to the following:

GUYTON MURRELL, ESQUIRE
KORN LAW FIRM, P.A.
1300 PICKENS STREET
P.O. BOX 11264
COLUMBIA, SOUTH CAROLINA 29211-1264


Seneca Brewton
Joseph Henry, P.C.
1708-B Columbia, South Carolina 29201
Telephone: (803) 929-3484

Columbia, South Carolina
March 9, 2005

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

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

PLAINTIFF)

V.)

LAURA TONEY,)

DEFENDANT)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

C/A NO.: 05-CP-31-169

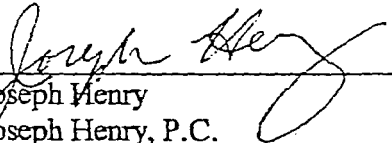
NOTICE OF MOTION AND MOTION TO
ALTER OR AMEND VERDICT
PURSUANT TO RULE 59 (e)

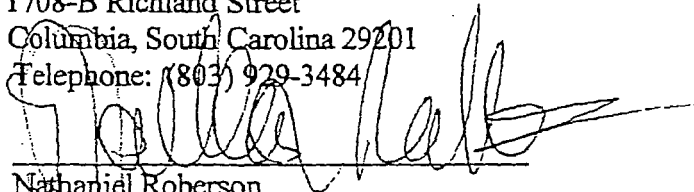
TO: DEFENDANT AND ITS ATTORNEYS:

PLEASE TAKE NOTICE that Plaintiff, through its undersigned counsel, will move before the Honorable William Coffee, Master In Equity for Clarendon County., at the Clarendon County Courthouse, ten (10) days from the service hereof or at such other time and place as may be designated by the Court, for an Order of the Court, pursuant to Rule 59(e), SCRCP, altering or amending that certain order of the Honorable William Coffee in the above-captioned action received by Plaintiff on March 15, 2007 . Plaintiff will move that the order of March 15, 2007, be altered or amended to declare that the Plaintiff's foreclosure of the mortgage on the property located at 729 Chatman Street Bishopville, South Carolina is null and void (for but not limited to) the following reasons:

1. That 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 Recission filed by Defendant within the time allotted by the Truth In Lending act.

Defendant respectfully requests that the provisions of the March 15, 2007 Order be altered or amended in accordance with and based upon the matters set for above.

By: 
Joseph Henry
Joseph Henry, P.C.
1708-B Richland Street
Columbia, South Carolina 29201
Telephone: (803) 929-3484


Nathaniel Roberson
Roberson Law Firm
1708 Richland Street
Columbia, South Carolina 29201
Telephone: (803) 252-4449

Columbia, South Carolina
March 23, 2007

WEEKS LAW OFFICE, LLC

J. David Weeks
Willie H. Brunson

ATTORNEY AT LAW
35 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
Telephone (803) 775-5856
Facsimile (803) 778-1365

P.O. Box 370
Sumter, SC 29151-0370

JULY 23, 2007

H. Guyton Murrell, Esquire
Korn Law Firm, P.A.
P.O. Box 11264
Columbia, S.C. 29211

VIA MAIL AND FACSIMILE: 803-231-2060

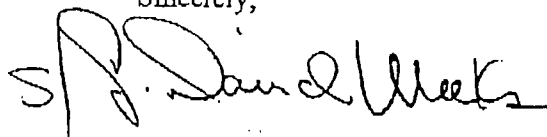
Re: LaSalle Bank v. Laura Toney
Docket No.: 2005-CP-31-169
Our File No.: 05-404

Dear Guyton:

Enclosed please find a copy of the signed and recorded **APPLICATION FOR TEMPORARY RESTRAINING ORDER** in the above reference matter, which I hereby serve upon you. In addition to this fax, I will send you a certified copy via mail.

With my kindest regards.

Sincerely,



J. David Weeks

JDW/cc

Enclosures - as stated

cc:

Joseph Henry, Esquire
Nathaniel Roberson, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF Lee

IN THE COURT OF COMMON PLEAS

☐ Plaintiff

La Salle Bank et al.

v.

CASE NO.

2005-CP-31-169

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET☒ Defendant.

Laura Toney

Plaintiff's Attorney: H. Gaylon Murrell
Bar No. Korn Law Firm
Address: PO Box 12369
Columbia, SC 29211
phone: fax: 231-2061
e-mail: other: 252-3817

Defendant's Attorney: J. David Weeks
Bar No.
Address: Weeks Law Office, LLC
PO Box 370
Sumter, SC 29151
phone: fax:
e-mail: other: 775-5836

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Temporary Restraining Order (Emergency Hearing)

Estimated Time Needed: 30 min Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

- ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO.: 05-CP-31-169

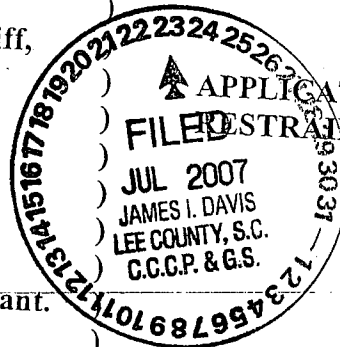
LaSalle Bank National Association, as
Trustee for registered holders of
Structured Asset Securities Corporation,
Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates,
Series 2004-11,

Plaintiff,

vs.

Laura Toney,

Defendant.



Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, the Defendant request that a Temporary Restraining Order be imposed on the Plaintiff, its agents and the Lee County Sheriff's Office to effectively suspend the eviction process of the Defendant. Furthermore, the Defendant request that a hearing regarding extending Temporary Restraining Order be held within ten (10) days of its issuance. The Defendant bases her application on the belief that unless a Temporary Restraining Order is imposed in this case the Defendant will ^{be} evicted from her principal place of residence causing her to clearly suffer immediate and irreparable harm.

In support to her application, the Defendant states:

1. That on March 9, 2007, the Plaintiff through error and excusable mistake obtained an Order of Foreclosure against the Defendant's property.
2. That pursuant to the Foreclosure Order, an eviction of the Defendant by the Lee County Sheriff's Office from her principal place of residence will be executed on July

Certified as a True Copy

James I. Davis
Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

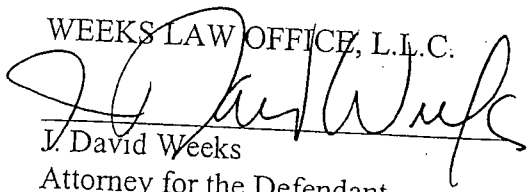
25, 2007 after 10:00am to the benefit of the Plaintiff, unless both the Plaintiff and the Lee County Sheriff's Office are enjoined by a Temporary Restraining Order.

3. That the Defendant will suffer immediate harm, unless the Plaintiff and the Lee County Sheriff's Office are enjoined, as the Defendant will lose her principal place of residence on Wednesday July 25, 2007 at 10:00am and possible remedies that the Defendant seeks in the present case.
4. That the Defendant filed and properly served a Motion for Reconsideration and Stay of Enforcement of the Order in the present Foreclosure case on April 25, 2007.
5. That a hearing on the above mentioned motions was to be held on May 24, 2007.
6. That the above mentioned hearing was continued to a latter date by the Special Referee in this case.
7. That to this date, no hearing has been held on the Defendant's motions or other pending motions, and therefore to evict the Defendant will be prejudicial to her case and would not serve the public interest in justice and equity.
8. That the Defendant has corroborating evidence that will show that the Plaintiff through his subsidiaries forged the Defendant's name and signature, in addition to failing to adequately provide the Defendant with the all of the federally mandated disclosure, pursuant to the Truth In Lending Act, in regard to the mortgaged property, which the Plaintiff and Lee County Sheriff's Office seeks to evict the Defendant from.
9. That furthermore, the Plaintiff failed to recognize the right of the Defendant, especially but not limited to the Defendant's right to rescind her loan with the Plaintiff in regard to her property.

10. That based on such evidence and allegations, the Defendant is informed and believes that she is entitled to certain damages pursuant to the Truth In Lending Act, including but not limited to her continuous and clear possession of her property.
11. That evicting the Defendant will immediately and irrevocably prevent the Defendant from exercising and enjoying her rights and protections granted to her by law and statute as will be provided.
12. That such eviction will be detrimental to the public interest and contrary to the principals of equity and justice.
13. That a Temporary Restraining Order is the least restricted means of enjoining the Plaintiff and the Lee County Sheriff's Office

WHEREFORE, the Defendant requests that the Court enters a Temporary Restraining Order against the Plaintiff and the Lee County Sheriff's Office and set a hearing within ten (10) days of the issuance of the Temporary Restraining Order, and after hearing the evidence to extend the Temporary Restraining Order to a time all pending motions are heard and ruled upon in this case.

WEEKS LAW OFFICE, L.L.C.


J. David Weeks

Attorney for the Defendant

35 South Sumter Street

PO Box 370

Sumter, SC 29151-0370

(803) 775-5856

Sumter, SC

July 23, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT FOR THE THIRD
JUDICIAL CIRCUIT

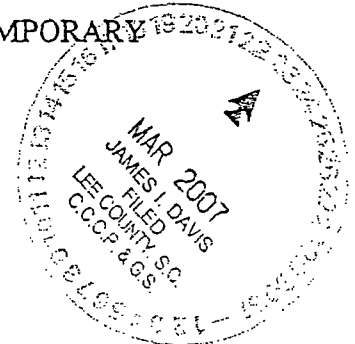
Laura Toney,
PLAINTIFF,

v.

LaSalle Bank National Association,
As Trustee for the registered holders)
Of Structured Asset Investment Loan)
Trust, Mortgage Pass-Through)
Certificates, Series 2004-11)
DEFENDANT(S).)

ORDER GRANTING TEMPORARY
RESTRAINING ORDER

2007-CP-31-66



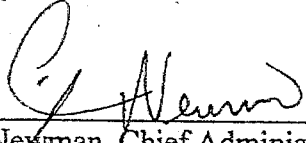
This matter came before me on March 22, 2007, upon Plaintiff's motion, supported by Affidavit, seeking the grant of a Temporary Restraining Order to halt Defendants' scheduled April 2, 2007 foreclosure sale of Plaintiff's property. The Court hereby grants Plaintiff's motion upon the following showing;

1. Plaintiff is the record owner of property located in Bishopville, South Carolina which was encumbered by a mortgage to Defendants designated by Loan # 0040789935;
2. The mortgage on Plaintiff's property was foreclosed by Defendants in an action originally filed in Bishopville, South Carolina but allegedly heard in Clarendon County by the Honorable William C. Coffey, Master In Equity for Clarendon County, South Carolina in violation of Plaintiff's venue rights;
3. Prior to the foreclosure action, Plaintiff sent Defendants a notice of exercise of her enhanced (three year) Right of Rescission of the transaction as a result of Defendants' failure to make certain disclosures required by the federal Truth In Lending Act;
4. Plaintiff alleges that Defendants did not respond to the notice of exercise of Plaintiff's enhanced right of rescission as required by the Truth In Lending Act;
5. That Defendants' alleged failure to respond to the rescission notice directly affects Defendants' security in the subject property and the right of Defendant to seek foreclosure of the same;
6. Plaintiff allegedly was involved in a bankruptcy proceeding at the time of the foreclosure proceeding and did not appear to defend the action;
7. That sale of the subject property is imminent and will forever extinguish the rights of the Plaintiff to seek redress through the court system of this state thereby visiting immediate and irreparable injury upon her;
8. That a hearing will be held on Tuesday, March 27, 2007 at 10:00 A.M. at the Lee County Court pursuant to the provisions of Rule 65 South Carolina Rules of Civil Procedure to determine the respective rights of the parties; and

Certified as a True Copy

James L. Davis

AND IT IS SO ORDERED.



Clifton Newman, Chief Administrative Judge, Third Circuit

Columbia, South Carolina

March 22, 2007

Time: 7:40 p.m.

MOTIONS

RECEIVED MAR 29 2006

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

March 28, 2006

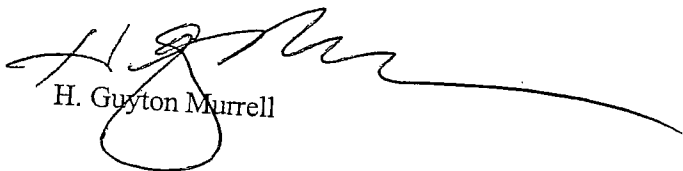
J. David Weeks, Esquire
P.O. Box 370
Sumter, SC 29151

RE: LaSalle Bank v. Laura Toney
Docket No. 2005-CP-31-169

Dear Sir:

Enclosed please find the Plaintiff's Motion for Summary Judgment with supporting affidavit and Certificate of Service in the above noted action.

Very truly yours,


H. Guyton Murrell

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,

(NON-JURY MORTGAGE FORECLOSURE)

C/A No. 2005-CP-31-169

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S).

F25-02718

CERTIFICATE OF MAILING

The undersigned hereby certifies that on March 28, 2006, she served one copy of Plaintiff's Motion for Summary Judgment and Affidavit of Michael May upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

J. David Weeks, Esquire
P.O. Box 370
Sumter, SC 29151

Kathryn Howell
Kathryn Howell, Paralegal

March 28, 2006
Columbia, South Carolina

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

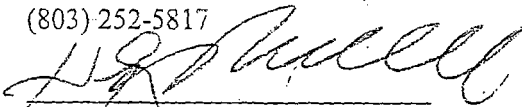
**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

TO: J. DAVID WEEKS, ATTORNEY FOR THE DEFENDANT LAURA TONEY:

YOU WILL PLEASE TAKE NOTICE that the attorney for the plaintiff will, on
April 11, 2006 at 2:30 p.m., or as soon thereafter as counsel may be heard, move before the Court
for an Order pursuant to Rule 56 of the SCRCF granting the plaintiff Summary Judgment.

This Motion is made on the grounds that there is no genuine issue as to any material fact
and that the plaintiff is entitled to a judgment as a matter of law. This Motion is based on the
pleadings in this case, discovery, affidavits, loan documents, and the applicable statutory and case
law.

Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211-2369
(803)-252-5817


H. Guyton Murrell, Esq.
Attorney for Plaintiff

March 28, 2006
Columbia, South Carolina

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".

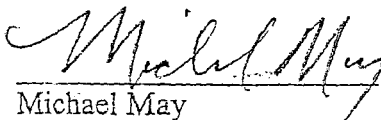
I reviewed and explained with Laura Toney the documents that needed to be executed to complete the loan closing. I specifically reviewed and explained the Good Faith Estimate of Charges with Laura Toney and provided her a copy of the document at closing. I personally witnessed Laura Toney sign the Good 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".

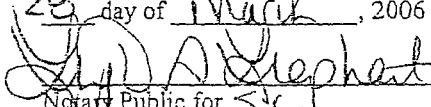
I specifically reviewed and explained the Truth in Lending Disclosure Statement with Laura Toney and provided her a copy of the document at closing. I personally witnessed Laura Toney sign the Truth in Lending Disclosure Statement acknowledging that she had received a

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

L Settlement Charges				Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. TOTAL SALES/BROKER'S COM. based on price					
Division of Commission (line 700) as follows:					
701.					
702.					
703. Commission paid at Settlement					
704.					
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	34	to			
802. Loan Discount	24	to			
803. Appraisal Fee	to	LAB Financial	<\$350.00>	"P.O.C."	
804. Broker Courier Fee	to	LAB Financial		32.50	
805. Broker Fee	to	LAB Financial		2,100.00	
806. Broker Processing Fee	to	LAB Financial		125.00	
807. Broker Credit Report	to	LAB Financial		12.00	
808. Lender Fee	to	Finance America LLC		693.00	
809. Flood Certificate Fee	to	Finance America LLC		27.00	
810.					
811.					
812.					
813.					
814.					
815.					
900. Items Required By Lender To Be Paid in Advance					
901. Interest from 10/12/2004 to 11/1/2004 @	17.78	/day		355.60	
902. Mortgage Insurance Premium for	months	to			
903. Hazard Insurance Premium for	years	to			
904.					
905.					
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 (392887)		365.00	
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		400.00	
Includes above item numbers:					
1108. Title insurance	to	Investors Title		317.50	
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.					
1200. Government Recording and Transfer Charges					
1201. Recording Fee: Debt \$30.00; L-Mortgage(s) \$5.00; Release				25.00	
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
Laura Tenay

Borrower

I, 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

10/15/2004 Date
20040661

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.

EXHIBIT A PAGE 2 OF 2

SOUTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY
DRIVER'S LICENSE

TONEY, LAURA THOMAS
739 CHATMAN ST
BISHOPVILLE, SC, 290101215

DL#: [REDACTED]
Expires: 10-15 2006

Class: D Hgt: 5-07 Wgt: 175
Sex: F DOB: 10-19-1956
Issued: 10-10-2001 21041111

Laura Toney

Active: None



GOOD FAITH ESTIMATE - RESPA

LENDER: Finance America LLC
 ADDRESS: 16802 Aston Street, Irvine, CA 92606

Prepared 10/06/2004
 Sales price N/A

APPLICANT(S) LAURA TONEY

PROPERTY

ADDRESS 729 CHATMAN ST

BISHOPVILLE, SC 29010-1215

LOAN

FHA

VA

FmHA

☒ CONV.

AMOUNT

\$76,500.00 RATE

8.36%

INTEREST

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 (8.365 %) 20 days @ 17.78 /day	\$355.60
801	* ORIGATION 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.

a mortgage broker, and

☐ 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 LAURA TONEY

DATE

APPLICANT

DATE

APPLICANT

DATE

APPLICANT

DATE

S designates those costs to be paid by Seller.

117/1196142 (9/06)

ARBHJ

ELECTRONIC LASER FORMS, INC. (800)327-3546

LOAN ID: 0040789935

68 FYHIRT R

TRU 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.: 0000789935

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 lenders 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 mortgagee 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.
a means estimate

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

LAURA TONEY
LAURA TONEY

BORROWER DATE

BORROWER DATE

BORROWER DATE

BORROWER DATE

1-888-788-0211

MPH MCR CASE FORMS 100JIS21-7291

Page 1 of 2

© 2003 CDF Systems, Inc. The contents of this form are protected under the copyright laws of the United States.

ADZF

DEFINITION OF TRUTH-IN-LENDING TERMS

ANNUAL PERCENTAGE RATE

This is not the Note rate for which the borrower applied. The Annual Percentage Rate (APR) is the cost of the loan in percentage terms taking into account various loan charges of which interest is only one such charge. Other charges which are used in calculation of the Annual Percentage Rate are Private Mortgage Insurance or FHA Mortgage Insurance Premium (when applicable) and Prepaid Finance Charges (loan discount, origination fees, prepaid interest and other credit costs). The APR is calculated by spreading these charges over the life of the loan which results in a rate generally higher than the interest rate shown on your Mortgage/Deed of Trust Note. If interest was the only Finance Charge, then the interest rate and the Annual Percentage Rate would be the same.

PREPAID FINANCE CHARGES

Prepaid Finance Charges are certain charges made in connection with the loan and which must be paid upon the close of the loan. These charges are defined by the Federal Reserve Board in Regulation Z and the charges must be paid by the borrower. Non-Inclusive examples of such charges are: Loan origination fee, "Points" or Discount, Private Mortgage Insurance or FHA Mortgage Insurance, Tax Service Fee. Some loan charges are specifically excluded from the Prepaid Finance Charge such as appraisal fees and credit report fees.

Prepaid Finance Charges are totaled and then subtracted from the Loan Amount (the face amount of the Deed of Trust/Mortgage Note). The net figure is the Amount Financed as explained below.

FINANCE CHARGE

The amount of interest, prepaid finance charge and certain insurance premiums (if any) which the borrower will be expected to pay over the life of the loan.

AMOUNT FINANCED

The Amount Financed is the loan amount applied for less the prepaid finance charges. Prepaid finance charges can be found on the Good Faith Estimate/Settlement Statement (HUD-1 or 1A). For example if the borrower's note is for \$100,000 and the Prepaid Finance Charges total \$5,000, the Amount Financed would be \$95,000. The Amount Financed is the figure on which the Annual Percentage Rate is based.

TOTAL OF PAYMENTS

This figure represents the total of all payments made toward principal, interest and mortgage insurance (if applicable).

PAYMENT SCHEDULE

The dollar figures in the Payment Schedule represent principal, interest, plus Private Mortgage Insurance (if applicable). These figures will not reflect taxes and insurance escrows or any temporary buydown payments contributed by the seller.

EXHIBIT C PAGE 2 OF 2

CHECK ONE:

Mail Checks to Other Address

Borrower/Broker to Pick Up Checks

✓:
P.O. Box 722
Bishopville, SC 29010

Please Note: All requests for stop payments on checks will incur a \$25.00 surcharge and will be taken out of the re-issued check.

Special Instructions:

Copy ID: 14214

Blue/Black Ink _____

To sign Legals: _____

PACKAGE DATED:

Collect \$ from Client 4

UPDATE ORDERED: 10/6/84

UPDATED RECEIVED:

OK TO DISBURSE:

Other: _____

ATTORNEY PREFERENCE DISCLOSURE

ST. I have been advised that I have the right to have an attorney of my choice close this loan.

5 I was advised prior to closing by my Broker or Lender's representative of my right to choose an attorney.

_____ I was advised at closing of this right, and understanding this right, chose to proceed with the closing.

ATTORNEY/INSURANCE PREFERENCE CHECK LIST

Borrower Name(s): LAURA TONEY	Lender: Finance America, LLC 16802 Aston Street Irvine, CA 92606
Property Address: 129 CHATMAN ST BISHOPVILLE, SC 29010-1215	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 BATCHFORD & MAY LLC -SC

Borrower <u>LAURA TONEY</u>	Borrower _____
Date _____	Date _____
Borrower _____	Borrower _____
Date _____	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

Batchford & May LLC

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

Borrower _____	Borrower _____
Date _____	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

<u><i>Laura Toney</i></u> Borrower <u>LAURA TONEY</u>	Date <u><i>10-6-04</i></u> Borrower _____
Date _____	Date _____

Borrower _____	Borrower _____
Date _____	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 <u>LAURA TONEY</u>	Borrower _____
Date _____	Date _____

Borrower _____	Borrower _____
Date _____	Date _____

1065(SC) (06/04)

NMP MORTGAGE FORMS (800) 521-7291

3/95

APRJ

EXHIBIT E PAGE 72 OF 1

LOAN ID: 0040789935



NOTICE OF RIGHT TO CANCEL

LENDER: Finance America, LLC

DATE 10/06/04
LOAN NO. 0040789935
TYPE CONVENTIONAL

BORROWERS/OWNERS LAURA TONEY

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

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage/lien/security interest on/in your home. You have a legal right under federal law to cancel this transaction, without cost, within THREE BUSINESS DAYS from whichever of the following events occurs last:

- (1) The date of the transaction, which is 10/06/04
- or
- (2) The date you received your Truth in Lending disclosures;
- or
- (3) The date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage/lien/security interest is also cancelled. Within 20 CALENDAR DAYS after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage/lien/security interest on/in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 CALENDAR DAYS of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at:

Finance America, LLC
1551 Sawgrass Corporate Pkwy Ste 400
Sunrise FL 33323
ATTN: JUDITH SWEENEY

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than MIDNIGHT of 10/09/04 (or MIDNIGHT of the THIRD BUSINESS DAY following the latest of the three events listed above.) If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

SIGNATURE

DATE

The undersigned each acknowledge receipt of two copies of NOTICE of RIGHT TO CANCEL and one copy of the Federal Truth in Lending Disclosure Statement.

Each borrower/owner in this transaction has the right to cancel. The exercise of this right by one borrower/owner shall be effective to all borrowers/owners.

BORROWER/OWNER LAURA TONEY

DATE

BORROWER/OWNER

DATE

BORROWER/OWNER

DATE

BORROWER/OWNER

DATE

KORN LAW FIRM, P. A.
POST OFFICE BOX 12369
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817

September 21, 2006

The Honorable James I. Davis
Clerk of Court
P. O. Box 387
Bishopville, SC 29010-0387

Re: LaSalle Bank National Association, as Trustee for registered holders of
Structured Asset Securities Corporation, Structured Asset Investment
Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 v. Laura
Toney
2005-CP-31-169.

Dear Mr. Davis:

Enclosed please find an original and one copy each of the Memorandum of Law in
Support of Plaintiff's Motion for Summary Judgment. Please kindly return a clocked
copy in the enclosed envelope. Thank you for your assistance and please do not hesitate
to contact me if there are any questions.

