

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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 ToneyAppellant.

SECOND SUPPLEMENTAL RECORD ON APPEAL

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

H. Guyton Murrell
Korn Law Firm
1300 Pickens Street
P.O Box 12369
Columbia, SC 29211-2369
(803) 252-5817
Attorney for Respondent LaSalle Bank

TABLE OF CONTENTS

Order of Reference filed April 6, 2006 2

Motion for Reconsideration of Decision and for Stay of
Enforcement of the Order filed April 25, 2007, Certificate
of Service and letter dated April 25, 2007..... 5

Transcript of Hearing held March 27, 2007,
Case No. 2007-CP-31-06612

Transcript of Hearing held October 18, 2007 29

Certificate43

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.

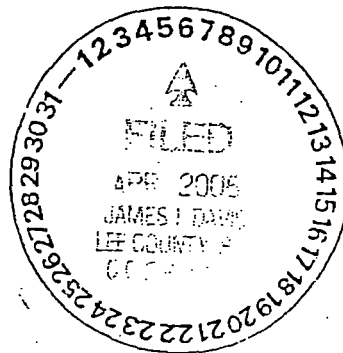
Laura Toney,

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.

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. Gayton Murrell
Attorney for Plaintiff

WEEKS LAW OFFICE, LLC

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

J. David Weeks

Willie H. Brunson

APRIL 25, 2007

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

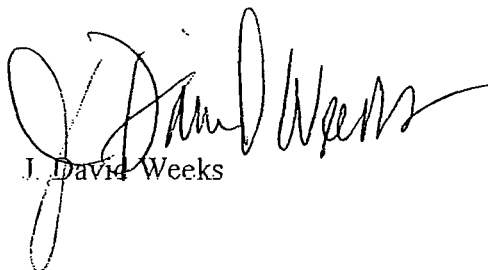
Re: LaSalle Bank v. Laura Toney
Docket No.: 2005-CP-31-169
Our File No.: 05-404

Dear Guyton:

Enclosed please find a copy of the signed and recorded **Notice of Motion and Motion for Reconsideration of Decision and for Stay of Enforcement of the Order** in the above reference matter, which I hereby serve upon you.

With my kindest regards.

Sincerely,



J. David Weeks

JDW/cc

Enclosures -- as stated

STATE OF SOUTH CAROLINA

COUNTY OF Lee

LaSalle Bank National Assoc, etc

Plaintiff

Laura Toney,

Defendant.

IN THE COURT OF Common Pleas

CASE NO.

2005-~~02~~ 31-169
CP



MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: H. Guyton Murrell, Esq.
, Bar No. Koin Law Firm
Address: P.O. Box 12369
Columbia, SC 29211
phone: fax: 803-231-2060
e-mail: other: 803-252-5817

Defendant's Attorney: J. David Week, Esq.
, Bar No. Weeks Law Office LLC
Address: P.O. Box 370
Sumter, SC 29151
phone: fax: 775-5856
e-mail: other:

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

SECTION I: Hearing Information

Nature of Motion:
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.

James I. Davis
Signature of Attorney for Plaintiff / Defendant

4/25/07
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ 25.00
- 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, SCRCP)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
 Other:

JUDGE'S SECTION

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

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

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

Certified as a True Copy

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

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

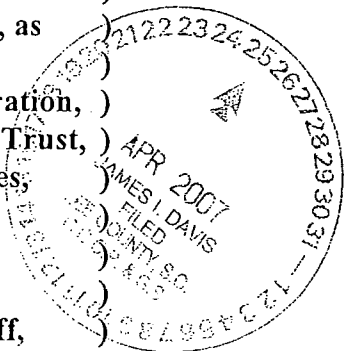
LaSalle Bank National Association, as
Trustee for registered holders of
Structured Asset Securities Corporation,)
Structured Asset Investment Loan Trust,)
Mortgage Pass-Through Certificates,
Series 2004-11,)

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 SCRП 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. SCRП 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:

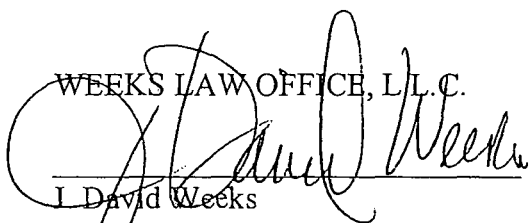
1. The Defendant on January 17, 2007 filed *pro se* a Chapter 13 Bankruptcy action (C/A No. 07-00234-JW).
2. Pursuant to 11 U.S.C. § 362(a), the Defendant believed that an automatic stay was to be put in place regarding the proceeding in the present foreclosure case; therefore, the Defendant move to 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.


I. David Weeks

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

Sumter, SC

4/25/07

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
LaSalle Bank National, etc)
)
PLAINTIFF,)
)
)
vs.)
)
Laura Toney,)
)
)
DEFENDANT.)
)
_____)

IN THE COMMON PLEAS COURT OF THE
THIRD JUDICIAL CIRCUIT
DOCKET NO. : 2005-~~DR~~-31-169
CP

REQUEST FOR HEARING



Attorney for Plaintiff: H. Guyton Murrell, Esq
Office address: Korn Law Firm
P.O. Box 12369
Columbia, SC 29211
Telephone: 803-252-5817 Fax: 803- 231-2060

Attorney for Defendant: J. David Weeks, Esquire
Office address: Weeks Law Office, LLC
P.O. Box 370
Sumter, South Carolina 29151
Telephone: 803-775-5856 fax -803-778-1365

Contested? () Yes (x) No
Child Custody at Issue?
() Yes (X) No GAL: _____

Type of Case: Notice of Motion and Motion for Reconsideration
Time Needed: 30 min _____

Comments and Issues:

Hearing Requested by : J. David Weeks, Esq.
For () Plaintiff (X) Defendant
Date: April 25, 2007

Certified as a True Copy
James L. Davis
Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

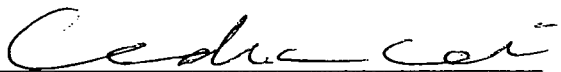
CERTIFICATE OF SERVICE

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

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.)
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STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
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,)

HEARING

Plaintiffs,)

-vs-)

Laura Toney,)

Defendant.)

Held before Judge Richard L. Booth at the Booth Law Firm, 17 East Calhoun Street, Sumter, South Carolina, on Thursday, October 18, 2007, commencing at 12:15 p.m.

COPY

Reported By:

**Missy A. Graczyk
Court Reporter**

Missy Graczyk, Court Reporter

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

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

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

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

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1 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

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

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

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1 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

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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

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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.

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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

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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,

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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

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

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

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

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

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

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

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1 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

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

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

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

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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,

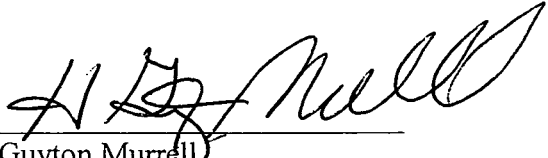
v.

Laura ToneyAppellant.

CERTIFICATE OF COUNSEL

The undersigned certified that the material contained in this Second Supplemental Record on Appeal was proposed to be included in Respondent's Designation of Matter but was omitted from the Supplemental Record on Appeal.

March 23, 2010



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