Very truly yours,

Kathryn Howell

Kathryn Howell
Senior Paralegal

cc: J. David Weeks, Esq.
The Hon. W. C. Coffey, Jr.

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.

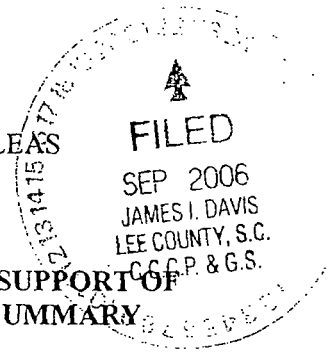
Laura Toney,

Defendants.

IN THE COURT OF COMMON PLEAS

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

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT.**



FACTUAL/PROCEDURAL BACKGROUND

This is an action for foreclosure as to certain real property located in Lee County. The facts as set forth in this memorandum are those facts that are agreed upon by the parties and not in controversy. On October 6, 2004, Laura Toney signed a Promissory Note to obtain a loan for Seventy Six Thousand Five Hundred and 00/100ths (\$76,500.00) Dollars. On the same date, Laura Toney signed a mortgage that designated her property located at 729 Chatman Street, Bishopville, SC 29010-1215 to act as collateral for the debt. (Plaintiff's Complaint; Defendant's Answer and Counterclaim).

At the real estate closing held October 6, 2004, the proceeds of the loan were used to pay an existing lien to Saxon Mortgage. Additionally, Laura Toney received proceeds of \$20,974.19 from the new loan. (HUD Settlement; Defendant's Response to Request for Admissions No.4).

Laura Toney failed to make the monthly payments as required under the terms of the Note and the account is due for the March 1, 2005 payments forward with a remaining principal balance of Seventy Six Thousand Three Hundred Fifty Six and 05/100ths (\$76,356.05) Dollars. (Plaintiff's Complaint; Defendant's Answer and Counterclaim).

The present foreclosure action was commenced on July 21, 2005. In her pro se Answer filed August 18, 2005, Laura Toney admitted that she signed the Note and Mortgage and admitted that she had failed to make the payments required under the note. The Defendant denied that the Mortgage provided for loan to be accelerated upon a default, denied that the Plaintiff was entitled

to a Deficiency Judgment and denied that any notice of breach was sent to her. As a Counterclaim, Defendant alleged that she had not been provided good faith estimate and that she had been provided an opportunity to select her own attorney to perform the closing. Additionally, she alleged an entitlement to rescind the loan pursuant to a letter of recession sent June 12, 2005. Plaintiff filed a Reply on September 19, 2005 and an Amended Reply October 20, 2005. Plaintiff filed a Motion for Summary Judgment on March 29, 2006.

ISSUES

- A. ARE THE TERMS OF THE NOTE AND MORTGAGE AND THE RIGHTS OF PLAINTIFF TO FORECLOSE UNDER THOSE INSTRUMENTS AT ISSUE?
- B. IS THE GOOD FAITH ESTIMATE AT ISSUE?
- C. IS THE ATTORNEY PREFERENCE DISCLOSURE AT ISSUE?
- D. IS THE DEFENDANT ENTITLED UNDER FEDERAL LAW TO RESCIND THE LOAN EIGHT (8) MONTHS AFTER THE LOAN CLOSING?

LAW/ANALYSIS

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), SCRPC; 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.

IV. DISCUSSION

A. ARE THE TERMS OF THE NOTE AND MORTGAGE AND THE RIGHTS OF PLAINTIFF TO FORECLOSE UNDER THOSE INSTRUMENTS AT ISSUE?

No genuine issue of material fact exists as to the note and mortgage or the defendant's default under those terms. Thus, the Plaintiff is entitled to judgment granting foreclosure as a matter of law.

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 that the Mortgage was recorded at Book 361 at Page 79 with the Lee County Clerk of Court.~~ 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. The Defendant did not provide a copy of either document or any other written instruments with alternate loan provisions pursuant to the Plaintiff's Request for Production of any documents pertaining to the case or to be submitted at trial. The Statute of Frauds precludes any allegations of terms contrary to those in the Note and Mortgage. Therefore, Defendant's denials are without any evidentiary support whatsoever and are barred by the Statute of Frauds. The admissions set forth in the pleadings and discovery establish that the loan is in default, the terms of the loan provide for acceleration of the debt upon default and Plaintiff is entitled to seek deficiency pursuant to the contract terms and the statutory law of the State. Furthermore, 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.

Although the Defendant does not deny being in default under the terms of the loan, she denies receiving a breach letter. 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 establishes that two (2) breach letters were sent to the subject property address as required. The

Affidavits shift the burden of proof to the Defendant to establish that either of the two (2) letters was not sent and she cannot rely upon a bare denial to avoid Summary Judgment.

B. IS THE GOOD FAITH ESTIMATE AT ISSUE?

The Defendant denies receiving a Good Faith Estimate at the loan closing. The affidavit of Michael May, the closing attorney, confirms that the Defendant Laura Toney received a Good Faith Estimate at closing and a copy of the Good Faith Estimate is attached to the affidavit. (Affidavit of Michael May filed March 29, 2006). The Affidavit of the closing attorney confirms that he personally provided the Good Faith Estimate to the Defendant Laura Toney, explained the document to her and provided her a copy. The Good Faith Estimate bears the signature of the Defendant Laura Toney confirming that she received a copy. Again, the Defendant's denials are not only unsupported by the evidence, her denials are conclusively discredited and disproved by the evidence.

C. IS THE ATTORNEY PREFERENCE DISCLOSURE AT ISSUE?

The Defendant Laura Toney denies being provided an opportunity to select the representative of her choice for the loan closing. The Affidavit of Letia Benjamin, the mortgage broker, confirms that the Defendant Laura Toney selected the closing attorney at the time of loan application. (Affidavit of Letia Benjamin). 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.

D. IS THE DEFENDANT ENTITLED UNDER FEDERAL LAW TO
RESCIND THE LOAN EIGHT (8) MONTHS AFTER THE LOAN CLOSING?

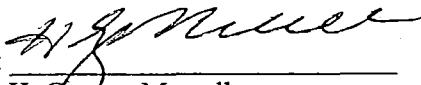
The Defendant Laura Toney alleges that she rescinded the loan by letter dated June 12, 2005. Pursuant to Title 15 Section 1635 of the U.S. Code, the obligor in a real estate secured consumer credit transaction shall have the right to rescind the transaction until midnight of the third business day following 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.

Furthermore, the Defendant admits that she made two (2) initial payments on the loan in December 2004 and January 2005 with her subsequent rescission letter not being mailed until June 2005. (Defendant's Answers to Plaintiff's Interrogatories No.4). The Defendant is estopped from alleging a right to rescission where by her own admission she had foregone that right by accepting the proceeds of the loan and then made the initial payments required under the loan.

IV. CONCLUSION

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). Accordingly, the Plaintiff prays that the Court award it Summary Judgment.

Korn Law Firm, P.A.
1300 Pickens Street
Post Office Box 11264
Columbia, SC 29211-1264
(803) 252-5817

By: 
H. Guyton Murrell
Attorney for Plaintiff

Dated this 20th day of September, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

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

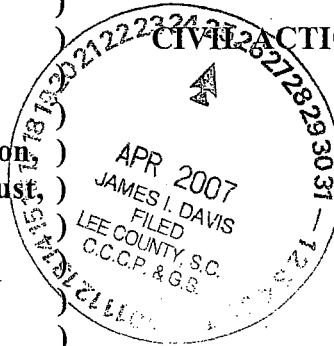
Plaintiff,

vs.

Laura Toney,

Defendant.

CIVIL ACTION NO.: 05-CP-31-169



NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION OF
DECISION AND FOR STAY OF
ENFORCEMENT OF THE ORDER

TO W.C. COFFEY, JR. MASTER IN EQUITY and the KORN LAW FIRM P.A.,
ATTORNEYS FOR THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the above named Plaintiff will move before W.C. Coffey, Jr. Master in Equity, ten (10) days after service hereof, excluding the day of service, will move before the Court for an Order withdrawing its previous Foreclosure Order in the above captioned matter pursuant to SCRP Rule 60.

The Defendant presents this Motion, reserving all rights to appeal any and all findings, conclusions, results of the Order despite the fact that she may not raise all objections to such findings, conclusions, and results in this Motion. The Defendant files this Motion on the belief that the default judgment entered against her was the result of mistake and/or excusable neglect and shall therefore be reconsidered. SCRP Rule 60(b)1.

Certified as a True Copy

James I. Davis

Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

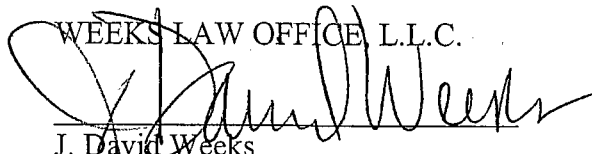
The Defendant respectfully requests that the Court imposes a stay on the enforcement of the Foreclose Order in the above captioned case, so this motion may be heard and ruled upon, and that the said Foreclosure Order be withdrawn upon the consideration of the following facts:

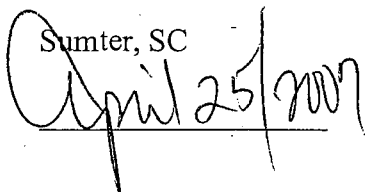
1. The Defendant on January 17, 2007 filed *pro se* a Chapter 13 Bankruptcy action (C/A No. 07-00234-JW).
2. Pursuant to 11 U.S.C. § 362(a), the Defendant believed that an automatic stay was to be put in place regarding the proceeding in the present foreclosure case; therefore, the Defendant move to the United States Bankruptcy Court to Impose the Stay on the present action.
3. Upon belief that the automatic stay was in place, the Defendant mistakenly believed that the Foreclosure Hearing would be postponed until the United States Bankruptcy Court ruled on the Motion to Impose the Stay filed by the Defendant, to which the Plaintiff in this case objected to.
4. On February 6, 2007, a foreclosure hearing was schedule in the present matter.
5. On February 6, 2007, under the belief that the issue of the stay was pending and due to scheduling issues, the Defendant's counsel made numerous attempts to postpone the foreclosure hearing.
6. On February 6, 2007, the South Carolina General Assembly was in session.
7. Mr. J. David Weeks, Esquire, as a Sumter County State Representative and the attorney of record for the Defendant in the above captioned case, shall have been granted a continuance as a matter of right, pursuant to South Carolina Code of Statute §2-1-150 (as amended).

8. On February 6, 2007, the Defendant and any her counsel mistakenly but excusably neglected to appear before the court, as the Motion to Impose the Stay had not yet been decided upon, and under the belief that the Defendant counsel successfully postponed the foreclosure hearing.
9. During the hearing of February 6, 2007, the Defendant was found to be in default and the Master in Equity move to impose a default judgment against the Defendant, thereby granting the Summary Judgment Motion of the Plaintiff.
10. On February 15, 2007, the United States Bankruptcy Court entered an Order against the Defendant denied her Motion to Impose the Stay.

This Motion shall be based upon such statutory and case law as will be presented at the hearing

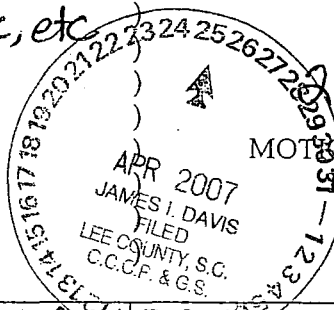
Respectfully submitted,

WEEKS LAW OFFICE L.L.C.

J. David Weeks
Attorney for the Defendant
35 South Sumter Street
PO Box 370
Sumter, SC 29151-0370
(803) 775-5856

Sumter, SC


COUNTY OF LeeLaSalle Bank National Assoc, etc☐ Plaintiff

v.

Laura Toney,☒ Defendant.

CASE NO.

005-DE-31-169
CPMOTION AND ORDER INFORMATION
FORM AND COVER SHEETPlaintiff's Attorney: H. Guyton Murrell, Esq, Bar No. Korn Law FirmAddress: P.O. Box 12369
Columbia, SC 29211phone: 803-231-2060e-mail: other: 803-252-5817Defendant's Attorney: J. David Week, Esq, Bar No. Weeks Law Office LLCAddress: P.O. Box 370
Sumter, SC 29151phone: fax: 775-5856e-mail: other: 775-5856☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

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

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant4/25/07
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

APR 20
JAMES J. DAVIS
LEE COUNTY, SO.
CLERK & REC.

J. David Weeks
Willie H. Brunson

35 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
Telephone (803) 775-5856
Facsimile (803) 778-1365

P.O. Box 370
Sumter, SC 29151-0370

APRIL 25, 2007

Joseph Henry, Esquire
1708-B Richland Street
Columbia SC, 29207

Re: LaSalle Bank v. Laura Toney
Docket No.: 2005-CP-31-169
Our File No.: 05-404

VIA FACSIMILE: (803)929-3485

Dear Joseph:

Enclosed please find a copy of the proposed Motion for Reconsideration in the above reference matter.

With my kindest regards.

Sincerely,



Cedric Cisse

/cc

Enclosures – as stated

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF DECISION AND FOR STAY OF ENFORCEMENT OF THE ORDER** was deposited in the United States mail, with certified first class postage affixed thereto, address as follows:

H. Guyton Murrell, Esquire
Korn Law Firm, P.A.
P.O. Box 11264
Columbia, S.C. 29211

Laura Toney
P.O. Box 722
Bishopville, S.C. 29010

This is to certify that a copy of the foregoing **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF DECISION AND FOR STAY OF ENFORCEMENT OF THE ORDER** was sent via facsimile to Joseph Henry, Esquire at the following number: (803)929-3485.

Cedric Cisse, Legal Assistant
at the Weeks Law Office, LLC.

April 25, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO.: 05-CP-31-169

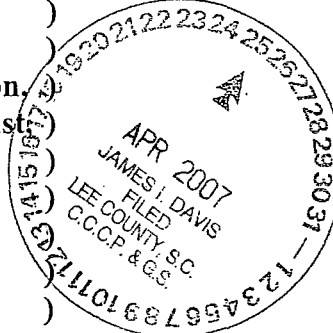
LaSalle Bank National Association, as
Trustee for registered holders of
Structured Asset Securities Corporation,
Structured Asset Investment Loan Trust
Mortgage Pass-Through Certificates,
Series 2004-11,

Plaintiff,)

vs.)

Laura Toney,)

Defendant.)



NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION OF
DECISION AND FOR STAY OF
ENFORCEMENT OF THE ORDER

TO W.C. COFFEY, JR. MASTER IN EQUITY and the KORN LAW FIRM P.A.,
ATTORNEYS FOR THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the above named Plaintiff will move before W.C. Coffey, Jr. Master in Equity, ten (10) days after service hereof, excluding the day of service, will move before the Court for an Order withdrawing its previous Foreclosure Order in the above captioned matter pursuant to SCR Rule 60.

The Defendant presents this Motion, reserving all rights to appeal any and all findings, conclusions, results of the Order despite the fact that she may not raise all objections to such findings, conclusions, and results in this Motion. The Defendant files this Motion on the belief that the default judgment entered against her was the result of mistake and/or excusable neglect and shall therefore be reconsidered. SCR Rule 60(b)1.

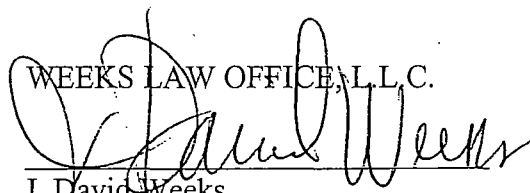
The Defendant respectfully requests that the Court imposes a stay on the enforcement of the Foreclose Order in the above captioned case, so this motion may be heard and ruled upon, and that the said Foreclosure Order be withdrawn upon the consideration of the following facts:

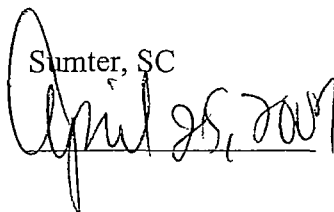
1. The Defendant on January 17, 2007 filed *pro se* a Chapter 13 Bankruptcy action (C/A No. 07-00234-JW).
2. Pursuant to 11 U.S.C. § 362(a), the Defendant believed that an automatic stay was to be put in place regarding the proceeding in the present foreclosure case; therefore, the Defendant move to the United States Bankruptcy Court to Impose the Stay on the present action.
3. Upon belief that the automatic stay was in place, the Defendant mistakenly believed that the Foreclosure Hearing would be postponed until the United States Bankruptcy Court ruled on the Motion to Impose the Stay filed by the Defendant, to which the Plaintiff in this case objected to.
4. On February 6, 2007, a foreclosure hearing was schedule in the present matter.
5. On February 6, 2007, under the belief that the issue of the stay was pending and due to scheduling issues, the Defendant's counsel made numerous attempts to postpone the foreclosure hearing.
6. On February 6, 2007, the South Carolina General Assembly was in session.
7. Mr. J. David Weeks, Esquire, as a Sumter County State Representative and the attorney of record for the Defendant in the above captioned case, shall have been granted a continuance as a matter of right, pursuant to South Carolina Code of Statute §2-1-150 (as amended).

8. On February 6, 2007, the Defendant and any her counsel mistakenly but excusably neglected to appear before the court, as the Motion to Impose the Stay had not yet been decided upon; and under the belief that the Defendant counsel successfully postponed the foreclosure hearing.
9. During the hearing of February 6, 2007, the Defendant was found to be in default and the Master in Equity move to impose a default judgment against the Defendant, thereby granting the Summary Judgment Motion of the Plaintiff.
10. On February 15, 2007, the United States Bankruptcy Court entered an Order against the Defendant denied her Motion to Impose the Stay.

This Motion shall be based upon such statutory and case law as will be presented at the hearing

Respectfully submitted,

WEEKS LAW OFFICE, L.L.C.

J. David Weeks
Attorney for the Defendant
35 South Sumter Street
PO Box 370
Sumter, SC 29151-0370
(803) 775-5856

Sumter, SC

April 25, 2007

HUD SETTLEMENT

A. Settlement StatementU.S. Department of Housing
and Urban Development

OMB No. 2502-0268

B. Type of Loan

1 ☐ FHA 2 ☐ FmHA 3 ☒ Conv. Units	6. File Number 20040661	7. Loan Number 0040789935	8. Mortgage Insurance Case Number
4 ☐ VA 5 ☐ Conv. Ins.			

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: Laura Toney**ADDRESS OF BORROWER:** 729 Chatman Street, Bishopville, SC 29010**E. NAME OF SELLER:** REFINANCE**FUNDING DATE:** 10/12/2004**ADDRESS OF SELLER:****F. NAME OF LENDER:** Finance America, LLC**ADDRESS OF LENDER:** 1551 Sawgrass Corporate Pkwy STE 400, Sunrise, FL 33323**G. PROPERTY LOCATION:** 729 Chatman Street
Bishopville, SC 29010**H. SETTLEMENT AGENT:** RATCHFORD & MAY, LLC
1813 PICKENS STREET, COLUMBIA, SC 29201**PLACE OF SETTLEMENT:** 1813 PICKENS STREET, COLUMBIA, SC 29201**I. SETTLEMENT DATE:** 10/6/2004**J. SUMMARY OF BORROWER'S TRANSACTION****K. SUMMARY OF SELLER'S TRANSACTION**

100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	4,709.60	403.	
104. Payoff to Saxon Mortgage	50,816.21	404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	55,525.81	420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	76,500.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206. Principal amount of seller financing		506. Principal amount of seller financing	
207.		507.	
208.		508.	
209.		509.	
209a.		509a.	
209b.		509b.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER	76,500.00	520. TOTAL REDUCTIONS IN AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (line 120)	55,525.81	601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	76,500.00	602. Less reductions in amount due seller (line 520)	
303. CASH ☐ From ☒ To BORROWER	20,974.19	603. CASH ☒ To ☐ From SELLER	



CERTIFICATION

DATE: 10/6/2004

CERTIFICATION

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.

Boitover

Borrower

The 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.

RATCHEFORD & MAY, L.L.C.

Settlement Agent

10/6/2004

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 a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

AFFIDAVITS

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

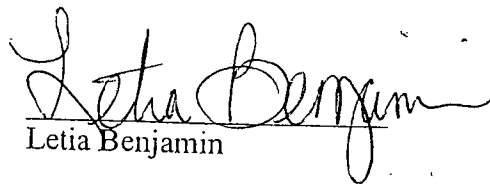
AFFIDAVIT

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

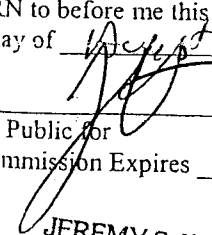
F25-02718

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

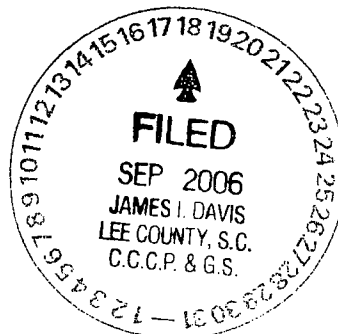
I am employed with LAB Financial Services and was the mortgage broker on this loan.
Attached is a copy of the attorney preference executed by Laura Toney when she applied for a
loan and the customer notes. The customer notes were kept in the ordinary course of business
and confirm that Laura Toney selected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


Letia Benjamin

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

 (SEAL)
Notary Public for
My Commission Expires 8/24/06

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



Mr. Toney due to changes in
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 803-428-4420
ATTORNEY/INSURANCE PREFERENCE
CHECKLIST

DATE: 10-3-04

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 Batchford & 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 Terberville 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

Customer Comments:

8-11-04 Customer does not want any attorney from Lee County. She doesn't want them in business. Gave Customer list. And she asked how I used any on list before. I told her I have used them all. Then she asked about the attorney in Columbia. She made choice.

8/11/05 Customer will call State Farm in Orangeburg for Orangeburg property. Customer wants Turbeville Ins. Co. Bishopville. State Farm can't do her insurance. For now she chooses State Farm until further changes. She will contact Mr. Wards at Turbeville + call me

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.

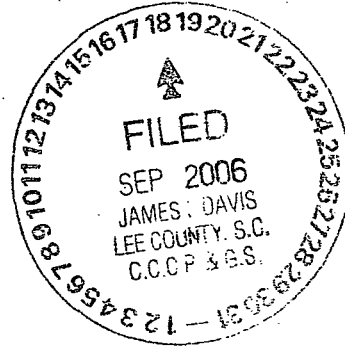
Laura Toney,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

AFFIDAVIT

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



AFFIDAVIT

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

Chomie Neil, being duly sworn, deposes and states:

1. I am employed as a Senior Loan Analyst at Ocwen Loan Servicing, LLC, successor in interest to Ocwen Federal Bank, FSB ("Ocwen").
2. I am over the age of 21, I am competent to and am authorized to make this affidavit, and I do so of my own personal knowledge.
3. I have reviewed our records kept in the ordinary course and performance of business for the purpose of making this affidavit.
4. Ocwen is currently the servicer of the loan which is the subject matter of this action and attorney-in-fact for Plaintiff on this loan matter.

5. Plaintiff is the current owner of the Note and Mortgage on real property located at 729 Chatman Street, Bishopville, South Carolina. The Note and Mortgage are attached as Exhibits "A" and "B."

6. Pursuant to the terms of the Note, any notice of breach in the terms of the loan were to be given to Laura Toney by mailing it by first class mail to the subject property address at 729 Chatman Street, Bishopville, SC 29010-1215.

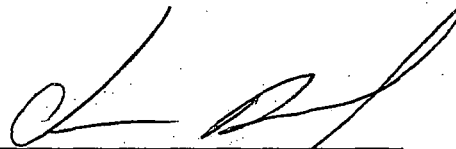
7. Pursuant to the Mortgage, any notice to the Borrower was deemed to have been given when mailed by first class mail to the subject property address.

8. The loan fell into arrears and a Notice of Default was mailed to Laura Toney by first class mail to the subject property address on March 19, 2005. A copy of that Notice of Default is attached hereto as Exhibit "C."

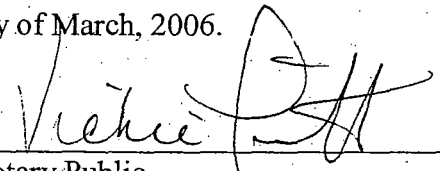
9. A subsequent Notice of Default was also sent to Laura Toney by first class mail to the subject property address on April 15, 2005. A copy of that Notice of Default is attached hereto as Exhibit "D."

10. The loan is in default for the payments due March 1, 2005 forward, with a principal balance due of Seventy-Six Thousand Three Hundred Fifty-Six Dollars and five cents (\$76,356.05) together with interest from February 1, 2005, and also for the costs and disbursements for this action, attorney fees and other advances.

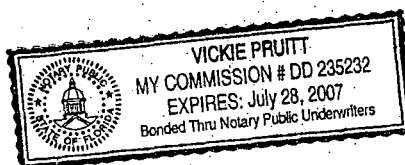
Further Affiant sayeth not.


Name: Chomie Neil
Title: Senior Loan Analyst

Subscribed and sworn to before me this 30th day of March, 2006.


Notary Public

My Commission Expires:



NOTE

10/20/04
(Date)

IRVINE
(City)



CA
(State)

410 NATURE LN, ORANGEBURG, SC 29115-5054
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 56,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Finance America, LLC

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 9.615 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on DECEMBER 01, 2004. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on NOVEMBER 01, 2034, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at OCWEN Federal Bank, FSB

P.O. Box 514577, Los Angeles, CA 90051-4577 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 475.58

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE-Single Family-Partial Mac/Prepaid Mac UNIFORM INSTRUMENT

1001-SH (4/20/07)

Form 3200 1/01

VEEP MORTGAGE FORMS - (10/01/07)-7201

Page 1 of 2

37



KRAM

LOAN ID: 0040790180

EXHIBIT A PAGE 1 OF 4

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Prepayment and Notice of Dishonor. "Prepayment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

FORM 3200 1/01

Page 2 of 3

Form 3200 1/01
Article 3

HEAV

LOAN ID: 0040790180

EXHIBIT A PAGE 2 OF 4

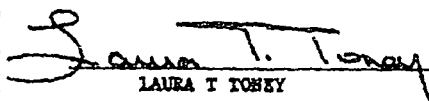
18. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


LAURA T TORREY

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Sign Original Only)

CH 183071

Page 3 of 3

Form 3200 1/01

MCAG

LOAN ID: 0040790180

EXHIBIT A PAGE 3 OF 4

Finance America, LLC
16802 Aston Street
Irvine, CA 92606

ALLONGE

Loan number: 0040790180

Borrower name: LAURA T TONEY

Pay to the order of
Without recourse Finance America, LLC



Gina Gerwig
Collateral Management Supervisor

AUTHORIZED OFFICER

1159143 00001

ELECTRONIC LAMIN FORMS, INC. - (800) 327-0046

May 1995

ARDD

LOAN ID:0040790180

EXHIBIT A PAGE 4 OF 4

Return To:

Finance America, LLC
P.O. BOX 16637
Irvine, Ca. 92623-6637

CERTIFIED TRUE COPY

of original

10-8-07

Date

Prepared By:

Karen Cornell
16802 Aston Street
Irvine, CA 92606

[Signature]

Notary Public for South Carolina

My Commission Expires 1-26-13

[Signature]
Name

[Space Above This Line For Recording Data]

MORTGAGE

of Finance America, LLC do hereby
certify that this is a true, correct, and
complete copy of the original.

MIN

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated OCTOBER 06, 2004 together with all Riders to this document.

(B) "Borrower" is
LAURA TONEY, A MARRIED WOMAN

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

12/01 -6A(SC) 100081.01

Page 1 of 15

Initials

[Signature]

VMP MORTGAGE FORMS - (800) 621-7281

MABC

(D) "Lender" is Finance America, LLC

Lender is a Limited Liability Company
organized and existing under the laws of Delaware
Lender's address is 16802 Aston Street Irvine, CA 92606

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 06, 2004
The Note states that Borrower owes Lender

SEVENTY-SIX THOUSAND FIVE HUNDRED AND NO/100 Dollars
(U.S. \$ 76,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than NOVEMBER 01, 2034

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☒ Other(s) [specify] Legal Desc.

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentation of, or omissions as to, the
value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,
the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to
time, or any additional or successor legislation or regulation that governs the same subject matter. As used

in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

COUNTY
[Type of Recording Jurisdiction]

of

LEE
[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 0300200024000

which currently has the address of

729 CHATMAN ST

[Street]

BISHOPVILLE

[City], South Carolina 29010-1215 [Zip Code]

("Property Address"): 729 CHATMAN ST, BISHOPVILLE, SC 29010-1215

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

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

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

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, 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, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.** This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

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

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Leta A. Benjamin *Laura Toney* (Seal)
LAURA TONEY -Borrower

M. King

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

STATE OF SOUTH CAROLINA,
County of Lee

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

Letia A. Benjamin

Sworn to before me this 6th day of October, 2007

My Commission Expires: 9-24-13

M. H. May
Notary Public for South Carolina

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 Chatman 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 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.

Derivation: 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 V5 at page 205 in the Lee County, South Carolina Records.

TMS# 030-02-00-024-000

EXHIBIT B PAGE 16 OF 20

RETURN RECORDED DOC TO:
Finance America, LLC
P.O. Box 16637
Irvine, Ca 92623-6637

MIN 100052300407899359

ADJUSTABLE RATE RIDER

(LIBOR Index - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 6th day of OCTOBER, 2004, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to Finance America, LLC

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

729 CHATMAN ST, BISHOPVILLE, SC 29010-1215

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.365 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of NOVEMBER 01, 2006, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

MULTISTATE ADJUSTABLE RATE RIDER (LIBOR Index) - Single Family - Freddie Mac UNIFORM INSTRUMENT

815R (0008) Form 3192 1/01
Page 1 of 4 Initials: ST
VMP MORTGAGE FORMS - (800) 521-7281



(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding SIX AND 25/100 percentage points (6.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.365 % or less than 8.365 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage point (1%) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 14.365 %. My interest rate will never be lower than the initial interest rate stated in Paragraph A of this Rider.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

U216 816R (0008)

Page 2 of 4

Initials: ST

Form 3182 1/01

MGMX

EXHIBIT B PAGE 18 OF 20

(f) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

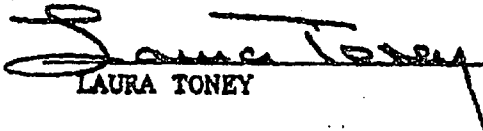
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

 (Seal)
LAURA TONEY -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

UMP-815R (0008)

Page 4 of 4

Form 3182 1/01

MGHZ

EXHIBIT B PAGE 20 OF 20

On or before May 15, 2005, you must submit payment by Western Union Quick Collect, Bank Check, Money Order or Certified Funds for the entire total due amount stated above to the appropriate address listed at the bottom of page two of this notice. Any payment(s) that come due in the interim must also be included.

Failure to bring your account current may result in our election to exercise our right to foreclose on your property. Upon acceleration your total obligation will be immediately due and payable without further demand. In foreclosure proceedings, we are entitled to collect your total arrearage in addition to any expenses of foreclosure, including but not limited to reasonable attorney's fees and costs. If your loan has already been accelerated and foreclosure proceedings already begun, we will continue the foreclosure action if possible. You have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure.

Ocwen Federal Bank FSB will work with bankruptcy lawyers, foreclosure defense lawyers, housing counselors and other authorized representatives of our customers. We will release information but will require written authorization as required by law.

After acceleration of the debt, but prior to foreclosure, you may have the right to reinstate the mortgage loan, depending on the terms of the note and mortgage. We encourage you to review the provisions of the note and mortgage. Please be aware that, after acceleration of the debt, there may be expenses and attorney's fees and costs incurred by Ocwen Federal to enforce the mortgage in addition to the overdue amount on the mortgage. Any payment to reinstate the mortgage loan after acceleration must therefore include an amount sufficient to cover such expenses and fees incurred. Payments received that are less than the amount required to reinstate the mortgage loan will be returned, and will not stop any foreclosure proceedings that have been begun. **PRIOR TO SUBMITTING PAYMENT, YOU MAY WISH TO CALL ME TO VERIFY THE EXACT AMOUNT DUE.**

A HUD counseling agency may be able to provide you with assistance. To locate the HUD approved counseling agency in your area, call the HUD Housing Counseling Service at (800) 569-4287 or consult HUD's website at www.HUD.gov

As a service for our valued customers to meet the needs of those who may feel overwhelmed by debt, Ocwen can provide you with contact information for qualified credit counselors. If you are experiencing financial hardship, credit counseling may be a way to manage your bills and help you get out of debt. Please note that credit counseling is a means to help control credit card and other unsecured debt. Enrolling in a credit counseling program will not lower your current mortgage payment or change your payment history.

National Foundation for Credit Counseling: 1-800-388-2227 www.NFCC.org

If you are unable to bring your account current, I urge you to call me immediately to discuss possible alternatives to foreclosure.

If you have the desire to remedy this situation we want to assist you in trying to reach that goal. Ocwen Federal Bank FSB would like to present you with some of the alternatives which you might have available regarding your delinquent mortgage loan. While our primary objective is the collection of past due amounts on your loan, we do want to work with you to find the best available alternative for you to bring your mortgage loan obligation current.

Yours truly,

ADDRESS WRITTEN CORRESPONDENCE TO:

Performing Collections Dept.
Ocwen Federal Bank FSB
P O Box 785055
Orlando, FL 32878-5055

Performing Collections Dept.
Collections Department
Toll Free Phone: 800-310-9229

Fax: 407-737-6300

PAYMENT REMITTANCE INFORMATION (always include Loan # 40789935 with your payment)

VIA Western Union Quick Collect

Code City OCWEN
Code State FL
Reference: Loan # 40789935
Attention: Collections Department

Overnight Address

Ocwen Federal Bank FSB
12650 Ingenuity Drive
Orlando, FL 32826
Attention: Collections Department

VIA Regular Mail

Ocwen Federal Bank FSB
PO Box 6440
Carol Stream, IL 60197-6440

Ocwen Federal Bank FSB is a debt collector attempting to collect a debt; and any information obtained will be used for that purpose.

DEMAND05 3

71069017515107721000

NOTICE OF DEFAULT

April 15, 2005

VIA First Class Mail
VIA Certified Mail (return receipt requested)
Certified Number: 71069017515107721000
Reference Code: 0503

Laura Toney

729 Chatman Street
Bishopville, SC 29010-1215

Loan Number: 40789935
Property Address: 729 Chatman Street, Bishopville, SC 29010-0000

AVISO IMPORTANTE PARA PERSONAS DE HABLA HISPANA:

Esta notificación es de suma importancia. Puede afectar su derecho a continuar viviendo en su casa. Si no entiende su contenido, obtenga una traducción inmediatamente o contáctenos ya que tenemos representantes que hablan español y están disponibles para asistir.

Dear Borrower (s):

SPECIAL NOTICE IN THE EVENT YOU HAVE FILED BANKRUPTCY

If you have received a Chapter 7 discharge under the Bankruptcy Code of the United States or if your mortgage is the type which has been discharged pursuant to a completed Chapter 13 plan, this notice is not intended and does not constitute an attempt to collect a debt against you personally. If the foregoing applies to you, this notice is sent to you only as a preliminary step to a foreclosure on Ocwen's mortgage against the above-referenced property. Notice provisions may be contained within your mortgage/deed of trust which notice may be required prior to foreclosure. It is not an attempt to assert that you have any personal liability for this debt.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because Ocwen has not been notified of your bankruptcy case. If the foregoing applies to you, it is **IMPORTANT** that you or your bankruptcy attorney contact us immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the number of the chapter you have filed.

You are hereby notified that this letter is an attempt to collect a debt. All information obtained will be used for that purpose. The debt is owed to Ocwen Federal Bank FSB ("Ocwen Federal") as the owner or servicer of your home loan and mortgage.

Unless you dispute the validity of the debt or any portion thereof, within thirty days after receipt of this letter, the debt will be assumed to be valid by Ocwen Federal. If you notify Ocwen Federal in writing within thirty days that the debt or a portion of the debt is disputed, Ocwen Federal will send you verification of the debt. Verification of the debt or a portion thereof may be requested in writing from the Loan Resolution Consultant within thirty days. The failure to dispute the validity of the debt may not be construed by any court as an admission of liability by you.

Your mortgage payments are past due which puts you in default of your loan agreement. As of April 15, 2005, you owe the following:

Principal and Interest	\$ 1,161.84
Escrow	\$ 0.00
Current Late Charges	\$ 29.05
Prior Late Charges	\$ 0.00
Non-sufficient Funds Charges	\$ 0.00
Other Advances	\$ 4.67
Interest Arrearage	\$ 0.00
Non-Escrow Balance	\$ 0.00
Subsidy Balance (CREDIT)	\$ 0.00
Suspense Balance (CREDIT)	\$ 0.00
Non-NSF Fees	\$ 0.00
Interest Reserve Balance	\$ 0.00
TOTAL DUE	\$ 1,195.56

DEMAND05 3

EXHIBIT D PAGE 1 OF 2

On or before April 19, 2005, you must submit payment by Western Union Quick Collect, Bank Check, Money Order or Certified Funds for the entire total due amount stated above to the appropriate address listed at the bottom of page two of this notice. Any payment(s) that come due in the interim must also be included.

Failure to bring your account current may result in our election to exercise our right to foreclose on your property. Upon acceleration your total obligation will be immediately due and payable without further demand. In foreclosure proceedings, we are entitled to collect your total arrearage in addition to any expenses of foreclosure, including but not limited to reasonable attorney's fees and costs. If your loan has already been accelerated and foreclosure proceedings already begun, we will continue the foreclosure action if possible. You have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure.

Ocwen Federal Bank FSB will work with bankruptcy lawyers, foreclosure defense lawyers, housing counselors and other authorized representatives of our customers. We will release information but will require written authorization as required by law.

After acceleration of the debt but prior to foreclosure, you may have the right to reinstate the mortgage loan, depending on the terms of the note and mortgage. We encourage you to review the provisions of the note and mortgage. Please be aware that, after acceleration of the debt, there may be expenses and attorney's fees and costs incurred by Ocwen Federal to enforce the mortgage in addition to the overdue amount on the mortgage. Any payment to reinstate the mortgage loan after acceleration must therefore include an amount sufficient to cover such expenses and fees incurred. Payments received that are less than the amount required to reinstate the mortgage loan will be returned, and will not stop any foreclosure proceedings that have been begun. **PRIOR TO SUBMITTING PAYMENT, YOU MAY WISH TO CALL ME TO VERIFY THE EXACT AMOUNT DUE.**

A HUD counseling agency may be able to provide you with assistance. To locate the HUD approved counseling agency in your area, call the HUD Housing Counseling Service at (800) 569-4287 or consult HUD's website at www.HUD.gov.

As a service for our valued customers to meet the needs of those who may feel overwhelmed by debt, Ocwen can provide you with contact information for qualified credit counselors. If you are experiencing financial hardship, credit counseling may be a way to manage your bills and help you get out of debt. Please note that credit counseling is a means to help control credit card and other unsecured debt. Enrolling in a credit counseling program will not lower your current mortgage payment or change your payment history.

National Foundation for Credit Counseling: 1-800-388-2227 www.NFCC.org

If you are unable to bring your account current, I urge you to call me immediately to discuss possible alternatives to foreclosure.

If you have the desire to remedy this situation we want to assist you in trying to reach that goal. Ocwen Federal Bank FSB would like to present you with some of the alternatives which you might have available regarding your delinquent mortgage loan. While our primary objective is the collection of past due amounts on your loan, we do want to work with you to find the best available alternative for you to bring your mortgage loan obligation current.

Yours truly,

ADDRESS WRITTEN CORRESPONDENCE TO:

Performing Collections Dept.
Ocwen Federal Bank FSB
P O Box 785055
Orlando, FL 32878-5055

Performing Collections Dept
Collections Department
Toll Free Phone: 800-310-9229

Fax: 407-737-6300

PAYMENT REMITTANCE INFORMATION (always include Loan # 40789935 with your payment)

VIA Western Union Quick Collect

Code City **OCWEN**
Code State **FL**
Reference: Loan # 40789935
Attention: Collections Department

Overnight Address

Ocwen Federal Bank FSB
12650 Ingenuity Drive
Orlando, FL 32826
Attention: Collections Department

VIA Regular Mail

Ocwen Federal Bank FSB
P O Box 514577
Los Angeles, CA 90051-4577

Ocwen Federal Bank FSB is a debt collector attempting to collect a debt; and any information obtained will be used for that purpose.

DEMAND05.1

EXHIBIT C PAGE 2 OF 2

71069017515107506577

NOTICE OF DEFAULT

March 19, 2005

VIA First Class Mail
VIA Certified Mail (return receipt requested)
Certified Number: 71069017515107506577
Reference Code: 0501

Laura Toney

729 Chatman Street
Bishopville, SC 29010-1215

Loan Number: 40789935
Property Address: 729 Chatman Street, Bishopville, SC 29010-0000

AVISO IMPORTANTE PARA PERSONAS DE HABLA HISPANA

Esta notificación es de suma importancia. Puede afectar su derecho a continuar viviendo en su casa. Si no entiende su contenido, obtenga una traducción inmediatamente o contáctenos ya que tenemos representantes que hablan español y están disponibles para asistir.

Dear Borrower (s):

SPECIAL NOTICE IN THE EVENT YOU HAVE FILED BANKRUPTCY

If you have received a Chapter 7 discharge under the Bankruptcy Code of the United States or if your mortgage is the type which has been discharged pursuant to a completed Chapter 13 plan, this notice is not intended and does not constitute an attempt to collect a debt against you personally. If the foregoing applies to you, this notice is sent to you only as a preliminary step to a foreclosure on Ocwen's mortgage against the above-referenced property. Notice provisions may be contained within your mortgage/deed of trust which notice may be required prior to foreclosure. It is not an attempt to assert that you have any personal liability for this debt.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because Ocwen has not been notified of your bankruptcy case. If the foregoing applies to you, it is **IMPORTANT** that you or your bankruptcy attorney contact us immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the number of the chapter you have filed.

You are hereby notified that this letter is an attempt to collect a debt. All information obtained will be used for that purpose. The debt is owed to Ocwen Federal Bank FSB ("Ocwen Federal") as the owner or servicer of your home loan and mortgage.

Unless you dispute the validity of the debt, or any portion thereof, within thirty days after receipt of this letter, the debt will be assumed to be valid by Ocwen Federal. If you notify Ocwen Federal in writing within thirty days that the debt or a portion of the debt is disputed, Ocwen Federal will send you verification of the debt. Verification of the debt or a portion thereof may be requested in writing from the Loan Resolution Consultant within thirty days. The failure to dispute the validity of the debt may not be construed by any court as an admission of liability by you.

Your mortgage payments are past due which puts you in default of your loan agreement. As of March 19, 2005, you owe the following:

Principal and Interest.....	\$ 1,161.84
Escrow.....	\$ 0.00
Current Late Charges.....	\$ 58.10
Prior Late Charges.....	\$ 0.00
Non-sufficient Funds Charges.....	\$ 0.00
Other Advances.....	\$ 0.00
Interest Arrears.....	\$ 0.00
Non-Escrow Balance.....	\$ 0.00
Subsidy Balance (CREDIT).....	\$ 0.00
Suspense Balance (CREDIT).....	\$ 0.00
Non-NSF Fees.....	\$ 0.00
Interest Reserve Balance.....	\$ 0.00
TOTAL DUE.....	\$ 1,219.94

DEMAND05 1

EXHIBIT C PAGE 1 OF 2

NOTICE OF DEFAULT

March 19, 2005

VIA First Class Mail
 VIA Certified Mail (return receipt requested)
 Certified Number: 71069017515107506577
 Reference Code: 0501

Laura Toney

729 Chatman Street
 Bishopville, SC 29010-1215

Loan Number: 40789935

Property Address: 729 Chauman Street, Bishopville, SC 29010-0000

AVISO IMPORTANTE PARA PERSONAS DE HABLA HISPANA:

Esta notificación es de suma importancia. Puede afectar su derecho a continuar viviendo en su casa. Si no entiende su contenido, obtenga una traducción inmediatamente o contáctenos ya que tenemos representantes que hablan español y están disponibles para asistir.

Dear Borrower (s):

SPECIAL NOTICE IN THE EVENT YOU HAVE FILED BANKRUPTCY

If you have received a Chapter 7 discharge under the Bankruptcy Code of the United States or if your mortgage is the type which has been discharged pursuant to a completed Chapter 13 plan, this notice is not intended and does not constitute an attempt to collect a debt against you personally. If the foregoing applies to you, this notice is sent to you only as a preliminary step to a foreclosure on Ocwen's mortgage against the above-referenced property. Notice provisions may be contained within your mortgage/deed of trust which notice may be required prior to foreclosure. It is not an attempt to assert that you have any personal liability for this debt.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because Ocwen has not been notified of your bankruptcy case. If the foregoing applies to you, it is **IMPORTANT** that you or your bankruptcy attorney contact us immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the number of the chapter you have filed.

You are hereby notified that this letter is an attempt to collect a debt. All information obtained will be used for that purpose. The debt is owed to Ocwen Federal Bank FSB ("Ocwen Federal") as the owner or servicer of your home loan and mortgage.

Unless you dispute the validity of the debt, or any portion thereof, within thirty days after receipt of this letter, the debt will be assumed to be valid by Ocwen Federal. If you notify Ocwen Federal in writing within thirty days that the debt or a portion of the debt is disputed, Ocwen Federal will send you verification of the debt. Verification of the debt or a portion thereof may be requested in writing from the Loan Resolution Consultant within thirty days. The failure to dispute the validity of the debt may not be construed by any court as an admission of liability by you.

Your mortgage payments are past due which puts you in default of your loan agreement. As of March 19, 2005, you owe the following:

Principal and Interest	\$ 1,161.84
Escrow	\$ 0.00
Current Late Charges	\$ 58.10
Prior Late Charges	\$ 0.00
Non-sufficient Funds Charges	\$ 0.00
Other Advances	\$ 0.00
Interest Arrearage	\$ 0.00
Non-Escrow Balance	\$ 0.00
Subsidy Balance (CREDIT)	\$ 0.00
Suspense Balance (CREDIT)	\$ 0.00
Non-NSF Fees	\$ 0.00
Interest Reserve Balance	\$ 0.00
TOTAL DUE	\$ 1,219.94

DEMAND05 1

EXHIBIT A PAGE 1 OF 2

On or before April 19, 2005, you must submit payment by Western Union Quick Collect, Bank Check, Money Order or Certified Funds for the entire total due amount stated above to the appropriate address listed at the bottom of page two of this notice. Any payment(s) that come due in the interim must also be included.

Failure to bring your account current may result in our election to exercise our right to foreclose on your property. Upon acceleration your total obligation will be immediately due and payable without further demand. In foreclosure proceedings, we are entitled to collect your total arrearage in addition to any expenses of foreclosure, including but not limited to reasonable attorney's fees and costs. If your loan has already been accelerated and foreclosure proceedings already begun, we will continue the foreclosure action if possible. You have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure.

Ocwen Federal Bank FSB will work with bankruptcy lawyers, foreclosure defense lawyers, housing counselors and other authorized representatives of our customers. We will release information but will require written authorization as required by law.

After acceleration of the debt, but prior to foreclosure, you may have the right to reinstate the mortgage loan, depending on the terms of the note and mortgage. We encourage you to review the provisions of the note and mortgage. Please be aware that, after acceleration of the debt, there may be expenses and attorney's fees and costs incurred by Ocwen Federal to enforce the mortgage in addition to the overdue amount on the mortgage. Any payment to reinstate the mortgage loan after acceleration must therefore include an amount sufficient to cover such expenses and fees incurred. Payments received that are less than the amount required to reinstate the mortgage loan will be returned, and will not stop any foreclosure proceedings that have been begun. **PRIOR TO SUBMITTING PAYMENT, YOU MAY WISH TO CALL ME TO VERIFY THE EXACT AMOUNT DUE.**

A HUD counseling agency may be able to provide you with assistance. To locate the HUD approved counseling agency in your area, call the HUD Housing Counseling Service at (800) 569-4287 or consult HUD's website at www.HUD.gov.

As a service for our valued customers to meet the needs of those who may feel overwhelmed by debt, Ocwen can provide you with contact information for qualified credit counselors. If you are experiencing financial hardship, credit counseling may be a way to manage your bills and help you get out of debt. Please note that credit counseling is a means to help control credit card and other unsecured debt. Enrolling in a credit counseling program will not lower your current mortgage payment or change your payment history.

National Foundation for Credit Counseling: 1-800-388-2227 www.NFCC.org

If you are unable to bring your account current, I urge you to call me immediately to discuss possible alternatives to foreclosure.

If you have the desire to remedy this situation we want to assist you in trying to reach that goal. Ocwen Federal Bank FSB would like to present you with some of the alternatives which you might have available regarding your delinquent mortgage loan. While our primary objective is the collection of past due amounts on your loan, we do want to work with you to find the best available alternative for you to bring your mortgage loan obligation current.

Yours truly,

ADDRESS WRITTEN CORRESPONDENCE TO:

Performing Collections Dept.
Ocwen Federal Bank FSB
P O Box 785055
Orlando, FL 32878-5055

Performing Collections Dept
Collections Department
Toll Free Phone: 800-310-9229

Fax: 407-737-6300

PAYMENT REMITTANCE INFORMATION (always include Loan # 40789935 with your payment)

VIA Western Union Quick Collect
Code City **OCWEN**
Code State **FL**
Reference: Loan # 40789935
Attention: Collections Department

Overnight Address
Ocwen Federal Bank FSB
12650 Ingenuity Drive
Orlando, FL 32826
Attention: Collections Department

VIA Regular Mail
Ocwen Federal Bank FSB
P O Box 514577
Los Angeles, CA 90051-4577

Ocwen Federal Bank FSB is a debt collector attempting to collect a debt; and any information obtained will be used for that purpose.

DEMAND05.1

EXHIBIT A PAGE 2 OF 2

NOTICE OF DEFAULT

April 15, 2005

VIA First Class Mail
 VIA Certified Mail (return receipt requested)
 Certified Number: 71069017515107721000
 Reference Code: 0503

Laura Toney

729 Chatman Street
 Bishopville, SC 29010-1215

Loan Number: 40789935
 Property Address: 729 Chatman Street, Bishopville, SC 29010-0000

AVISO IMPORTANTE PARA PERSONAS DE HABLA HISPANA:

Esta notificación es de suma importancia. Puede afectar su derecho a continuar viviendo en su casa. Si no entiende su contenido, obtenga una traducción inmediatamente o contáctenos ya que tenemos representantes que hablan español y están disponibles para asistir.

Dear Borrower (s):

SPECIAL NOTICE IN THE EVENT YOU HAVE FILED BANKRUPTCY

If you have received a Chapter 7 discharge under the Bankruptcy Code of the United States or if your mortgage is the type which has been discharged pursuant to a completed Chapter 13 plan, this notice is not intended and does not constitute an attempt to collect a debt against you personally. If the foregoing applies to you, this notice is sent to you only as a preliminary step to a foreclosure on Ocwen's mortgage against the above-referenced property. Notice provisions may be contained within your mortgage/deed of trust which notice may be required prior to foreclosure. It is not an attempt to assert that you have any personal liability for this debt.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because Ocwen has not been notified of your bankruptcy case. If the foregoing applies to you, it is **IMPORTANT** that you or your bankruptcy attorney contact us immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the number of the chapter you have filed.

You are hereby notified that this letter is an attempt to collect a debt. All information obtained will be used for that purpose. The debt is owed to Ocwen Federal Bank FSB ("Ocwen Federal") as the owner or servicer of your home loan and mortgage.

Unless you dispute the validity of the debt, or any portion thereof, within thirty days after receipt of this letter, the debt will be assumed to be valid by Ocwen Federal. If you notify Ocwen Federal in writing within thirty days that the debt or a portion of the debt is disputed, Ocwen Federal will send you verification of the debt. Verification of the debt or a portion thereof may be requested in writing from the Loan Resolution Consultant within thirty days. The failure to dispute the validity of the debt may not be construed by any court as an admission of liability by you.

Your mortgage payments are past due which puts you in default of your loan agreement. As of April 15, 2005, you owe the following:

Principal and Interest	\$ 1,161.84
Escrow	\$ 0.00
Current Late Charges	\$ 29.05
Prior Late Charges	\$ 0.00
Non-sufficient Funds Charges	\$ 0.00
Other Advances	\$ 4.67
Interest Arrearage	\$ 0.00
Non-Escrow Balance	\$ 0.00
Subsidy Balance (CREDIT)	\$ 0.00
Suspense Balance (CREDIT)	\$ 0.00
Non-NSF Fees	\$ 0.00
Interest Reserve Balance	\$ 0.00
TOTAL DUE	\$ 1,195.56

DEMAND053

EXHIBIT B PAGE 1 OF 2

On or before May 15, 2005, you must submit payment by Western Union Quick Collect, Bank Check, Money Order or Certified Funds for the entire total due amount stated above to the appropriate address listed at the bottom of page two of this notice. Any payment(s) that come due in the interim must also be included.

Failure to bring your account current may result in our election to exercise our right to foreclose on your property. Upon acceleration your total obligation will be immediately due and payable without further demand. In foreclosure proceedings, we are entitled to collect your total arrearage in addition to any expenses of foreclosure, including but not limited to reasonable attorney's fees and costs. If your loan has already been accelerated and foreclosure proceedings already begun, we will continue the foreclosure action if possible. You have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure.

Ocwen Federal Bank FSB will work with bankruptcy lawyers, foreclosure defense lawyers, housing counselors and other authorized representatives of our customers. We will release information but will require written authorization as required by law.

After acceleration of the debt, but prior to foreclosure, you may have the right to reinstate the mortgage loan, depending on the terms of the note and mortgage. We encourage you to review the provisions of the note and mortgage. Please be aware that, after acceleration of the debt, there may be expenses and attorney's fees and costs incurred by Ocwen Federal to enforce the mortgage in addition to the overdue amount on the mortgage. Any payment to reinstate the mortgage loan after acceleration must therefore include an amount sufficient to cover such expenses and fees incurred. Payments received that are less than the amount required to reinstate the mortgage loan will be returned, and will not stop any foreclosure proceedings that have been begun. **PRIOR TO SUBMITTING PAYMENT, YOU MAY WISH TO CALL ME TO VERIFY THE EXACT AMOUNT DUE.**

A HUD counseling agency may be able to provide you with assistance. To locate the HUD approved counseling agency in your area, call the HUD Housing Counseling Service at (800) 569-4287 or consult HUD's website at www.HUD.gov

As a service for our valued customers to meet the needs of those who may feel overwhelmed by debt, Ocwen can provide you with contact information for qualified credit counselors. If you are experiencing financial hardship, credit counseling may be a way to manage your bills and help you get out of debt. Please note that credit counseling is a means to help control credit card and other unsecured debt. Enrolling in a credit counseling program will not lower your current mortgage payment or change your payment history.

National Foundation for Credit Counseling: 1-800-388-2227 www.NFCC.org

If you are unable to bring your account current, I urge you to call me immediately to discuss possible alternatives to foreclosure.

If you have the desire to remedy this situation we want to assist you in trying to reach that goal. Ocwen Federal Bank FSB would like to present you with some of the alternatives which you might have available regarding your delinquent mortgage loan. While our primary objective is the collection of past due amounts on your loan, we do want to work with you to find the best available alternative for you to bring your mortgage loan obligation current.

Yours truly,

ADDRESS WRITTEN CORRESPONDENCE TO:

Performing Collections Dept.
Ocwen Federal Bank FSB
P O Box 785055
Orlando, FL 32878-5055

Performing Collections Dept.
Collections Department
Toll Free Phone: 800-310-9229

Fax: 407-737-6300

PAYMENT REMITTANCE INFORMATION (always include Loan # 40789935 with your payment)

VIA Western Union Quick Collect

Code City **OCWEN**
Code State **FL**
Reference: Loan # 40789935
Attention: Collections Department

Overnight Address

Ocwen Federal Bank FSB
12650 Ingenuity Drive
Orlando, FL 32826
Attention: Collections Department

VIA Regular Mail

Ocwen Federal Bank FSB
PO Box 6440
Carol Stream, IL 60197-6440

Ocwen Federal Bank FSB is a debt collector attempting to collect a debt; and any information obtained will be used for that purpose.

DEMAND053

EXHIBIT B PAGE 2 OF 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

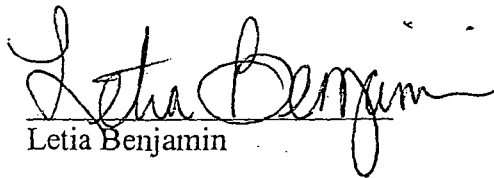
AFFIDAVIT

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

F25-02718

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

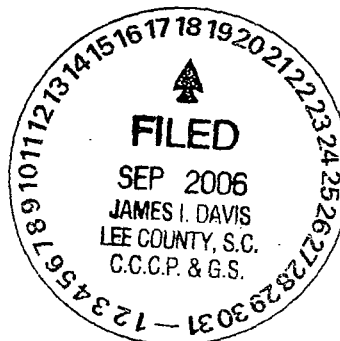
I am employed with LAB Financial Services and was the mortgage broker on this loan.
Attached is a copy of the attorney preference executed by Laura Toney when she applied for a
loan and the customer notes. The customer notes were kept in the ordinary course of business
and confirm that Laura Toney selected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


Letia Benjamin

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

(SEAL)
Notary Public for
My Commission Expires 8/24/06

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



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,

v.

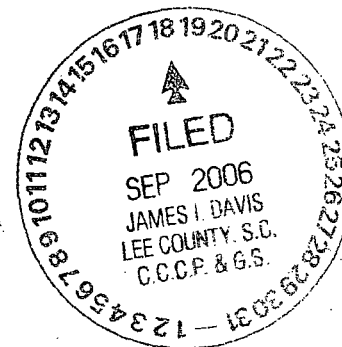
Laura Toney,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No. 2005-CP-31-169

AFFIDAVIT



STATE OF FLORIDA)
) ss.
COUNTY OF ORANGE)

Nichelle Jones, being duly sworn, deposes and states:

1. I am employed as a loan analyst at Ocwen Loan Servicing, LLC (Ocwen”), the servicer of Defendants’ loan.
2. I am over the age of 21, I am competent to and am authorized to make this affidavit, and I do so of my own personal knowledge.
3. The current holder of Defendant’s loan is 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”).

4. Attached to this Affidavit as Exhibit "A" and "B" are true and correct copies of two "Notice of Default" letters sent to Laura Toney on March 19, 2005 and April 15, 2005, respectively.

5. Defendant failed to make her payments on the Note in accordance with the terms of the Note, and is in default.

6. Under the terms of the Note, upon default the Plaintiff may accelerate and claim the entire indebtedness due. Plaintiff has accelerated the entire indebtedness and the entire amount of the Note is currently due and owing.

7. The Mortgage and other loan documents provide that upon acceleration of the Note, the Mortgage should be foreclosed upon pursuant to law.

8. The amount due and owing from the Defendant is \$88,596.94 as of September 6, 2006, plus interest thereafter at the rate described in the Note (currently \$17.51 per day), together with attorney fees, title costs, filing fees and other expenses or advances made by Plaintiff under the Note or Mortgage.

9. Defendant has failed to pay one third (1/3) of the original indebtedness.

10. Defendant has not made tender of sufficient and certified moneys to reinstate the loan.

11. There has not been an extension or renewal of this Note.

12. Plaintiff has not made any arrangement or agreement with the Defendants to delay the entry of judgment in this foreclosure proceeding.

Further Affiant sayeth not.

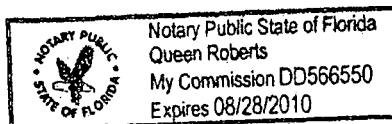
Nichelle Jones
Name: Nichelle Jones
Title: Loan Analyst

Subscribed and sworn to before me this 6th day of September, 2006.

Queen Roberts
Notary Public

My Commission Expires:

8/28/2010



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

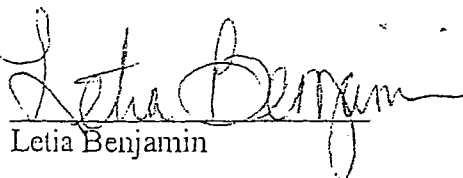
AFFIDAVIT

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
28 day of August, 2006

Notary Public for
My Commission Expires 8/24/06

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

Net Toney due to changes on
Insurance you need to sign
and fill in (attorney firm) 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 803-428-4420
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 Jana 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 Turberville Ins. Co. Inc.
INSURANCE AGENT'S NAME

X Jana 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

Customer Comments:

8-11-04 Customer does not want any attorney from Lee County. She doesn't want them in business. Gave Customer list. And she asked if I used any or list before. I told her I have used them all. Then she asked about the attorney in Columbia. She made choice.

8/11/05 Customer will call State farm in Orangeburg for Orangeburg property. Customer wants Turbeville Ins. Co. Bishopville. If State farm can't do her insurance. For now she chooses State farm until further changes. She will contact Mr. Wards at Turbeville + call me.

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Laura Toney,

PLAINTIFF,

vs.

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,

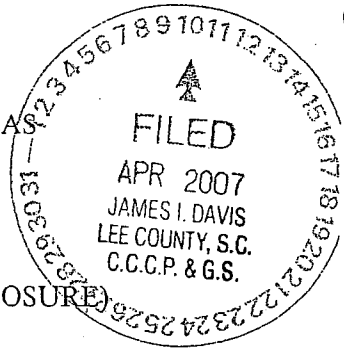
DEFENDANT(S).

F25-02718

IN THE COURT OF COMMON PLEAS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:2007-CP-31-66



AFFIDAVIT OF SERVICE BY MAIL

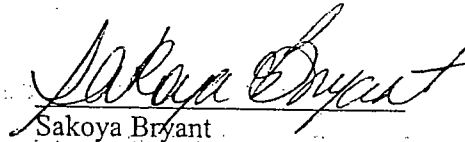
PERSONALLY appeared before me, the undersigned, who first being duly sworn, deposes and says:

I am an employee of the Korn Law Firm. A filed copy of the Order Dissolving Temporary Restraining Order was served upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

J. David Weeks, Esquire
P.O. Box 370
Sumter, SC 29151

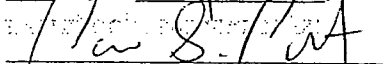
Joseph Henry, Esquire
1708-B Richland Street
Columbia, SC 29201

Nathaniel Roberson, Esquire
1708 Richland Street
Columbia, SC 29201


Sakoya Bryant

SWORN to before me this

9th day of Apr. 2007

, (SEAL)

Notary Public for South Carolina
My Commission Expires 10/9/2011

LETTERS

J. David Weeks
Willie H. Brunson

WEEKS LAW OFFICE
ATTORNEYS AT LAW
35 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
Telephone (803) 775-5856
Facsimile (803) 778-1365

P.O. Box 370
Sumter, SC 29151-0370

January 11, 2006

The Honorable James I. Davis
Clerk of Court
Post Office Box 387
Bishopville, SC 29010-0287

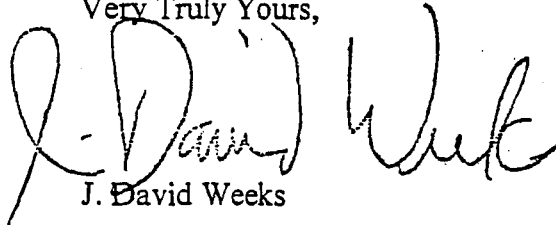
Re: LaSalle Bank v. Laura Toney
2005-CP-31-168

Dear Mr. Davis:

I am writing to inform the Court that Ms. Laura Toney has retained my office to represent her in this matter. Please forward any future correspondence to my office at Post Office Box 370, Sumter, SC 29151. By way of copy of this letter, I am notifying the attorney for the Plaintiff.

With warmest personal regards, I remain

Very Truly Yours,


J. David Weeks

JDW/dkk

cc:

H. Guyton Murrell, Esquire
Korn Law Firm, PA
PO Box 12369
Columbia, SC 29211

J. David Weeks
Willie H. Brunson

WEEKS LAW OFFICE, LLC
ATTORNEYS AT LAW
35 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
Telephone (803) 775-5856
Facsimile (803) 778-1365

P.O. Box 370
Sumter, SC 29151-0370

March 3, 2006

H. Guyton Murrell, Esquire
Korn Law Firm, PA
PO Box 12369
Columbia, SC 29211

VIA FAX: 803-252-5827

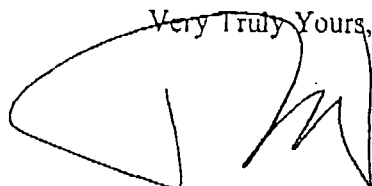
Re: LaSalle Bank v. Laura Toney
2005-CP-31-168

Dear Mr. Murrell:

Thank you for your extension to respond to the Request for Admission in the above matter until March 10, 2006.

With warmest personal regards, I remain

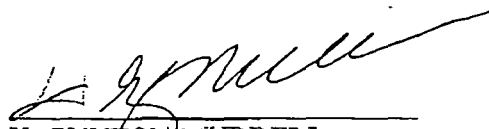
Very Truly Yours,



J. David Weeks

JDW/dkk

I AGREE:



H. GUYTON MURRELL

STATE OF SOUTH CAROLINA
COUNTY OF LEE
MASTER IN EQUITY FOR LEE COUNTY
P. O. BOX 106
BISHOPVILLE, SOUTH CAROLINA 29010
April 19, 2006

ROBERT D. JENNINGS
MASTER

TELEPHONE:
(803) 484-5454

TELEFAX:
(803) 484-6044

Ms. Kathryn Howell
Senior Paralegal
Korn Law Firm, P. A.
Attorneys at Law
PO Box 12369
Columbia, SC 29211

Re: LaSalle Bank National Association, et al
Vs. Laura Toney
2005-CP-31-169

Dear Ms. Howell:

I am returning to you the Order for Mandatory Reference in the above matter, as well as the check made payable to the Clerk of Court for the Master's Deposit as our office has a conflict with this matter.

Thank you, and with kind regards.

Yours truly,



Robert D. Jennings

RDJ/sh

Encs. As Stated

CC: Ms. Cheryl Watkins
Lee County Clerk of Court's Office

KORN LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS
POST OFFICE BOX 12369
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817
FACSIMILE (803) 252-5827
May 31, 2006

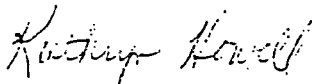
The Honorable James I. Davis
Clerk of Court
P. O. Box 387
Bishopville, SC 29010-0387

Re: LaSalle Bank National Association, as Trustee for registered holders of
Structured Asset Securities Corporation, Structured Asset Investment
Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 v. Laura
Toney
2005-CP-31-169

Dear Mr. Davis:

Enclosed please find an original and one copy of an Order for Mandatory Reference. This matter had previously been referred to Judge Jennings, but Judge Jennings advised us that he had a conflict. We have spoken with Judge Coffey and he has agreed to hear this matter. We have attempted to confer with opposing counsel, but have not been able to reach him. Please place the order before the Presiding Judge for signature and kindly return a clocked copy in the enclosed envelope. Thank you for your assistance and please do not hesitate to contact me if there are any questions.

Very truly yours,



Kathryn Howell
Senior Paralegal

cc: J. David Weeks, Esq.

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

August 25, 2006

Lee County Clerk of Court
P.O. Box 281
Bishopville, SC 29010

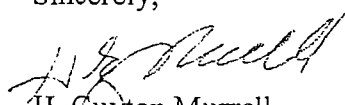
RE: LaSalle Bank v. Laura Toney
Docket No. 2005-CP-31-169
File No. F25-02718

Dear Sir or Madam:

Enclosed please find the original and one (1) copy of an Affidavit in the above noted matter. Please file the Affidavit and return a clocked copy to me in the enclosed envelope.

Thank you for your attention in this matter.

Sincerely,


H. Guyton Murrell

Cc:
David Weeks, Esquire

KORN LAW FIRM, P. A.
POST OFFICE BOX 12369
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817

September 15, 2006

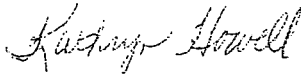
The Honorable James I. Davis
Clerk of Court
P. O. Box 387
Bishopville, SC 29010-0387

Re: LaSalle Bank National Association, as Trustee for registered holders of
Structured Asset Securities Corporation, Structured Asset Investment
Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 v. Laura
Toney
2005-CP-31-169

Dear Mr. Davis:

Enclosed please find an original and one copy each of three Affidavits. Please kindly return a clocked copy of each in the enclosed envelope. Thank you for your assistance and please do not hesitate to contact me if there are any questions.

Very truly yours,



Kathryn Howell
Senior Paralegal

cc: J. David Weeks, Esq.

KORN LAW FIRM, P. A.
POST OFFICE BOX 12369
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817

September 21, 2006

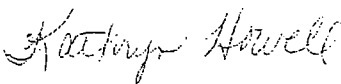
The Honorable James I. Davis
Clerk of Court
P. O. Box 387
Bishopville, SC 29010-0387

Re: LaSalle Bank National Association, as Trustee for registered holders of
Structured Asset Securities Corporation, Structured Asset Investment
Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 v. Laura
Toney
2005-CP-31-169

Dear Mr. Davis:

Enclosed please find an original and one copy each of the Memorandum of Law in
Support of Plaintiff's Motion for Summary Judgment. Please kindly return a clocked
copy in the enclosed envelope. Thank you for your assistance and please do not hesitate
to contact me if there are any questions.

Very truly yours,



Kathryn Howell
Senior Paralegal

cc: J. David Weeks, Esq.
The Hon. W. C. Coffey, Jr.

WEEKS LAW OFFICE
ATTORNEYS AT LAW
35 SOUTH SUMTER STREET
SUMTER, SOUTH CAROLINA 29150
Telephone (803) 775-5856
Facsimile (803) 778-1365

J. David Weeks
Willie E. Brunson

P.O. Box 370
Sumter, SC 29151-0370

September 27, 2006

The Honorable W. C. Coffey
Master In Equity, Clarendon County
Manning, South Carolina

VIA FAX: 803-435-8915

RE: LaSalle Bank v. Laura Toney

Dear Judge Coffey,

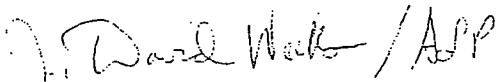
A Summary Judgment in the above referenced case is set to be heard by you on Thursday, September 28, 2006 at 2:00pm. I will not be able to argue the Motion at this time due to a personal medical situation that will have me out of the office for the remainder of the week. An Order of Protection from Judge Newman, the Chief Administration Judge for this Circuit, is forthcoming.

My situation will be resolved this week and if your Honor has time as early as Wednesday or Thursday of next week I would appreciate the matter being scheduled on one of those days if it meets the opposing party's schedule.

Opposing Counsel, Guyton Murrell, and I have been missing each other on the telephone. I am forwarding a copy of this letter to him.

With kindest regards, I am

Sincerely,



J. David Weeks

JDW/alp

Cc: Guyton Murrell, Esquire

WEEKS LAW OFFICE

ATTORNEYS AT LAW

35 SOUTH SUMTER STREET

SUMTER, SOUTH CAROLINA 29150

Telephone (803) 775-5856

Facsimile (803) 778-1365

J. David Weeks

Willie B. Brunson

P.O. Box 370

Sumter, SC 29151-0370

September 28, 2006

Kathryn Howell, Senior Paralegal

Korn Law Firm, P. A.

Post Office Box 12369

1300 Pickens Street

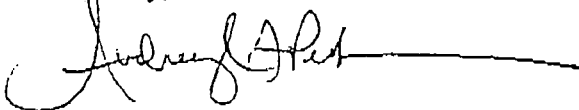
Columbia, South Carolina 29211-2369

Re: LaSalle Bank v. Laura Toney
2005-CP-31-169

Dear Ms. Howell,

I received your correspondence in regards to the rescheduling of the Summary Judgment in the above referenced matter to October 5, 2006. Please accept this letter as confirmation.

Sincerely,



Audrey L. F. Perkins
Legal Assistant

Cc: The Hon. W. C. Coffey, Jr.

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

February 28, 2007

The Honorable William C. Coffey, Jr.
8 South Brooks Street
Manning, SC 29102

RE: LaSalle Bank v. Laura Toney
Docket No. 2005-CP-31-169
File No. F25-02718

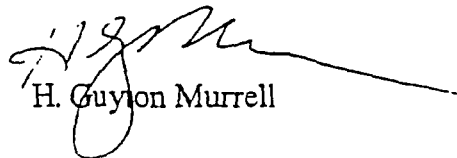
Dear Judge Coffey:

Enclosed please find the proposed Foreclosure Decree in the above noted case. I have also enclosed a copy of the transcript as well as a copy of the Order of the U.S. Bankruptcy Court confirming that no automatic stay is in effect. It is my understanding that Ms. Toney's Chapter 13 Bankruptcy has been dismissed and an Order of Dismissal is pending. If the Decree meets with your approval, please sign it and return it to me in the enclosed envelope.

I will forward the original Decree to the Lee County Clerk of Court for filing along with the original Transcript. As this is a foreclosure on property in Lee County, the sale will be performed by the Lee County Master-in-Equity. Your honor would reserve jurisdiction on any post-sale matters pursuant to the terms of the decree.

Thank you for your attention in this matter.

Sincerely,


H. Guyton Murrell

Cc:
J. David Weeks, Esquire
35 South Sumter Street
Sumter, SC 29150

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

March 8, 2007

The Honorable William C. Coffey, Jr.
8 South Brooks Street
Manning, SC 29102

RE: LaSalle Bank v. Laura Toney
Docket No. 2005-CP-31-169
File No. F25-02718

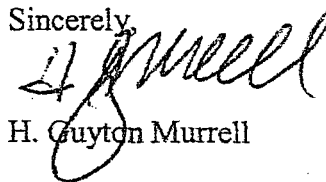
Dear Judge Coffey:

After initially agreeing to perform the foreclosure sale in the above noted matter, the Lee County Master-in-Equity has expressed a preference that the sale be performed by the Clerk of Court. Enclosed please find a revised Foreclosure Decree in the above noted case. If the Decree meets with your approval, please sign it and return it to me in the enclosed envelope. I received the previously signed Decree, but it has not been filed.

I will forward the revised Decree to the Lee County Clerk of Court for filing along with the original Transcript. Your honor would reserve jurisdiction on any post-sale matters pursuant to the terms of the decree.

Thank you for your attention in this matter.

Sincerely,



H. Guyton Murrell

Cc:
J. David Weeks, Esquire
35 South Sumter Street
Sumter, SC 29150

WILLIAM C. COFFEY, JR.
Master in Equity

May 21, 2007

H. Guyton Murrell, Esquire
Korn Law Firm, P.A.
P.O. Box 11264
1300 Pickens Street
Columbia, South Carolina 29211

~~X~~Mr. J. David Weeks, Esquire
P.O. Box 370
Sumter, South Carolina 29151

Mr. Joseph Henry, Esquire
1708-B Richland Street
Columbia, South Carolina 29201

Mr. Nathaniel Roberson, Esquire
1708 Richland Street
Columbia, South Carolina 29201

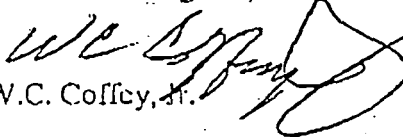
RE: LaSalle Bank v Laura Toney Docket No. 2005-CP-31-169
Your File F25-02718

Gentlemen:

As you may know, Ms. Laura Toney has filed a complaint against me with the Commission on Judicial conduct. I have responded to the complaint and I am waiting for the decision of the Commission.

Before I conduct a hearing on the Motion or take any further action, in this case I need to be aware of the Commissions decision. Therefore, in order for me to either continue to hear the case or recuse myself we must await the Commissions decision to conduct a hearing on your motions. As soon as I receive the Commissions response, I will be in touch with you.

With sincere regards,


W.C. Coffey, Jr.

WCCNB

P.O. Drawer 1292 • Manning, South Carolina 29102-1292

WILLIAM C. COFFEY, JR.
Master in Equity

July 26, 2007

H. Guyton Murrell, Esquire
Korn Law Firm, P.A.
P.O. Box 11264
1300 Pickens Street
Columbia, South Carolina 29211
Via Fax 803-252-5827

Mr. J. David Weeks, Esquire
P.O. Box 370
Sumter, South Carolina 29151
Via Fax 803-778-1365

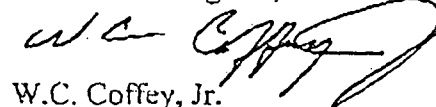
RE: LaSalle Bank v Laura Toney Docket No. 2005-CP-31-169

Dear Gentleman:

I have received, from David Weeks, a Motion for a Temporary Restraining Order in the above caption case. As stated in my letter dated May 21, 2007, Ms. Toney filed a complaint against me, with the Commission on Judicial Conduct. I have responded and am waiting on a written reply from the Commission.

I do not feel that I am in a position to conduct a hearing on any Motions or take further action in this case, until I receive the written decision of the Judicial Commission. Therefore, I suggest that the pending Motions be made before a Circuit Judge, and since Judge Newman heard an earlier Motion in the case, he would probably be willing to hear them.

With sincere regards,



W.C. Coffey, Jr.

WCC:lb

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

November 2, 2007

The Honorable Richard Booth
P.O. Box 2756
Sumter, SC 29151

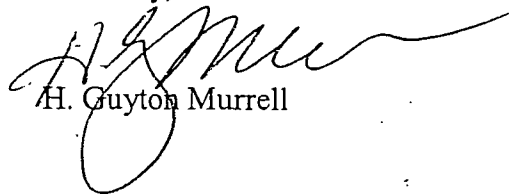
RE: LaSalle Bank v. Laura Toney
Docket No. 2005-CP-31-169
File No. F25-02718

Dear Judge Booth:

Enclosed please find the proposed Order as to Pending Motions and a Deficiency Judgment in the above noted case. If you have any questions or revisions, please do not hesitate to contact me.

Thank you for your attention in this matter.

Sincerely,



H. Guyton Murrell

cc:
David Weeks, Esquire
P.O. Box 370
Sumter, SC 29151

CERTIFICATES OF MAILING

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,

v.

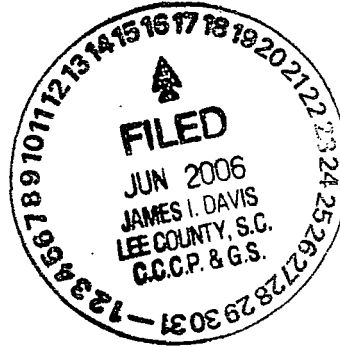
Laura Toney,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No. 2005-CP-31-169

CERTIFICATE OF MAILING



The undersigned hereby certifies that on May 31, 2006, she served a copy of the
an Order for Mandatory Reference upon the below listed parties or counsel by depositing
a copy in the United States Mail, postage prepaid, regular mail addressed as follows:

J. David Weeks, Esq.
35 South Sumter
Sumter, SC 29150

Kathryn Howell
Kathryn Howell

Dated: May 31, 2006
Columbia, SC

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,

v.

Laura Toney,

DEFENDANT(S).

F23-06439

IN THE COURT OF COMMON PLEAS

(NON-JURY MORTGAGE FORECLOSURE)

C/A No. 2005-CP-31-169

DEFICIENCY REQUESTED

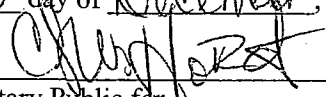
CERTIFICATE OF MAILING

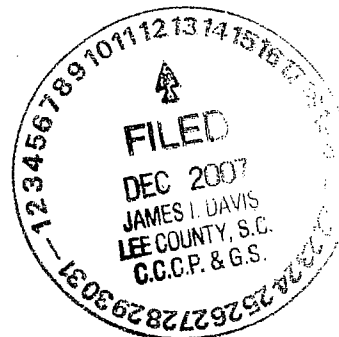
The undersigned hereby certifies that on December 10, 2007, she served one copy of
Order as to Pending Motion and Order for Deficiency Judgment upon the following by depositing
a copy of same in the United States Mail, postage prepaid, and addressed as follows:

J. David Weeks, Esquire
35 South Sumter Street
Sumter, SC 29150


Tammy Thompson, Paralegal

SWORN to before me this
10 day of December, 2007

 (SEAL)
Notary Public for
My Commission Expires 11-19-2017



TRANSCRIPTS

Page 1

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2)
 3 COUNTY OF LEE) C/A No. 05-CP-31-169
 4 LaSalle Bank National Association,)
 5 as Trustee for the registered)
 6 holders of Structured Asset)
 7 Securities Corporation, Structured)
 8 Asset Investment Loan Trust,)
 9 Mortgage Pass Through Certificates,)
 10 Series 2004-11,)
 11 Plaintiffs,)
 12 v.)
 13)
 14 Laura Toney,)
 15 Defendant.)

FORECLOSURE HEARING

Tuesday, February 6, 2007
 2:12 p.m. - 2:19 p.m.

The hearing before the Honorable William C.
 Coffey, Jr., Master In Equity for Lee County, was
 taken at the law offices of Coffey, Chandler & Kent,
 P.A., 8 South Brooks Street, Manning, South Carolina
 on the 6th day of February, 2007 before Margaret S.
 Smith, Court Reporter and Notary Public in and for
 the State of South Carolina.

Page 3

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

Page 2

1 APPEARANCES:
 2 Guyton Murrell, Esquire
 3 Korn Law Firm, P.A.
 4 1300 Pickens Street
 5 Columbia, South Carolina 29201
 6 Attorney for the Plaintiffs
 7 J. David Weeks, Esquire (Not Present)
 8 Attorney at Law
 9 35 South Sumter Street
 10 Sumter, South Carolina 29150
 11 Attorney for the Defendant

INDEX

11 Certificate 8
 12 EXHIBITS
 13 Plaintiff's Exhibit Number One 3
 14 (Notice of Hearing)
 15 Plaintiff's Exhibit Number Two 3
 16 (Bankruptcy 2006-53-81-DD)
 17 Plaintiff's Exhibit Number Three 3
 18 (Benjamin Affidavit)
 19 Plaintiff's Exhibit Number Four 3
 20 (Jones' Affidavit)
 21 Plaintiff's Exhibit Number Five 3
 22 (Adjustable Rate Note)
 23 Plaintiff's Exhibit Number Six 3
 24 (Mortgage)
 25 Plaintiff's Exhibit Number Seven 3
 (Assignment of Mortgage)
 Plaintiff's Exhibit Number Eight 3
 (HUD Settlement Statement)

Page 4

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 (Pages 1 to 4)

Page 5

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.

Page 6

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

Page 7

1 court?
 2 MR. MURRELL: No, Your Honor. I was uncertain as to
 3 who would be appearing. So, therefore, I would
 4 ask leave of court to submit a prepared order.
 5 JUDGE COFFEY: Okay. If you'd let it be shown,
 6 please, ma'am, that the defendant nor the
 7 defendant's attorney appeared at the hearing,
 8 and that they were given due notice of the
 9 hearing and failed to appear, and that the
 10 court now rules for the plaintiff in all
 11 particulars and awards attorney's fees once the
 12 affidavit of attorney's fees is submitted to
 13 me. And ...
 14 MR. MURRELL: And also note a copy to opposing
 15 counsel, as well.
 16 JUDGE COFFEY: Very good. I have nothing further to
 17 say on this.
 18 (There being no further testimony, the hearing
 19 concluded at 2:19 p.m.).

2 (Pages 5 to 7)

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 JENNINGS AS THE MASTER-IN-EQUITY FOR LEE COUNTY. THERE
2 SHOULD ALSO BE IN THE COURT RECORD A SUBSEQUENT LETTER
3 FROM JUDGE JENNINGS WHEREBY HE NOTIFIED ME THAT HE HAD A
4 CONFLICT. THAT LETTER IS DATED APRIL 19 OF 2006 WITH THE
5 CC TO THE LEE COUNTY CLERK OF COURT. AFTER ATTEMPTING TO
6 CONTACT HER ATTORNEY FOR A MONTH AND A HALF IN AN ATTEMPT
7 TO COORDINATE A SUBSEQUENT HEARING OFFICER BY LETTER DATED
8 MAY 31, 2006 I SUBMITTED AN ORDER OF REFERENCE TO THE
9 NEAREST MASTER-IN-EQUITY WITH A COPY GOING TO ATTORNEY
10 WEEKS, AND HAVING NO OBJECTION HEARD THE MATTER WAS
11 REFERRED TO JUDGE WEEKS -- EXCUSE ME; WAS REFERRED TO
12 JUDGE COFFEY, AND CONTRARY TO OBJECTING TO THE REFERENCE
13 ATTORNEY WEEKS MADE SEVERAL WRITTEN REQUESTS WHICH ARE
14 ALSO IN THE COURT RECORD TO HAVE THE CASE CONTINUED DUE TO
15 EYE SURGERY, AND I BELIEVE ONE OF THE LETTERS REFERENCED
16 GETTING AN ORDER OF PROTECTION FROM YOUR HONOR AS TO THE
17 TIME HE WAS OUT WITH THAT. I ALSO CONSENTED TO SEVERAL
18 CONTINUANCES DUE TO HIS SERVICE IN THE LEGISLATURE, AND
19 SUBSEQUENTLY THE CASE IN BETWEEN BOTH CONFLICTS WITH
20 MR. WEEKS'S OFFICE AND THE COURT BANKRUPTCY FILING BY
21 MS. TONEY WAS HEARD. PROPER NOTICE WAS PROVIDED TO HER --
22 TO HIM AS HER ATTORNEY AND THE COURT ENTERED JUDGMENT
23 THEREIN.

24 THE COURT: ALL RIGHT. MR. HENRY?

25 MR. HENRY: IN RESPONSE TO THE REFERENCE TO A

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 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 MAKE THE COURT AWARE OF THAT TERMINATION AND ASK THE COURT
2 THEN WHETHER OR NOT IT IS PERMISSIBLE.

3 THE COURT: AND WHEN WAS THAT DONE IN THIS CASE?
4 WHEN WAS THAT DONE IN THIS CASE?

5 MR. HENRY: I BEG THE COURT'S INDULGENCE. MS. TONEY
6 SAYS ABOUT TWO WEEKS AGO SHE TERMINATED MR. WEEKS.

7 THE COURT: TWO WEEKS AGO?

8 MR. HENRY: TWO WEEKS AGO.

9 THE COURT: ALL RIGHT.

10 MR. HENRY: NOW, PRIOR --

11 THE COURT: ALL RIGHT. LET ME HEAR FROM MR. MURRELL.

12 MR. MURRELL: THANK YOU, YOUR HONOR. I'LL TRY TO BE
13 BRIEF. IT IS SOMEWHAT DISINGENUOUS TO SAY THAT THE
14 FORECLOSURE IS A SEPARATE CASE BUT NOW THAT THE ATTEMPT TO
15 STOP THE FORECLOSURE SALE IS A SEPARATE MATTER. NOT ONLY
16 IS THERE THE SALE TO PERFORM BUT ALSO THE DEFICIENCY
17 JUDGMENT THAT RESULTS, AND AS THE COURT HAS TAKEN JUDICIAL
18 NOTICE OF THE MATTERS OF PUBLIC RECORD THERE IS A PREVIOUS
19 CASE WHEREBY MS. TONEY LITIGATED WITH THE PRIOR MORTGAGE
20 LENDER. SO, EVERYBODY THAT SAT DOWN AT CLOSING -- BECAUSE
21 YOU HAVE TO DO A TITLE SEARCH FOR CLOSING -- KNEW THAT
22 THIS WAS A CASE WHERE THEY NEEDED TO BE EXTRA CAREFUL.
23 EVERY CASE SHOULD, OBVIOUSLY, PERFORM ALL OF THE DUTIES
24 THAT YOU HAVE INVOLVED. EVERYONE WAS CERTAINLY ON NOTICE
25 IN THIS CASE.

1 SHE COMMENCED A STREAM OF PAYMENTS AND THEN SHE STOPPED
2 MAKING THOSE PAYMENTS, AND THEN AT SOME POINT IN THE
3 FUTURE WELL BEYOND THE TIME PERIOD PROVIDED ATTEMPTED TO
4 NO LONGER PERFORM UNDER THE LOAN, AND I WOULD DIRECT YOUR
5 HONOR'S ATTENTION TO THE CASELAW WHICH IS RECITED IN THE
6 FORECLOSURE DECREE BUT SPECIFICALLY THE DICTUM REGARDING
7 THE REGION'S BANK VERSUS SHUMACH CASE. ONCE THE PARTY
8 MOVING FOR SUMMARY JUDGMENT MEETS THE INITIAL BURDEN OF
9 SHOWING AN ABSENCE OF EVIDENTIARY SUPPORT FOR THE
10 OPPONENT'S CASE, THE OPPONENT CANNOT SIMPLY REST ON MERE
11 ALLEGATIONS OR DENIALS CONTAINED IN THE PLEADINGS. THAT'S
12 PRECISELY WHAT THIS IS, YOUR HONOR. REGARDLESS OF WHAT
13 THE RECORD SHOWED, REGARDLESS OF WHAT THE EXECUTED
14 DOCUMENT SHOWED, ALL MS. TONEY HAS EVER DONE IS HAD MERE
15 DENIALS WHICH HAVE BEEN COMPLETELY REFUTED BY THE
16 EVIDENCE.

17 AS TO THE ISSUE OF REFERENCE AT THE BEGINNING OF THIS
18 ARGUMENT, I WOULD, AGAIN, DIRECT YOUR HONOR'S ATTENTION TO
19 THE LETTER OF APRIL 19, 2006 WHEREBY JUDGE JENNINGS
20 INFORMED ME HE HAD A CONFLICT. I GENERALLY DO NOT SEE
21 THAT AS A SITUATION WHERE I HAVE TO ARGUE WITH THE JUDGE
22 OF WHETHER HE HAS A CONFLICT. IT'S CERTAINLY INCUMBENT
23 UPON ATTORNEYS AND MEMBERS OF THE JUDICIARY IF THEY FEEL
24 THEY HAVE A CONFLICT TO NOTIFY THE PARTIES AND NOT PROCEED
25 IN THE MATTER. OPPOSING COUNSEL MENTIONED THAT SUMTER OR

1 FLORENCE WOULD HAVE BEEN MORE APPROPRIATE. FLORENCE
2 DOESN'T HAVE A SITTING MASTER-IN-EQUITY. SUMTER HAD A
3 SITTING MASTER-IN-EQUITY WHO WAS UNDER SUSPENSION AND
4 ATTORNEY DICK BOOTH HAD NOT BEEN APPOINTED AS INTERIM
5 MASTER-IN-EQUITY AT THAT POINT. CLARENDON COUNTY HAD THE
6 NEAREST MASTER-IN-EQUITY AVAILABLE. AGAIN, THIS IS A
7 MATTER I ATTEMPTED FOR A MONTH AND A HALF WITH PREJUDICE
8 TO MY CLIENT IN DELAYING THE CASE TO COORDINATE WITH OTHER
9 COUNSEL BUT COULD NOT GET ANY RESPONSE. THEREFORE, WITH
10 NOTICE TO OPPOSING COUNSEL I SUBMITTED AN ORDER OF
11 REFERENCE.

12 YOUR HONOR, IT'S CLEAR IN THIS CASE THAT MY CLIENT
13 HAS PROVEN HIS RIGHT TO PROCEED IN THE FORECLOSURE ACTION.
14 THIS IS NOT A PROPER PROCEEDING TO NOW ATTEMPT TO
15 RELITIGATE ALL OF THE ISSUES BECAUSE THEY'RE NOT HAPPY
16 WITH THE RESULT THAT WAS ACHIEVED IN THE FORECLOSURE CASE.
17 I WOULD READ JUST VERY BRIEFLY FROM THE LANE FEDERAL
18 CREDIT UNION VERSUS BAILEY CASE WHICH IS CITED IN THE
19 FORECLOSURE BRIEF BY WHICH THE SUPREME COURT ADOPTED THE
20 PRINCIPAL OF JUDICIAL ESTOPPEL. ALTHOUGH PARTIES MAY
21 VIGOROUSLY ASSERT THEIR VERSION OF THE FACTS THEY MAY NOT
22 MISREPRESENT THOSE FACTS IN ORDER TO GAIN ADVANTAGE IN THE
23 PROCESS. THE DOCTRINE THUS PUNISHES THOSE WHO TAKE THE
24 TRUTH-SEEKING FUNCTION OF THE SYSTEM LIGHTLY. WHEN A
25 PARTY HAS FORMALLY ASSERTED A CERTAIN VERSION OF THE FACTS

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 TO THIS COURT THAT YOU WERE HIRING AN ATTORNEY TO
2 REPRESENT YOU?

3 A YES.

4 Q AND YOU SUBSEQUENTLY DID NOT GET AN ATTORNEY TO
5 REPRESENT YOU?

6 A I DID NOT GET AN ATTORNEY BECAUSE THE CASE WAS
7 DISMISSED.

8 Q BUT THE DISMISSAL WAS BECAUSE YOU DIDN'T GET AN
9 ATTORNEY TO REPRESENT YOU?

10 A NO. THE DISMISSAL WAS BECAUSE -- I DON'T KNOW. I
11 CAN'T REMEMBER THE LANGUAGE, BUT IT WAS NOT BECAUSE I DID
12 NOT GET AN ATTORNEY.

13 THE COURT: ALL RIGHT.

14 Q DESPITE WHAT THE FEBRUARY 15TH ORDER SAYS?

15 THE COURT: ALL RIGHT. JUST HOLD ON.

16 (WHEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

17 THE COURT: MA'AM, YOU'RE REPRESENTED BY COUNSEL HERE
18 TODAY. SO YOU MUST ONLY RESPOND THROUGH COUNSEL.

19 MR. HENRY: YOUR HONOR, I BELIEVE THAT'S ALL WE HAVE.

20 THE COURT: ALL RIGHT. Y'ALL HAVE A LOT OF ISSUES.

21 FIRST, ON THE ISSUE OF CHANGE OF ATTORNEY I WILL POINT OUT
22 TO RULE 11B WHICH SAYS THAT AN ATTORNEY MAY BE CHANGED BY
23 CONSENT OR UPON CAUSE SHOWN AND UPON SUCH TERMS AS SHALL
24 BE JUST UPON APPLICATION BY ORDER OF THE COURT AND NOT
25 OTHERWISE. WRITTEN NOTICE OF CHANGE OF ATTORNEY MUST BE

1 SERVED AS PROVIDED BY RULE FIVE. I FIND THAT THAT RULE
2 HAS NOT BEEN COMPLIED WITH REGARDING COUNSEL IN THIS
3 MATTER. DESPITE THAT FACT, HOWEVER, WE WILL NEVERTHELESS
4 PROCEED WITH THIS MATTER.

5 RULE 53C SAYS THAT ONCE REFERRED THE MASTER OR
6 SPECIAL REFEREE SHALL EXERCISE ALL POWER AND AUTHORITY
7 WHICH A CIRCUIT JUDGE SITTING WITHOUT A JURY WOULD HAVE IN
8 A SIMILAR MATTER, AND UNDER SECTION E IS WHEN A MATTER HAS
9 BEEN REFERRED ANY APPEAL FROM ANY ORDER OF JUDGMENT ISSUED
10 BY A MASTER OR SPECIAL REFEREE SHALL BE TO THE SUPREME
11 COURT OR COURT OF APPEALS AS PROVIDED BY THE SOUTH
12 CAROLINA APPELLATE RULES.

13 SO, IN THIS SITUATION WE HAVE A MORTGAGE FORECLOSURE
14 ACTION, AND THE MATTER WAS REFERRED INITIALLY BY ME TO
15 JUDGE JENNINGS, THE MASTER-IN-EQUITY HERE IN LEE COUNTY.
16 HE INFORMED THE COURT THAT HE HAD A CONFLICT. THEN JUDGE
17 TOMMY COOPER REFERRED THE MATTER TO JUDGE COFFEY. NOW,
18 WHEREAS I CERTAINLY HAVE A PROBLEM WITH ANY HEARING
19 INVOLVING A FORECLOSURE MATTER BEING CONDUCTED OUTSIDE OF
20 THE COUNTY AND I MAKE IT A CONDITION OF ANY REFERENCE THAT
21 I SIGN THAT THE HEARING BE DONE INSIDE THE COUNTY, THIS IS
22 A REFERENCE MADE BY ANOTHER CIRCUIT JUDGE -- JUDGE
23 COOPER -- WITHOUT ANY LIMITING LANGUAGE. THE MATTER WAS
24 REFERRED TO WILLIAM COFFEY AND JUDGE COFFEY SITS WITH THE
25 SAME POWER AND AUTHORITY OF A CIRCUIT COURT JUDGE.

1 NOW, RULE 12 OF THE RULES OF PROCEDURE PROVIDES THAT
2 EVERY DEFENSE IN LAW OR FACT TO A CAUSE OF ACTION IN ANY
3 PLEADING WHETHER CLAIM, COUNTERCLAIM, CROSS CLAIM, OR
4 THIRD PARTY CLAIM SHALL BE ASSERTED AND THE RESPONSIVE
5 PLEADING THERETO IF ONE IS REQUIRED EXCEPT AS TO THE
6 FOLLOWING DEFENSES MAY HAVE THE OPTION OF THE PLEADING MAY
7 BE MADE BY MOTION AND THAT IS A MOTION TO DISMISS OR WHERE
8 THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES
9 FOR THE SAME CLAIM AND THAT HAS NOT BEEN FORMALLY RAISED,
10 BUT IT SHOULD NOT BE DIFFICULT FOR THE PARTIES TO
11 UNDERSTAND THAT YOU CANNOT HAVE TWO CASES GOING INVOLVING
12 THE SAME PARTIES AND THE SAME ISSUES IN TWO SEPARATE
13 COURTS.

14 I HAVE HAD A CHANCE TO REVIEW THE FILE -- FORECLOSURE
15 FILE FOR THIS HEARING -- AND I FIND THAT THE FORECLOSURE
16 FILE INVOLVES THE SAME PARTIES AND THE SAME ISSUES AND ALL
17 OF THOSE ISSUES WERE REFERRED TO WILLIAM COFFEY AND AS
18 SUCH THAT JUDGE COFFEY IS THE JUDGE WHO HAS JURISDICTION
19 OVER THIS MATTER AND NOT ME. I ALSO NOTE THAT A NOTICE OF
20 MOTION AND MOTION TO ALTER OR AMEND THE VERDICT PURSUANT
21 TO RULE 59E WAS FILED IN THE LASALLE BANK VERSUS TONEY
22 CASE ON MARCH 23 THE SAME DAY THAT THE ORDER GRANTING THE
23 TEMPORARY RESTRAINING ORDER WAS SIGNED BY ME. THE BASIS
24 OF THE ORDER THAT I SIGNED INDICATED VARIOUS FINDINGS
25 CONCERNING THE PLAINTIFF'S ENHANCED RIGHT OF RESCISSION

1 AND ALSO BASED ON REPRESENTATION OF HER BEING INVOLVED IN
2 BANKRUPTCY PROCEEDING THAT MAY HAVE INVOLVED HER HAVING AN
3 AUTOMATIC STAY. ALL OF THOSE ISSUES ARE ISSUES THAT IS
4 PART AND PARCEL OF THE CASE PENDING BEFORE JUDGE COFFEY,
5 AND, THEREFORE, I'M DISSOLVING AND RESCINDING THE ORDER
6 THAT I SIGNED GRANTING THE TEMPORARY RESTRAINING ORDER.
7 ANYTHING ELSE?

8 MR. MURRELL: YOUR HONOR, I'LL BE HAPPY TO DRAFT THE
9 PROPOSED ORDER WITH A COPY TO ATTORNEY HENRY AS WELL AS A
10 COPY TO ATTORNEY WEEKS.

11 THE COURT: ALL RIGHT. IF YOU'LL DO THAT I
12 APPRECIATE IT.

13 (WHEREUPON, THE HEARING WAS CONCLUDED.)
14
15
16
17
18
19
20
21
22
23
24
25

)
) IN THE COURT OF COMMON PLEAS
) Case No. 2005-CP-31-169

HEARING

-VS-

Defendant.

COPY

Missy A. Graczyk
Court Reporter

176

1 JUDGE BOOTH: Okay. Well, his was filed or
2 signed on April 2. Mr. Murrell, what's your
3 position on this one -- you understand what
4 I'm --

5 MR. MURRELL: Yes, Your Honor, I do.

6 JUDGE BOOTH: I'm not trying to reach any
7 excusable neglect arguments here as much as I am
8 the substance of the Rule 59 allegation that
9 there was a stay in place. To me, there either
10 was or there wasn't.

11 MR. MURRELL: That's precisely my point,
12 Your Honor. There is no gray area in Bankruptcy
13 as to a stay. A stay is a drastic remedy that
14 can be imposed by the Bankruptcy Court, and it's
15 typically one that's imposed in your first
16 Bankruptcy. This was Ms. Toney's fourth Chapter
17 13 Bankruptcy within the space of nine months.
18 There was no stay in effect under the revision to
19 the bankruptcy rules that were specifically
20 adopted to prevent exactly this type of behavior
21 of repetitive bad faith filing. Ms. Toney knew
22 that there was no stay in effect, because she had
23 filed an explicit motion asking the Court to
24 impose a stay. The decision by the Court was
25 that they would not grant her request to impose a

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

1 gather, and then another bankruptcy was filed
2 after that?

3 MR. MURRELL: A Chapter 13 was filed after
4 that, Your Honor -- Chapter 7, I'm sorry.

5 JUDGE BOOTH: And then, there is a followup
6 order on May 15, which was the dismissal of the
7 Chapter 7.

8 MR. MURRELL: Correct, Your Honor, and there
9 was also a filing of bad faith in that case, and
10 a ban was imposed as to filing for bankruptcy
11 relief under any chapter for the term of one
12 year.

13 JUDGE BOOTH: Okay. So, I'm seeing recited
14 in this subsequent order of Judge Waites, the
15 May 15 order, that the debtor filed her pending
16 case under Chapter 7 on April 13, 2007, and by
17 letter of April 16 asked the Court to dismiss the
18 case. The Court also concludes it was in bad
19 faith, etc., and so on. And that's where she had
20 the Chapter 7 case dismissed with prejudice to
21 bar a refiling under any Bankruptcy Court for a
22 period of one year. So, we have a dismissal of
23 the fourth bankruptcy, which was a Chapter 13
24 case, on February 26. We have the ruling of the
25 Court filed on March 15, which was the

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

1 foreclosure decree, basically. And then we have
2 a subsequent bankruptcy filed on April 13 and
3 dismissed on May 15. So, it just seems to me
4 that the chronology of bankruptcy filings and
5 their subsequent dismissals, basically there was
6 a gap between the end of the fourth bankruptcy
7 and the filing of the fifth bankruptcy at which
8 time the decree of foreclosure was actually
9 signed and entered.

10 MR. MURRELL: Correct, Your Honor.

11 JUDGE BOOTH: And so, on the Rule 59 motion
12 that the Plaintiff was in Bankruptcy Court at the
13 time of the hearing --

14 MR. MURRELL: Your Honor, I didn't think it
15 relevant, because the February 26 order disposed
16 of the case and imposed the stay, but there was
17 initially an order filed February 15 by Judge
18 Waites which specifically denied Ms. Toney's
19 request for the filing of a, for the imposition
20 of a stay. The Court held off on dismissing her
21 case based upon her representations that she was
22 going to retain legal counsel, and so--

23 JUDGE BOOTH: That was a February 15 order.

24 MR. MURRELL: That's correct. I have a copy
25 of that, which I'd like to retain a copy, because

Missy Graczyk, Court Reporter
128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

1 Clerk of Court. So, due to Ms. Toney's timing
2 with her grievance, the Court had ruled upon the
3 issue, and the sale was pending with the Clerk of
4 Court. She intervened with the newspaper to have
5 my publication canceled, which stopped the first
6 sale, and then I explained to --

7 JUDGE BOOTH: You mean, just unilaterally--

8 MR. MURRELL: Unilaterally, without any
9 notice to me. I found out when the last
10 publication did not run. We -- subsequently, the
11 sale did take place, and although I certainly
12 intended, both in this case and in all cases, to
13 have any motions disposed of prior to the sale,
14 unfortunately, due to her filing of the grievance
15 against Judge Coffey, he could not and would not
16 hear the motions because of the pending
17 grievance. So the sale took place, and the
18 motion has been pending since that time.

19 JUDGE BOOTH: But, I guess the real issue is
20 not what should have happened, as far as
21 determining a temporary restraining order,
22 there's nothing left to determine. There's
23 nothing left to restrain.

24 MR. MURRELL: I believe it's moot at this
25 point.

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

1 JUDGE BOOTH: I mean, that's not to say
2 there might not be some relief of the motion.
3 I'm just saying as far as the temporary
4 restraining order itself, you can't restrain
5 something that's already happened.

6 MR. WEEKS: Right. I mean, that's the whole
7 point. I mean, our whole point was, you know, we
8 wanted to stop the proceeding before it got to
9 that point, and it didn't happen. Now, we don't
10 think the proceeding --

11 JUDGE BOOTH: That's not to say the merits
12 that you were arguing on the temporary
13 restraining order themselves are moot. I'm just
14 saying as far as there being an open request for
15 a TRO, there's nothing left to R.

16 MR. WEEKS: I think there is one issue. The
17 property is for sale; I understand there's a for
18 sale sign in front of the house. I honestly
19 think that until we get some disposition of this
20 whole matter, that even the idea of trying to
21 sell the property --

22 JUDGE BOOTH: But I mean, the arguments you
23 would have raised on your temporary restraining
24 order, if you had had a forum to do so, are
25 basically the same arguments you're intending to

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

1 raise under your Rule 60 motion here today,
2 aren't they?

3 DEPONENT: Very similar, yes, sir.

4 JUDGE BOOTH: So, it's not like we're losing
5 any right for you to argue anything by merely
6 acknowledging there's nothing left to argue about
7 a temporary restraining order.

8 MR. WEEKS: Right, I understand what you're
9 saying, Your Honor.

10 JUDGE BOOTH: Okay. Well, I think what I'm
11 going to do on that just to dispose of that is
12 just to acknowledge that by some inadvertence on
13 the part of the sales officer that the action
14 that was attempting to be restrained in the
15 temporary restraining order took place, and I
16 don't think, it doesn't sound like anybody did so
17 out of some effort to circumvent motions that
18 were in place. There has just been an
19 unfortunate coincidence of events that made it
20 not addressed, but the arguments that would have
21 been advanced for the temporary restraining order
22 have not been lost, or nor are you estopped from
23 presenting them for after the fact relief. So,
24 I'm just going to dispose of the temporary
25 restraining order by saying that it's dismissed,

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

1 still outstanding, that that issue should have
2 been given precedent and priority, and a
3 resolution of that issue should have been put in
4 place, because any rulings by the
5 Master-in-Equity on any of these issues,
6 particularly on the Motion for Summary Judgment,
7 would be determined by that. I mean, the whole
8 proceedings, of course, would have been stopped
9 at that point, and of course, this was an
10 attempt, I guess, to try to get this even before
11 there was an actual hearing and an order issued
12 by the Judge in the bankruptcy action.

13 MR. MURRELL: I'd object to that statement.

14 JUDGE BOOTH: Noted.

15 MR. WEEKS: It's without a doubt that the
16 15th is when the actual order was issued in the
17 Bankruptcy Court, and at that point, my client
18 was made aware at that time that she didn't have
19 a stay. But you know, at that point, it was too
20 late. It had already gone through, and there was
21 an issue at that point. Now, we get to the
22 issue, Judge, of this Rule 60, and there's a
23 question about the hearing which took place on
24 that particular day. Judge, I think there's an
25 affidavit that was attached to my motion where

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 749-9008 * courtreporter@sc.rr.com * Mobile (803) 528-0022

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,

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 749-9008 * courtreporter@sc.rr.com * Mobile (803) 528-0022

47
1 but that there had not been a specific request to
2 continue the hearing. I know we had continued
3 the hearing several times--

4 MR. WEEKS: Twice before. The first hearing
5 was in September when I had some LASIK surgery on
6 my eyes. The second time it was scheduled for
7 October, and at that time, we couldn't go forward
8 because of the first bankruptcy that was filed by
9 Ms. Toney. There were some questions about the
10 automatic stay and whether or not the bankruptcy
11 itself stopped the action.

12 MR. MURRELL: You're talking about the
13 April 25 motion, correct?

14 MR. WEEKS: Right. You said it had been
15 scheduled a couple of times--

16 MR. MURRELL: Well no, I mean, obviously, I
17 know that you're in the legislature, and I have
18 kids, so if someone has a medical issue or a
19 court issue or something like that, but this is
20 the entire of what I received which is the
21 April 25 Notice of Motion and Motion for
22 Reconsideration--

23 MR. WEEKS: Right.

24 MR. MURRELL: --and it's the motion and a
25 Request for Hearing cover sheet and a Certificate

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 749-9008 * courtreporter@sc.rr.com * Mobile (803) 528-0022

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 749-9008 * courtreporter@sc.rr.com * Mobile (803) 528-0022

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

BANKRUPTCY DOCUMENTS

In re

Laura ANN Toney
Debtor

Case No.

06-05381-DD
(If known)**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	0			
2. Checking, savings or other finan- cial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and home- stead associations, or credit unions, brokerage houses, or cooperatives.	0			
3. Security deposits with public util- ities, telephone companies, land- lords, and others.	0			
4. Household goods and furnishings, including audio, video, and computer equipment.	✓	Personal Property		50,000.00
5. Books, pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.	✓			
6. Wearing apparel.	✓			
7. Furs and jewelry.	✓			
8. Firearms and sports, photo- graphic, and other hobby equipment	0			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	0			
10. Annuities. Itemize and name each issuer.	0			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Rule 1007(b)).	0			



In re _____
Debtor

Case No. 06-05381-00
(If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	0			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	0			
14. Interests in partnerships or joint ventures. Itemize.	0			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	0			
16. Accounts receivable.	0			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	0			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	0			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	0			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	0			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	0			

In re _____
Debtor

Case No. 06-05381-DD
(If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	INDIVIDUAL, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	0			
23. Licenses, franchises, and other general intangibles. Give particulars.	0			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	0			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		→ 1989 Mercedes		3,000.00
26. Boats, motors, and accessories.		1999 Ford F150 Truck		9,000.00
27. Aircraft and accessories.				
28. Office equipment, furnishings, and supplies.				
29. Machinery, fixtures, equipment, and supplies used in business.				
30. Inventory.				
31. Animals.				
32. Crops - growing or harvested. Give particulars.				
33. Farming equipment and implements.				
34. Farm supplies, chemicals, and feed.				
35. Other personal property of any kind not already listed. Itemize.				
_____ continuation sheets attached Total				\$ 12,000.00

(Include amounts from any continuation
sheets attached. Report total also on
Summary of Schedules.)

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

IN RE:

Laura Ann Toney,

Debtor(s).

C/A No. 07-00234-JW

Chapter 13

ORDER

FILED

at _____ min. _____ AM
FEB 15 2007

United States Bankruptcy Court
Columbia, South Carolina 29201

FEB 15 2007

L.O.

This matter comes before the Court upon a Motion to Impose Stay (the "Motion") filed by Laura Ann Toney ("Debtor") pursuant to 11 U.S.C. § 362(c)(4)(B).¹ The Chapter 13 Trustee, Countrywide Home Loans, Inc., and Speedee Cash each filed an objection to the Motion. The United States Trustee and Chase Home Finance each made an oral objection to the Motion at the hearing.

Debtor filed three Chapter 13 bankruptcy cases during 2006 before she filed this current case. In all cases, Debtor has been *pro se*. Debtor filed her first Chapter 13 case (C/A No. 06-03028-jw) on July 20, 2006. The first case was dismissed for failure to appear at the § 341 meeting of creditors. On September 29, 2006, Debtor filed a second Chapter 13 case (C/A No. 06-04333-dd). Debtor's second case was dismissed for failure to file schedules, statements, and/or her Chapter 13 plan. On November 27, 2006, Debtor filed her third Chapter 13 case (C/A No. 06-05381-dd). Debtor's third case was also dismissed for failure to file schedules, statements, and/or her Chapter 13 plan. Debtor filed the present case on January 17, 2007.

Because Debtor was involved in three bankruptcy cases that were pending and dismissed during the one year period preceding the filing of this current case (C/A No. 07-00234-jw), the stay provided by § 362(a) did not go into effect when Debtor filed this

¹ Internal references to the Bankruptcy Code (11 U.S.C. § 101 et. Seq.), as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be made by section number only.

current case. 11 U.S.C. § 362(c)(4)(B). Under § 362(c)(4)(D)(i)(I), there is a presumption that Debtor did not file this case in good faith. In light of this presumption, Debtor must demonstrate, by clear and convincing evidence, that she filed this case in good faith in order to have the automatic stay imposed in this case. 11 U.S.C. § 362(c)(4)(B). In instances arising under § 362(c)(4), where a debtor had pending two or more cases within the year which were dismissed, the substantial change in circumstances must occur since the dismissal of the next most recent case. In re Ray, No. 06-01920-JW, slip. op. at 2 (Bankr. D.S.C. May 26, 2006).

Apparently, Debtor's first Chapter 13 case failed because she failed to attend her first meeting of creditors. Debtor asserts that she attempted to attend the meeting of creditors, but was unable to attend due to car trouble. Debtor's second case was dismissed for failure to timely file Schedules A through J, Statement of Financial Affairs, Statement of Income Calculation, payment advices, Statement of Increased Income/Expenses, Chapter 13 Plan and Pro se Statement of Assistance. Debtor asserts that she timely mailed these documents to the clerk of court, but due to circumstances beyond her control, the documents failed to arrive in time to be filed. Debtor's third case was dismissed for failure to file her Pro se Statement of Assistance. Debtor asserts that she thought she had included this document when she filed her schedules. The court's records indicate that she was later contacted by court personnel and advised that the Pro Se Statement of Assistance was due, but she failed to comply. To further support her claim that she has filed this case in good faith, Debtor asserts that she has recently contacted an attorney, who will take her case if it is not dismissed.

Debtor can overcome the presumption that this case was filed not in good faith by presenting clear and convincing evidence that she had a substantial excuse for her failure to file the required documents in her previous case under § 362(c)(4)(D)(i)(II). Debtor's previous cases have all been dismissed for failure to comply with the Bankruptcy Code, Rules of Bankruptcy Procedure or Local Bankruptcy Rules. Debtor has presented a series of excuses for the dismissal of her prior cases. Even if substantial excuses existed for the failure to file the required documents in Debtor's first two cases, Debtor's only explanation for her failure to file this document in her next most previous case is that she thought she had filed it with her other documents. Mere inadvertence or negligence is not a substantial excuse. See §362(c)(4)(D)(i)(II). This Court previously stated in In re Maret, No. 96-72959-W, slip. op. at 5 (Bankr. D.S.C. Sept. 8, 1996):

"Although a debtor is free to represent [herself] in [her] bankruptcy case, that choice does not excuse the debtor from complying with the requirements of the Bankruptcy Code, the Bankruptcy rules, and the Local Rules. As one court stated: 'Once Debtor determined to represent herself pro se she undertook the responsibility to comply with the relevant rules of procedural and substantive law ... and, therefore, she is to be graced with no special treatment as a reward for her decision to represent herself.' In re Kleinman, 136 B.R. 69, 71 (Bkrty. S.D.N.Y. 1991). See Hughes v. Ruffin (In re Ruffin), No.94-1795-19 BC, slip. op. at 3 (D.S.C. Nov. 28, 1994); In re Clawson, No. 92-72412 (Bkrty. D.S.C. Feb. 7, 1995)."

Moreover, when a serial filer offers a series of excuses for the dismissal of each case, the Court will weigh the excuses presented against the prejudice caused to creditors from the automatic stay and the failure of the cases to reach confirmation.

Debtor can also overcome the presumption that this case was filed not in good faith by presenting clear and convincing evidence that there has been a substantial change in her financial or personal affairs since the dismissal of the next most previous case under § 362(c)(4)(D)(i)(III). The only change in circumstances that Debtor has asserted

is that an attorney has agreed to take her case if it is allowed to continue. A comparison of Debtor's personal and financial situation in her third case with her personal and financial situation in the current case does not indicate a substantial change in circumstances. Since the filing and dismissal of Debtor's third case, Debtor's employment has not changed. Furthermore, Debtor's monthly net income has not materially changed. Debtor's proposed plan payments have also decreased from \$300.00 per month in her previous case to \$250.00 in this current case. This case is also the fourth case filed by Debtor within the past six months in order to stay the foreclosure of her home, which is a strong indication that this case was filed in bad faith. Debtor has presented no other evidence giving the Court reason to believe that Debtor can fully perform a confirmed plan in this case.

In light of the totality of the circumstances attendant in this case, Debtor has failed to demonstrate, by clear and convincing evidence, that she filed this current case in good faith.² There are also procedural defects associated with the filing of the Motion: Debtor failed to file the Motion with her bankruptcy petition pursuant to Local Bankruptcy Rule 4001-1(c)(2)³ and Debtor failed to serve all creditors with the Motion pursuant to Local Bankruptcy Rule 4001-1(b)(2). Therefore, it is hereby

ORDERED that Debtor's Motion to Impose the Stay is denied. As a condition for allowing this case to continue, it is further ordered that any dismissal of this case shall be

² The Court's findings are limited to the context of this Motion and nothing in this Order shall be construed as res judicata to prevent Debtor, the trustee, or any party in interest from challenging or establishing that this case or plan was filed or proposed in good faith for purposes of 11 U.S.C. §§ 1307 or 1325. *See In re Charles*, 332 B.R. 538, 542 (Bankr. S.D. Tex. 2005) (holding that Congress, by enacting § 362(c)(3), intended the courts to conduct an early triage of a case and determine whether a case is doomed to fail or whether a case has a reasonable likelihood of success.)

³ Debtor's current petition for bankruptcy was filed on January 17, 2007. Debtor's Motion was not filed until January 23, 2007. Under Local Bankruptcy Rule 4001-1(e), the Court may strike or deny the Motion for failure to comply with the provisions of this local rule.

with prejudice to prohibit Debtor from filing a case under Chapters 11, 12, and 13 of the Bankruptcy Code for a period of one (1) year from the date of dismissal.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
February 15, 2007

FILED
at _____ O'clock & _____ min. _____ M
FEB 26 2007

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

United States Bankruptcy Court
Columbia, South Carolina (26)

ENTERED

IN RE:

C/A No. 07-00234-JW

Laura Ann Toney,

Chapter 13

FEB 26 2007

Debtor(s).

ORDER

L.O.

This matter comes before the Court upon a Rule to Show Cause (the "Rule") requiring Laura Ann Toney ("Debtor") to appear and show cause why she has engaged in repetitive bankruptcy filings. Debtor filed the present case, *pro se*, on January 17, 2007. Debtor serially filed three Chapter 13 bankruptcy cases during 2006 before she filed this current case. Debtor filed her first Chapter 13 case (C/A No. 06-03028-jw) on July 20, 2006. The first case was dismissed for failure to appear at the § 341 meeting of creditors. On September 29, 2006, Debtor filed a second Chapter 13 case (C/A No. 06-04333-dd). Debtor's second case was dismissed for failure to timely file Schedules A through J, Statement of Financial Affairs, Statement of Income Calculation, payment advices, Statement of Increased Income/Expenses, Chapter 13 Plan and Pro se Statement of Assistance. On November 27, 2006, Debtor filed her third Chapter 13 case (C/A No. 06-05381-dd). Debtor's third case was dismissed for failure to file her Pro se Statement of Assistance, as required by local rules.

Debtor appeared at the hearing on the Rule and provided explanations for the failure of her previous cases. With respect to her first case, Debtor asserts that she attempted to attend the meeting of creditors, but was unable to attend due to car trouble. Debtor asserts that she timely mailed the required documents in her second case to the clerk of court, but due to circumstances beyond her control, the documents failed to arrive in time to be filed. As to her third case, Debtor asserts that she thought she had included her Pro se Statement of Assistance when she

filed her schedules. She also asserted that she has filed each of her bankruptcy cases to save her home from foreclosure.

Debtor's serial filing of four cases in the past six months is suspect and may indicate abuse of the bankruptcy process. Under § 362(c)(4)(D) there is a presumption of bad faith filing when Debtor has had two or more previous bankruptcy cases pending within the past year. This Court has found that the lack of good faith in filing a chapter 13 case can constitute cause to dismiss the case. In re Harris, No. 06-05030-jw, slip. op. at 3 (Bankr. D.S.C. Dec. 28, 2006). As a serial filer, Debtor has the burden to show a substantial change of circumstances since the prior dismissal and that the current case is filed in good faith. Id. at 3-4; In re Hartlev, 187 B.R. 506 (Bankr. D.S.C. 1995). To determine whether Debtor's fourth filing is filed in good faith, the Court will examine the following non-exclusive factors: Debtor's past bankruptcy filings, which includes a determination of whether Debtor has experienced a change in circumstances warranting a fourth filing; the time elapsed between the third and fourth filing; Debtor's pre-petition behavior; and the effect of Debtor's repeated filings on creditors. In re Brown, No. 03-07515, slip. op. at 4 (Bankr. D.S.C. Sept. 26, 2003).

Debtor's past bankruptcy filings are a relevant factor in determining whether Debtor's current case is filed in good faith. Debtor must prove with detailed testimony and convincing evidence that she is entitled to a fourth opportunity to file a bankruptcy petition. In re Marett, No. 96-75003, slip. op. at 14 (Bankr. D.S.C. Nov. 14, 1996). A substantial change in circumstances between the last filed case and the pending case may demonstrate that the current case was filed in good faith. Id. In response to Debtor's motion to impose the automatic stay, this Court previously analyzed whether Debtor had rebutted the presumption that the case was filed not in good faith by showing either a substantial excuse for her failure to file documents in her previous

cases under § 362(c)(4)(D)(i)(II) or showing a substantial change in Debtor's financial or personal affairs since her next most previous case. The Court found that Debtor presented no persuasive evidence of either a substantial excuse for her failure to file documents or a substantial change in circumstances. The Court denied Debtor's motion to impose the stay and found that Debtor failed to demonstrate, by clear and convincing evidence, that she filed this current case in good faith.

Another factor to be considered is the period of time that elapsed between the dismissal of Debtor's third case and the filing of the fourth case. Debtor's third case was dismissed on January 2, 2007. The current case was filed fifteen days later on January 17, 2007. The close proximity in the dismissal of Debtor's previous case and filing of the current case is evidence of a lack of good faith.

The pre-petition conduct of Debtor is also a factor to be examined. In re Brown, No. 03-07515-W, slip.op. at 6 (Bankr. D.S.C. Sept. 26, 2003). Prior to filing her current case, Debtor filed three chapter 13 bankruptcy cases in a six month period. Debtor informed the Court that she filed these cases to stop the foreclosure of her home. Although filing bankruptcy to save a home from foreclosure is not *per se* bad faith, a debtor's proclivity for repeatedly filing to stave off foreclosure can be considered as evidence of bad faith. In re Casse, 219 B.R. 657, 661 (Bankr. E.D.N.Y. 1998). Serial bankruptcy filings that are designed solely to delay creditors by imposing the automatic stay without benefiting creditors in any way are an abuse of the bankruptcy laws. Id.

The Court will also consider the effect of Debtor's fourth filing on her creditors. Debtor has repeatedly filed bankruptcy to frustrate or delay enforcement of her secured creditors' foreclosure rights. These creditors have incurred additional costs as a result of being unable to

complete their foreclosure proceedings. Two such creditors appeared at the hearing and supported dismissal. The prejudice caused to the creditors in this case weighs heavily in favor of a finding that Debtor filed her current case with a lack of good faith.

Finally, the Court finds that all parties had adequate notice of the probability of dismissal of the case as a result of repetitive filings; however, if Debtor seeks to continue this case despite the Court's prior ruling that denied the imposition of the stay, thereby allowing secured creditors to continue foreclosure, Debtor may file a written objection to dismissal with the Court within ten (10) days. In the event of a timely objection, the Court may issue a further order with or without a hearing.

For the foregoing reasons, the Court finds that Debtor filed her fourth bankruptcy in bad faith and that cause exists to dismiss the case with prejudice to bar a refiling under Chapters 11, 12 or 13 of the Bankruptcy Code for a period of one (1) year. Therefore, it is hereby

ORDERED that Debtor's Chapter 13 case be dismissed subject to the Court retaining jurisdiction to consider dismissal with prejudice and other sanctions pursuant to 11 U.S.C. § 105, 28 U.S.C. § 1927, and this Court's inherent authority to regulate litigants and address improper conduct.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
February 26, 2007

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE

Laura Ann Toney

DEBTOR(S).

CHAPTER 13

CASE NO. 07-00234W

ORDER CONFIRMING TERMINATION OF AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(j)

As the filing of the within case occurred within one year of the dismissal of the three previous cases filed by the Debtor, pursuant to 11 U.S.C. 362(e)(4)(A)(i), the automatic stay did not go into effect upon the filing of the present case.

The Debtor has not filed a motion to impose the automatic stay as required by 11 U.S.C. §362(c)(4)(b) and Local Rule of Bankruptcy Procedure 4001-1(c).

NOW THEREFORE, IT IS ORDERED that the motion to confirm termination of the automatic stay pursuant to 11 U.S.C. § 362(j) filed by Speedee Cash is granted, permitting Speedee Cash to pursue collection attempts against the Debtor's 1997 Ford Explorer, VIN #1FMDU32P1VUA15202.

The claimant agrees to waive any claim that may arise under 11 U.S.C. Section 503(b) or Section 507(b) as a result of this Order. The claimant further agrees that any funds realized from the sale of the collateral, in excess of all liens, costs, and expenses, will be paid to the Trustee.

FILED

2:00 clock & min. M

MAR 27 2007

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

IN RE:

Laura Ann Toney,

Debtor(s)

C/A No. 07-00234-JW

Chapter 13

AMENDED ORDER DISMISSING
CASE WITH PREJUDICE

By Order entered February 26, 2007, this case was dismissed for repetitive filing in bad faith. The Court found that cause existed to dismiss the case with prejudice, but provided Debtor with the opportunity to file a written objection to the dismissal with the Court within ten days. Having received no written objection from Debtor, it is hereby

ORDERED that Debtor's Chapter 13 case is dismissed with prejudice to bar a refiling under Chapters 11, 12, or 13 of the Bankruptcy Code for a period of one (1) year.

AND IT IS SO ORDERED.

Columbia, South Carolina
March 27, 2007


UNITED STATES BANKRUPTCY JUDGE

ENTERED

MAR 27 2007

L.O.

FILED

it _____ O'clock & _____ min _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

MAY 15 2007

United States Bankruptcy Court
Columbia, South Carolina

In re:

Laura Ann Toney,

Debtor.

Case No. 07-01978-DD
Chapter 7

ENTERED

MAY 15 2007

KRW.

ORDER DISMISSING CASE WITH PREJUDICE

This proceeding is before the Court on the motion of the debtor to dismiss this case. The United States Trustee (UST) objected to the debtor's motion. The debtor failed to appear at the hearing on the motion. The UST and the attorney for LaSalle Bank National Association appeared at the hearing and recommended that any dismissal be with prejudice for one year.

The debtor, acting *pro se*, has now filed five bankruptcy cases in only nine months. In the debtor's most recent previous case, Case No. 07-00234-JW, this Court found that the debtor had filed her case in bad faith and dismissed the case with prejudice, prohibiting her from refiling under chapters 11, 12 or 13 for a period of one year.¹ The debtor filed her pending case under chapter 7 on April 13, 2007, and by letter dated April 16, 2007, asked the court to dismiss the case. The Court concludes that this case was also filed in bad faith. The debtor has failed to file schedules and statements or to attend and submit to questions under oath at the meeting of creditors as required by the Bankruptcy Code. The debtor also failed to attend the hearing on her motion. It is, therefore

¹ The Court's order finding bad faith and dismissing Case No. 07-00234-JW was entered on February 26, 2007. The order was amended by a subsequent order entered on March 27, 2007, prohibiting the debtor from refiling under chapters 11, 12, or 13 for one year.

ORDERED that the debtor's case is dismissed with prejudice to bar a refiling under any chapter of the Bankruptcy Code in any district for a period of one (1) year from the entry of this order.


John E. Waites
U.S. Bankruptcy Court Judge
District of South Carolina

5/15/07
Date

NOTICES OF HEARING

KORN LAW FIRM, P. A.
POST OFFICE BOX 12369
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817

September 28, 2006

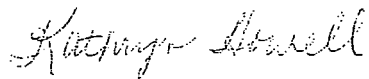
J. David Weeks, Esq.
Weeks Law Office
35 South Sumter Street
Sumter, SC 29150

Re: LaSalle Bank v. Laura Toney
2005-CP-31-169

Dear Mr. Weeks:

Please be advised that the hearing on Plaintiff's Motion for Summary Judgment is scheduled to be heard on October 5, 2006, at 2:15 p.m. before the Honorable W. C. Coffey, Jr., 8 South Brooks Street, Manning, SC 29102.

Very truly yours,



Kathryn Howell
Senior Paralegal

cc: The Hon. W. C. Coffey, Jr.

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

January 24, 2007

J. David Weeks, Esquire
35 South Sumter Street
Sumter, SC 29150

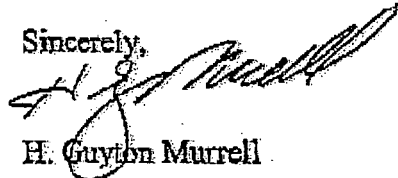
RE: LaSalle Bank v. Laura Toney
Docket No. 2005-CP-31-169
File No. F25-02718

Dear Sir:

Please be advised that a hearing has been set in the above-referenced matter before the Honorable William C. Coffey, Jr., Master in Equity on February 6, 2007 beginning at 2:00 p.m. at 8 South Brooks Street, Manning, South Carolina. Please contact our office at 803-252-5817 if you plan to attend the hearing. Thank you.

Thank you for your attention in this matter.

Sincerely,



H. Guyton Murrell

Cc:
The Honorable William C. Coffey, Jr.
8 South Brooks Street
Manning, SC 29102



CERTIFICATE OF SERVICE

FILED DECEMBER 12, 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,

v.

Laura Toney,

DEFENDANT(S).

F23-06439

IN THE COURT OF COMMON PLEAS

(NON-JURY MORTGAGE FORECLOSURE)

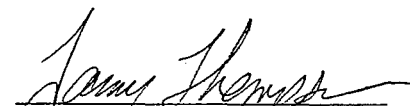
C/A No. 2005-CP-31-169

DEFICIENCY REQUESTED

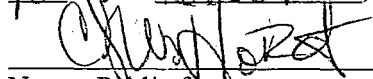
CERTIFICATE OF MAILING

The undersigned hereby certifies that on December 10, 2007, she served one copy of
Order as to Pending Motion and Order for Deficiency Judgment upon the following by depositing
a copy of same in the United States Mail, postage prepaid, and addressed as follows:

J. David Weeks, Esquire
35 South Sumter Street
Sumter, SC 29150

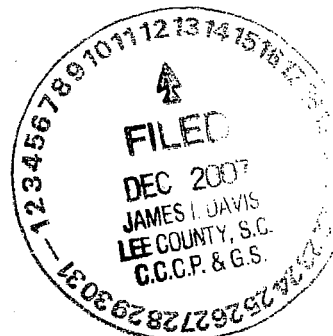

Tammy Thompson, Paralegal

SWORN to before me this
10 day of December, 2007

 (SEAL)

Notary Public for

My Commission Expires 11-19-2017



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)

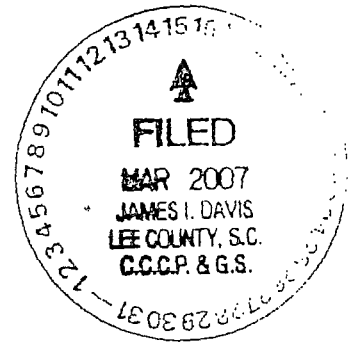
C/A NO:2005-CP-31-169

DEFICIENCY REQUESTED

F25-02718

TO:

Korn Law Firm, P.A.
Attorney for Plaintiff



Pursuant to Rule 53 SCRPC, 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.

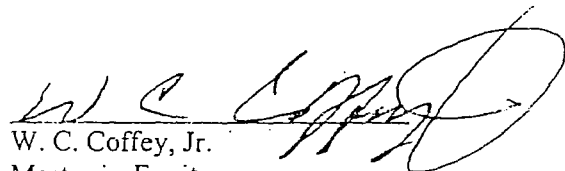
This conveyance is made subject to any and all existing reservations, easements, right-of-way, zoning ordinances, and restrictive or protective covenants that may appear of record or on the premises.

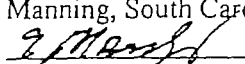
This being the same property most recently to Laura Toney by deed from Milton Toney dated December 4, 1992 and recorded December 4, 1992 in Book V-5 at page 205 in the Lee County, South Carolina Records.

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

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).

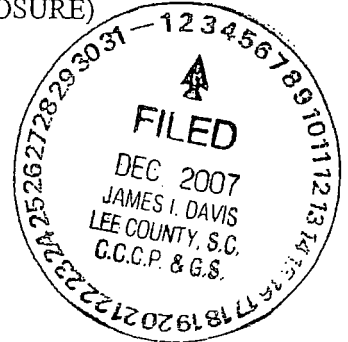
IN THE COURT OF COMMON PLEAS

**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

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

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), SCRPC 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.

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,

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

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

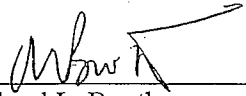
subsequent deficiency judgment should be supplemented to include the fees and costs incurred by Plaintiff in the subsequent injunction action.

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.

IT IS SO ORDERED.



Richard L. Booth
Special Referee herein

Sumter, South Carolina
11/27, 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

ORDER FOR DEFICIENCY JUDGMENT

(NON-JURY
FORECLOSURE)

MORTGAGE

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

DEFICIENCY REQUESTED

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

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 *Mictronics, 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 *Mictronics*. 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 Mictronics, 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-cr-31-169

(Please Print) J. Scott Walls
Submitted By: Korn Law Firm, PA
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	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Battery/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☒ Foreclosure (420)
☐ General (130)	☐ Other (299)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)		☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Other (399)	☐ Building Code Violation (460)
			☐ Other (499)
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Penden (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ 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

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)

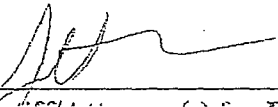
CERTIFICATE OF EXEMPTION
FROM ADR

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

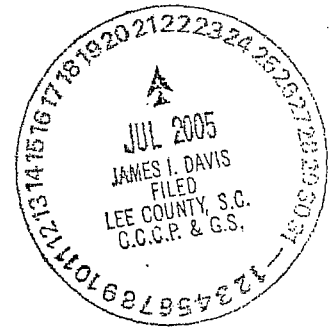
IN THE COURT OF COMMON PLEAS

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.

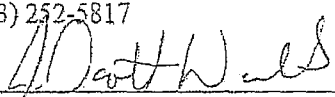
KORN LAW FIRM, P.A.

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

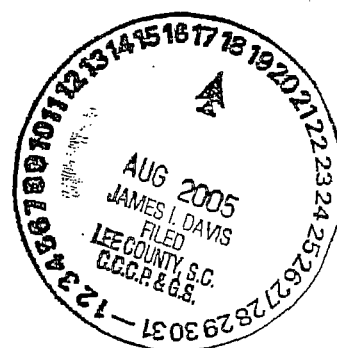
1. The amount of the debt is stated in paragraph 7 of the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, 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

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



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.

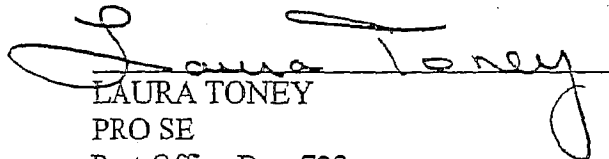
21. That the Plaintiffs did not provide Defendant an opportunity to select the representative of her choice to act in her behalf at the closing of the loan.

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 (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 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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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,

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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,

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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 recision, 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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(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.

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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.

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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 rescission 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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

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

Missy Graczyk, Court Reporter

128 Laurel Branch Way * Columbia, South Carolina 29212
(803) 528-0022 * MissyCR@bellsouth.net

EXHIBIT #1

LETTER OF RESCISSION

June 14, 2005

P.O. Box 722
Bishopville, SC 29010

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

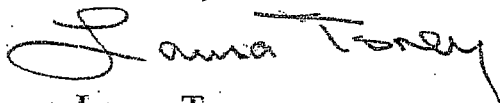
RE: Loan Number: 0040789935/ Laura Toney/ 251-11-6990
Property Location: 729 Chatmon Street, Bishopville, SC

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 sr)

PS Form 38

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

JUN 16 2005

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 lab)

7004 2510 0006 1747 2314

PS Form 3811, February 2004

Domestic Return Receipt

102505-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

TOM NELSON

JUN 16 2005

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

05



EXHIBIT #6

AFFIDAVIT OF CHERYL SCOTT JONES

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION 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)

Plaintiff,

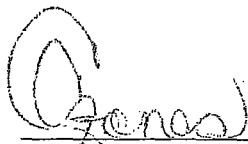
vs.

Laura Toney

Defendant.

**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

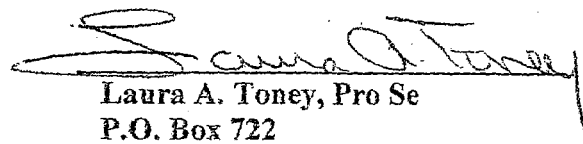

Laura A. Toney, Pro Se
P.O. Box 722
Bishopville, SC 29010

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".

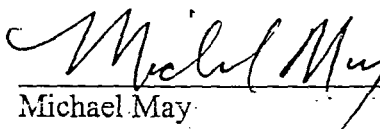
I reviewed and explained with Laura Toney the documents that needed to be executed to complete the loan closing. I specifically reviewed and explained the Good Faith Estimate of Charges with Laura Toney and provided her a copy of the document at closing. I personally witnessed Laura Toney sign the Good 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

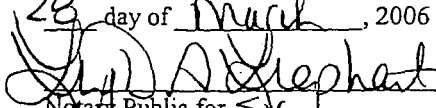
SWORN to before me this
28 day of March, 2006
 (SEAL)
Notary Public for S.C.
My Commission Expires 2.22.15

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 2004-11,

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S),

IN THE COURT OF COMMON PLEAS

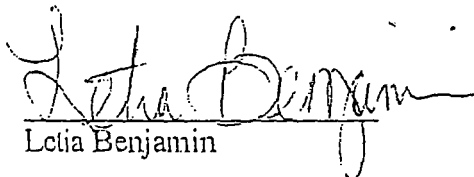
AFFIDAVIT

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

_____, (SEAL)
Notary Public for
My Commission Expires 8/24/06

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



EXHIBIT #10

ATTORNEY PREFERENCE DISCLOSURES

2.

Money 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 Datchford & Mays
ATTORNEY'S NAME

X Laura 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 Tinswelle Ins. Co. - Inland
INSURANCE AGENT'S NAME

X Laura 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

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 29010-1115

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

Date

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.

TRUE 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.: 0000789935
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.
0 means estimate

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

LAURA TONEY
LAURA TONEY

10-6-04
BORROWER DATE

BORROWER DATE

BORROWER DATE

BORROWER DATE

GOOD FAITH ESTIMATE - RESPA

LENDER: Finance America LLC
ADDRESS: 16802 Aston Street, Irvine, CA 92606

Prepared 10/06/2014
Sales price N/A

APPLICANT(S): LAURA TONEY

PROPERTY

ADDRESS: 729 CHATMAN ST
BISHOPVILLE, SC 29010-1215

☐ FHA ☐ VA ☐ FIMA ☒ CONV.

LOAN AMOUNT \$76,500.00 RATE 8.365% INTEREST

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 (8.365 %) 20 days @ 17.78 /day	\$355.60
801	* ORIGATION 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.

is mortgage broker, and

☐ 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 LAURA TONEY DATE

APPLICANT DATE

APPLICANT DATE

APPLICANT DATE

S designates those costs to be paid by Seller.

117/1196142 (page)
ARBH1

ELECTRONIC LENDER FORMS, INC. (800)327-0545

I. Settlement Charges			Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. TOTAL SALES/BROKER'S 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 <9350.00>		*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		695.00
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 @	17.78	/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)		365.00
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		400.00
(includes above items numbers:				
1108. Title insurance	to	Investors Title		217.50
(includes above items 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; Release				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 this HUD - 1 Settlement Statement.

Borrower

Laura Toney

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.

20040661

EXHIBIT A PAGE 2 OF 2

EXHIBIT #12
FORGERY REPORT



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



DIPLOMATE AMERICAN BOARD
OF FORENSIC DOCUMENT EXAMINERS

AMERICAN ACADEMY
OF
FORENSIC SCIENCES

MARVIN H. DAWSON, JR.
FORENSIC DOCUMENT EXAMINER

December 12, 2007

AMERICAN SOCIETY
OF
QUESTIONED DOCUMENTS EXAMINERS

SOUTHEASTERN ASSOCIATION
OF FORENSIC DOCUMENT EXAMINERS

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.

When fundamental differences are observed that cannot be attributed to the reproduction process, such as basic divergences in size and proportions of letters, placement on the signature line, writing style and slant; a conclusion of non-authorship may be rendered.

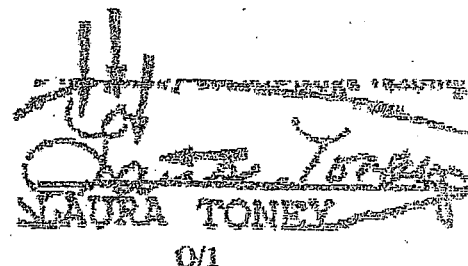
Examination and Findings

The aforesaid documents were examined in this laboratory on December 10 & 11, 2007. Comparison charts were prepared as part of the examination. Copies of these charts are included in this report for ease of reference.

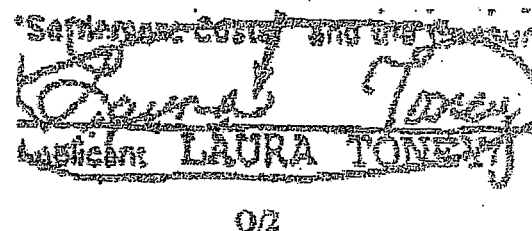
A detailed examination was undertaken and included microscopic examination of the questioned "Laura Toney" signatures appearing on Exhibits Q/1 thru Q/4 and undisputed signatures attributed to Laura A. Toney (K/1). An examination of the signatures "Laura Toney" where they appear on Exhibit Q/1 - Q/4 are inconsistent with the formatting, signature style and other handwriting characteristics found in the specimen signatures attributed to K/1 (Laura A. Toney). In particular:

L-a-u-r-a

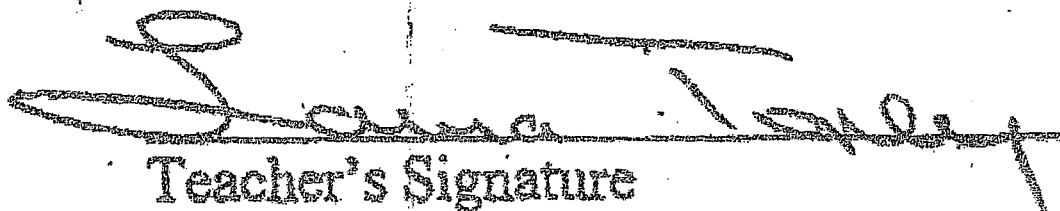
1. The upper loops of the questioned "L" are round - the known are elongated. The initial stroke of the "L" is long. The known are short.
2. The questioned "a" are vertical and pointed at the seven o'clock position.
3. The "a" is larger in height ratio than the following lower case letter forms. The known "a" is equal to all other lower case.
4. The terminal stroke of the known "a" is short; while the questioned terminal is long.



Q/1



Q/2



Teacher's Signature

K12 Lee County School District Memorandum (machine copy) 04-22-05

T-o-n-e-y

5. The questioned "Toney" is vertical or slightly slanted to the right, the specimen exhibits a left slant.
6. The crossbar of the questioned "T" is curved, the specimen exhibits a *retrace* and horizontal stroke.
7. The questioned "o" is angular, the known oblong.
8. The questioned "n" exhibits an extended initial stroke, the specimen does not.
9. The questioned "e" is closed, the specimen "e" is open.
10. The questioned "y" exhibits a *deep bowl*, the specimen bowl is *wide and shallow*. The lower extender of the questioned is curved, the specimen is straight.

Laura Toney
BORROWER'S SIGNATURE

Q/3a

Laura Toney
BORROWER'S SIGNATURE

Q/3b

Laura Toney
BORROWER'S SIGNATURE

Q/4a

Laura Toney
BORROWER'S SIGNATURE

Q/4b

Laura A. Toney
Employee's Signature

KL1 Lee County School District Statement of Physical and Mental Fitness

Laura A. Toney
2909P 2234 70000090042

KL5 Ch #2234 (machine copy) 06-18-94

Laura A. Toney
(Employee)

KL9 Lee County School District Contract 04-26-99

Examination Results

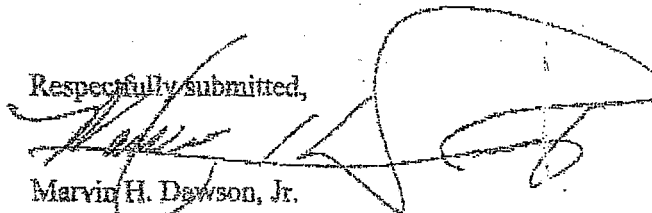
Examination and comparison of questioned "Laura Toney" signatures appearing on Exhibit Q/1 thru Q/4 in conjunction with specimen signatures attributed Laura A. Toney (K/1) leads to the following conclusion:

There is a strong probability the writer of the K/1 specimen signatures, Laura A. Toney, *did not* execute the questioned "Laura Toney" signatures appearing on Exhibits Q/1, Q/2, Q/3 and Q/4.

Remarks

1. The above is qualified upon the examination of original inked signatures.
2. All exhibits are being returned with this report.

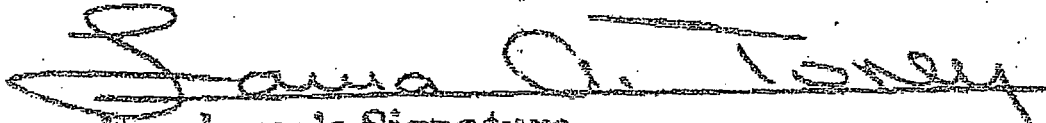
Respectfully submitted,



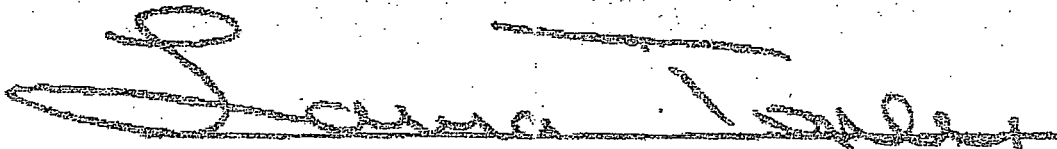
Marvin H. Dawson, Jr.
Forensic Document Examiner
Dawson Questioned Document Laboratory, LLC

Enclosures as noted above

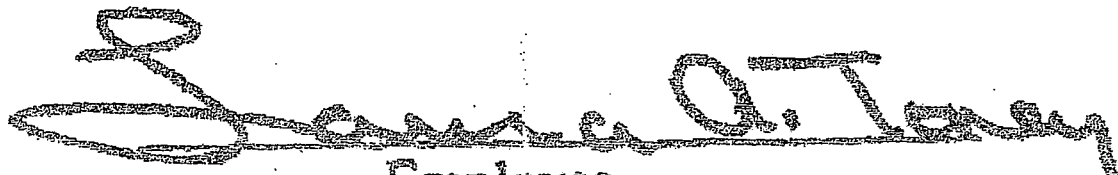
SPECIMEN SIGNATURES (K/1)


Employee's Signature

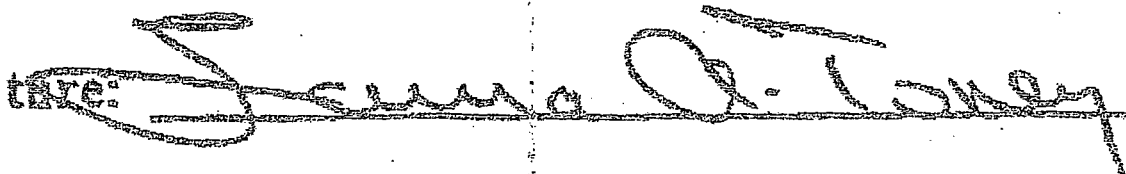
K1.1 Lee County School District Statement of Physical and Mental Fitness
(machine copy) 04-25-05


Teacher's Signature

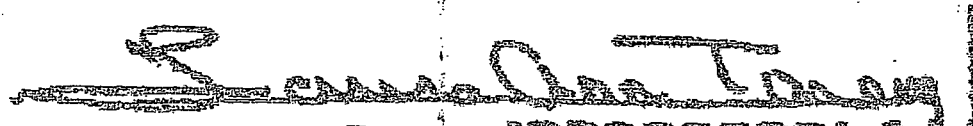
K1.2 Lee County School District Memorandum (machine copy) 04-22-05


Employee

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


Signature:

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

7701-5-4309 CC \$500.00
James A. Toney
 44009# 2030

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

James A. Toney
 44009# 2223 #0000014000#

K1.7 Ck # 2223 (machine copy) 06-12-04

James A. Toney
 44009# 1637 #0000007134#

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

James A. Toney
 44009# 1583 #0000012444#

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

James A. Toney
 (Employee)

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

27011-4909 CC 150000
 4909 2030

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

4909 2223 00000014000

K1.7 Ck # 2223 (machine copy) 06-12-04

4009 1237 0000007134

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

44009 1583 0000001244

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

James A. Toney
 (Employee)

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

LENDER OR LENDER'S AGENT:

LAB FINANCIAL SERVICES

(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

☒ Preliminary ☐ Final

DATE: 8-4-07

LOAN NO: 00000301

Type of Loan: Conventional

BORROWER: LAURA TONEY
729 CHATMAN STREET
BISHOPVILLE, SC 29010

ADDRESS: 729 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 as per your request.	Total Payments The amount you will have paid after you have made all payments scheduled.
7.500	184,865.33	221,462.75	306,329.69

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	5/01/04			
1	852.40	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 Characteristics have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at: 729 CHATMAN STREET
BISHOPVILLE, SC 29010

ASSUMPTION: Someone buying this property ☐ cannot assume the existing balance due under original mortgage terms.
☐ may assume, subject to lender's approval, the remaining balance due under original mortgage terms.

FLAT / RENEWAL FEE: \$

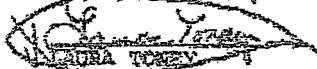
PROPERTY INSURANCE: ☐ Property hazard insurance in the amount of \$ with a ☐ year term. ☐ is not available through the lender at an estimated cost of \$ per year term.

LATE CHARGE: If your payment is more than days late, you will be charged a late charge of \$ of the scheduled 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 to full before scheduled date, and prepayment returns and penalties.

We hereby acknowledge reading and receiving a complete copy of this document.


LAURA TONEY

8-11-07
BORROWER / DATE

BORROWER / DATE

BORROWER / DATE

BORROWER / DATE

729 CHATMAN STREET

LAB FINANCIAL SERVICES

Page 1 of 2

0034

© 2007 LAB FINANCIAL SERVICES, INC. The signature of this form is void if it has not been printed under the copyright laws of the United States.

Original Choice ~~Change~~ PAGE 22

When Changed from 8-11-04
on 10-3-04 to Tullerville 216,
Had MS. Tony to Sign New Form.

LAB FINANCIAL SERVICES

1822 HOLMAN ROAD SPARTAN, SC 29153
PH 803-428-2053 FAX 803-428-4020

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 & May, Columbia SC
ATTORNEY'S NAME

X Laura Jones
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 HAZARD INSURANCE IN CONNECTION WITH THIS MORTGAGE TRANSACTION.

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

X Laura Jones
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

01:01 803-428-4429

LAB FINANCIAL SER

PAGE 83

Ms. Toney due to changes in
insurance you need to sign
and fill in another form and you can
it by 01 you fax it back: to 428-4429

LAB FINANCIAL SERVICES

1833 HOLMAN ROAD SUMTER, SC 29152
117 803-428-2050 FAX 803-428-4429

ATTORNEY/INSURANCE PREFERENCE CHECKLIST

DATE: 10-3-04

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 Quitchard & Mayo
ATTORNEY'S NAME

X Laura 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
(WE) HAVE A RIGHT TO SELECT AN INSURANCE AGENT
TO FURNISH REQUIRED HADZARD INSURANCE IN
CONNECTION WITH THIS MORTGAGE TRANSACTION.

→ A I SELECT Univerelle Ins. Co. Ward
INSURANCE AGENT'S NAME

X Laura 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

When fundamental differences are observed that cannot be attributed to the reproduction process, such as basic divergences in size and proportions of letters, placement on the signature line, writing style and slant; a conclusion of non-authorship may be rendered.

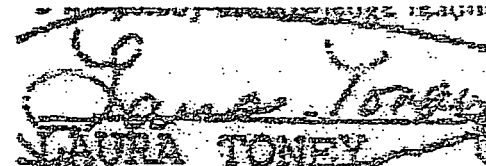
Examination and Findings

The aforelisted documents were examined in this laboratory on December 10 & 11, 2007. Comparison charts were prepared as part of the examination. Copies of these charts are included in this report for ease of reference.

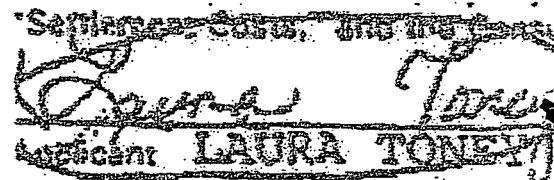
A detailed examination was undertaken and included microscopic examination of the questioned "Laura Toney" signatures appearing on Exhibits Q/1 thru Q/4 and undisputed signatures attributed to Laura A. Toney (K/1). An examination of the signatures "Laura Toney" where they appear on Exhibit Q/1 - Q/4 are inconsistent with the formatting, signature style and other handwriting characteristics found in the specimen signatures attributed to K/1 (Laura A. Toney). In particular:

L-a-u-r-a

1. The upper loops of the questioned "L" are round - the known are elongated. The initial stroke of the "L" is long. The known are short.
2. The questioned "a" are vertical and pointed at the seven o'clock position.
3. The "a" is larger in height ratio than the following lower case letter forms. The known "a" is equal to all other lower case.
4. The terminal stroke of the known "a" is short; while the questioned terminal is long.



Q/1



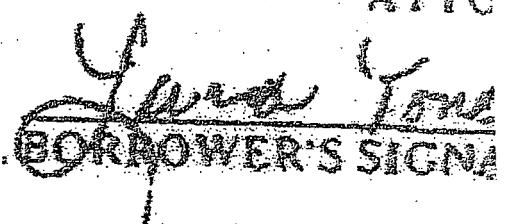
Q/2



Teacher's Signature

T-o-n-e-y

5. The questioned "Toney" is vertical or slightly slanted to the right, the specimen exhibits a left slant.


BORROWER'S SIGNATURE

Q/3a

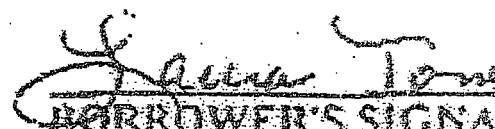
6. The crossbar of the questioned "T" is curved, the specimen exhibits a *retrace* and horizontal stroke.


BORROWER'S SIGNATURE

7. The questioned "o" is angular, the known oblong.

Q/3b

8. The questioned "n" exhibits an extended initial stroke, the specimen does not.


BORROWER'S SIGNATURE

Q/4a

9. The questioned "e" is closed, the specimen "e" is open.

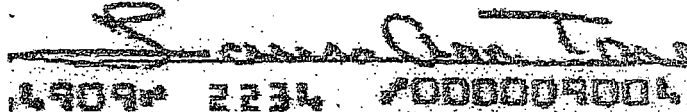

BORROWER'S SIGNATURE

10. The questioned "y" exhibits a *deep bowl*, the specimen bowl is *wide and shallow*. The lower extender of the questioned is curved, the specimen is straight.

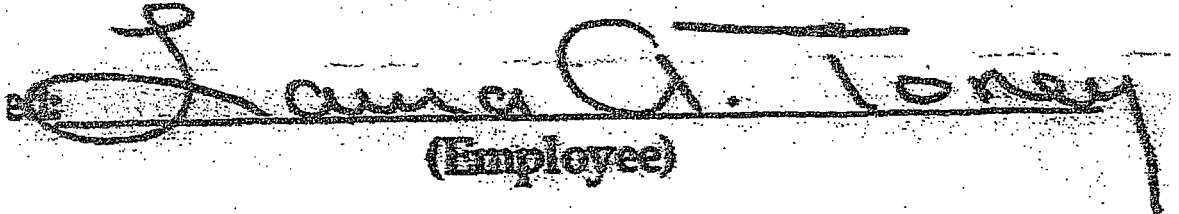
Q/4b


Employee's Signature

K1.1 Lee County School District Statement of Physical and Mental Fitness


4909# 2234 /000004004

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


(Employee)

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

Examples—There is strong probability that the John Doe of the known material did not write the questioned material, or in my opinion (or conclusion or determination) it is highly probable that the John Doe of the known material did not write the questioned material. *Discussion*—Certainly those examiners who choose to use “unlikely” in place of “probably did not” may wish to use “highly unlikely” here.

elimination—this, like the *definite conclusion of identity*, is the highest degree of confidence expressed by the document examiner in handwriting comparisons. By using this expression the examiner denotes no doubt in his opinion that the questioned and known writings were not written by the same individual.

Examples—It has been concluded that the John Doe of the known material did not write the questioned material, or it is my opinion (or conclusion or determination) that the John Doe of the known material did not write the questioned material. *Discussion*—This is often a very difficult determination to make in handwriting examinations, especially when only requested exemplars are available, and extreme care should be used in arriving at this conclusion.

4.1.1 When the opinion is less than definite, there is usually a necessity for additional comments, consisting of such things as reasons for qualification (if the available evidence allows that determination), suggestions for remedies (if any are known), and any other comments that will shed more light on the report. The report should stand alone with no extra explanations necessary.

4.2 *Deprecated and Discouraged Expressions*

4.2.1 Several expressions occasionally used by document examiners are troublesome because they may be misinterpreted to imply bias, lack of clarity, or fallaciousness and their use is deprecated. Some of the terms are so blatantly inane (such as “make/no make”) that they will not be discussed. The use of others is discouraged because they are incomplete or misused. These expressions include:

possible/could have—these terms have no place in expert opinions on handwriting because the examiner’s task is to decide to what degree of certainty it can be said that a handwriting sample is by a specific person. If the evidence is so limited or unclear that no definite or qualified opinion can be expressed, then the proper answer is *no conclusion*. To say that the suspect “could have written the material in question” says nothing about probability and is therefore meaningless to the reader or to the court. The examiner should be clear on the different meanings of “possible” and “probable,” although they are often used interchangeably in everyday speech.

consistent with—there are times when this expression is perfectly appropriate, such as when “evidence consistent with disguise is present” or “evidence consistent with a simulation or tracing is present,” but “the known writing is consistent with the questioned writing” has no intelligible meaning.

could not be identified/cannot identify—these terms are objectionable not only because they are ambiguous but also because they are biased; they imply that the examiner’s task is only to identify the suspect, not to decide whether or not the suspect is the writer. If one of these terms is used, it should always be followed by “or eliminate[d]”.

similarities were noted/differences as well as similarities—these expressions are meaningless without an explanation as to the extent and significance of the similarities or differences between the known and questioned material. These terms should never be substituted for gradations of opinions.

cannot be associated/cannot be connected—these terms are too vague and may be interpreted as reflecting bias as they have no counterpart suggesting that the writer cannot be eliminated either.

no identification—this expression could be understood to mean anything from a strong probability that the suspect wrote the questioned writing; to a complete elimination. It is not only confusing but also grammatically incorrect when used informally in sentences such as “I no identified the writer” or “I made a no ident in this case.”

inconclusive—this is commonly used synonymously with *no conclusion* when the examiner is at the zero point on the scale of confidence. A potential problem is that some people understand this term to mean something short of definite (or conclusive), that is, any degree of probability, and the examiner should be aware of this ambiguity.

positive identification—This phrase is inappropriate because it seems to suggest that some identifications are more positive than others.

[strong] reason to believe—there are too many definitions of *believe* and *belief* that lack certitude. It is more appropriate to testify to our conclusion (or determination or expert opinion) than to our belief, so why use that term in a report?

qualified identification—An *identification* is not qualified. However, opinions may be qualified when the evidence falls short of an *identification* or *elimination*.

ASTM International takes no position respecting the validity of any patent rights asserted in connection with any item mentioned in this standard. Users of this standard are expressly advised that determination of the validity of any such patent rights, and the risk of infringement of such rights, are entirely their own responsibility.

4. Terminology

4.1 Recommended Terms:

identification (definite conclusion of identity)—this is the highest degree of confidence expressed by document examiners in handwriting comparisons. The examiner has no reservations whatever, and although prohibited from using the word "fact," the examiner is certain, based on evidence contained in the handwriting, that the writer of the known material actually wrote the writing in question.

Examples—It has been concluded that John Doe wrote the questioned material, or it is my opinion [or conclusion] that John Doe of the known material wrote the questioned material.

* **strong probability** (highly probable, very probable)—the evidence is very persuasive, yet some critical feature or quality is missing so that an *identification* is not in order; however, the examiner is virtually certain that the questioned and known writings were written by the same individual.

Examples—There is *strong probability* that the John Doe of the known material wrote the questioned material, or it is my opinion (or conclusion or determination) that the John Doe of the known material *very probably* wrote the questioned material. *Discussion*—Some examiners doubt the desirability of differentiating between strong probability and probable, and certainly they may eliminate this terminology. But those examiners who are trying to encompass the entire "gray scale" of degrees of confidence may wish to use this or a similar term.

probable—the evidence contained in the handwriting points rather strongly toward the questioned and known writings having been written by the same individual; however, it falls short of the "virtually certain" degree of confidence.

Examples—It has been concluded that the John Doe of the known material *probably* wrote the questioned material, or it is my opinion (or conclusion or determination) that the John Doe of the known material *probably* wrote the questioned material.

indications (evidence to suggest)—a body of writing has few features which are of significance for handwriting comparison purposes, but those features are in agreement with another body of writing.

Examples—There is evidence which *indicates* (or suggests) that the John Doe of the known material may have written the questioned material but the evidence falls far short of that necessary to support a definite conclusion. *Discussion*—This is a very weak opinion, and a report may be misinterpreted to be an identification by some readers if the report simply states, "The evidence *indicates* that the John Doe of the known material wrote the questioned material." There should always be additional limiting words or phrases (such as "may have" or "but the evidence is far from conclusive") when this opinion is reported, to ensure that the reader understands that the opinion is weak. Some examiners doubt the desirability of reporting an opinion this vague, and certainly they cannot be criticized if they eliminate this terminology. But those examiners who are trying to encompass the entire "gray scale" of degrees of confidence may wish to use this or a similar term.

no conclusion (totally inconclusive, indeterminable)—This is the zero point of the confidence scale. It is used when there are significantly limiting factors, such as disguise in the questioned and/or known writing or a lack of comparable writing, and the examiner does not have even a leaning one way or another.

Examples—*No conclusion* could be reached as to whether or not the John Doe of the known material wrote the questioned material, or I could not determine whether or not the John Doe of the known material wrote the questioned material.

indications did not—this carries the same weight as the indications term that is, it is a very weak opinion.

Examples—There is very little significant evidence present in the comparable portions of the questioned and known writings, but that evidence *suggests* that the John Doe of the known material did not write the questioned material, or I found *indications* that the John Doe of the known material did *not* write the questioned material but the evidence is far from conclusive.

See Discussion after indications.

probably did not—the evidence points rather strongly against the questioned and known writings having been written by the same individual, but, as in the probable range above, the evidence is not quite up to the "virtually certain" range.

Examples—It has been concluded that the John Doe of the known material *probably* did not write the questioned material, or it is my opinion (or conclusion or determination) that the John Doe of the known material *probably* did not write the questioned material. *Discussion*—Some examiners prefer to state this opinion: "It is unlikely that the John Doe of the known material wrote the questioned material." There is no strong objection to this, as "unlikely" is merely the Anglo-Saxon equivalent of "improbable".

* **strong probability did not**—this carries the same weight as strong probability on the identification side of the scale; that is, the examiner is virtually certain that the questioned and known writings were not written by the same individual.

This document is not an ASTM standard; it is under consideration within an ASTM technical committee but has not received all approvals required to become an ASTM standard. It shall not be reproduced or circulated or quoted, in whole or in part, outside of ASTM committee activities except with the approval of the chairman of the committee having jurisdiction and the president of the society. Copyright ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. All rights reserved.

Standard Terminology for Expressing Conclusions of Forensic Document Examiners¹

This standard is issued under the fixed designation E 1658; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 This terminology is intended to assist forensic document examiners in expressing conclusions based on their examination.

1.2 This terminology is based on the report of a committee of the Questioned Document Section of the American Academy of Forensic Science which was adopted as the recommended guidelines in reports and testimony by the Questioned Document Section of the American Academy of Forensic Science and the American Board of Forensic Document Examiners^{2,3}.

2. Referenced Documents

2.1 ASTM Standards:

E 444 Guide for Description of Work of Forensic Document Examiners²

3. Significance and Use

3.1 Document examiners should always begin their handwriting examinations from a point of complete neutrality. There are an infinite number of gradations of opinion toward an identification or toward an elimination. It is in those cases wherein the opinion is less than definite that careful attention is especially needed in the choice of language used to convey the weight of the evidence.

3.2 Common sense dictates that we must limit the terminology we use in expressing our degrees of confidence in the evidence to terms that are readily understandable to those who use our services (including investigators, attorneys, judges, and jury members), as well as to other document examiners. We must be careful that the expressions we use in separating the gradations of opinions do not become strongly defined "categories" that will always be used as a matter of convenience; instead, these expressions should be guidelines without sharply defined boundaries.

3.3 When a forensic document examiner chooses to use one of the terms defined below, the listener or reader can assume that this is what the examiner intended the term to mean. To avoid the possibility of misinterpretation of a term where the expert is not present to explain the guidelines in this standard, the appropriate definition(s) could be quoted in or appended to reports.

3.4 The examples are given both in the first person and in third person since both methods of reporting are used by document examiners and since both forms meet the main purpose of the standard, *i. e.*, to suggest terminology that is readily understandable. These examples should not be regarded as the only ways to utilize probability statements in reports and testimony. In following any guidelines, the examiner should always bear in mind that sometimes the examination will lead into paths that cannot be anticipated and that no guidelines can cover exactly.

3.5 Although the material that follows deals with handwriting, forensic document examiners may apply this terminology to other examinations within the scope of their work, as described in Guide E 444, and it may be used by forensic examiners in other areas, as appropriate.

¹ This terminology is under the jurisdiction of ASTM Committee E-30 on Forensic Sciences and is the direct responsibility of Subcommittee E30.02 on Questioned Documents.

Current edition approved March 10, 1996. Published March 1997. Originally published as E 1658 - 95. Last previous edition E 1658 - 95.

² McAlexander, T. V., Bock, J., and Dick, R., "The Standardization of Handwriting Opinion Terminology," *Journal of Forensic Science*, Vol. 36, No. 2, March 1991, pp. 311-319.

³ *Annual Book of ASTM Standards*, Vol. 14.02.

17011524909 CC 250100
Lana O. Toney
4909# 2030

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

Lana O. Toney
4909# 2223 #00000014000#

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

Lana O. Toney
4009# 1637 #00000007134#

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

Lana O. Toney
44009# 1583 #00000012444#

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

Lana O. Toney
(Employee)

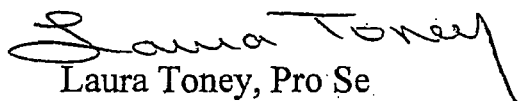
K1.9 Lee County School District Contract 04-26-99

This standard is subject to revision at any time by the responsible technical committee and must be reviewed every five years and if not revised, either reapproved or withdrawn. Your comments are invited either for revision of this standard or for additional standards and should be addressed to ASTM International Headquarters. Your comments will receive careful consideration at a meeting of the responsible technical committee, which you may attend. If you feel that your comments have not received a fair hearing you should make your views known to the ASTM Committee on Standards, at the address shown below.

This standard is copyrighted by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19380-2959, United States. Individual reprints (single or multiple copies) of this standard may be obtained by contacting ASTM at the above address or at 610-832-9585 (phone), 610-832-9555 (fax), or service@astm.org (e-mail); or through the ASTM website <www.astm.org> <ba>.

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.


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