

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP4603040

Deutsche Bank National Trust Company	Cora B Wilks  Chase Bank USA NA	David C Wilks  Midland Funding LLC
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

*s/ S. Jackson Kimball*

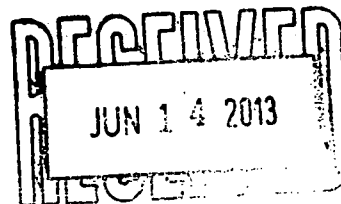
Circuit Court Judge

3063

Judge Code

6/6/2013

Date



**For Clerk of Court Office Use Only**

This judgment was entered on **June 12, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **June 12, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

**Michael J. Anzelmo** PO Box 11070 Columbia, SC 29211  
**Benjamin Rush Smith III** Meridian/17Th Floor 1320 Main  
Street Columbia, SC 29201

**John Martin Foster** PO Box 106 Rock Hill, SC 297316106  
**Wylie Westmoreland Clarkson** PO Box 12369 Columbia,  
SC 29211

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter**

**David Hamilton - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF YORK ) SIXTEENTH JUDICIAL CIRCUIT

Deutsche Bank National Trust ) Case No. 2012-CP-46-03040  
 Company, as Trustee for J.P. Morgan )  
 Mortgage Acquisition Trust 2007-CH1, )  
 Asset Backed Pass Through Certificates, )  
 Series 2007-CH1. )

Plaintiff, )

**Order Granting Plaintiff's**  
**Motion to Dismiss**

vs. )

Cora B. Wilks, David C. Wilks, Chase )  
 Bank USA, N.A., and Midland Funding, )  
 LLC, )

Defendants. )

FILED-RECEIVED  
 2013 JUN 12 AM 10:09  
 CLERK OF COURT  
 C.C.C.P. & C.S.  
 YORK COUNTY, SC

This matter came before me on May 16, 2013, upon Plaintiff's motion pursuant to Rule 12(b)(6), SCRCP, to dismiss the counterclaim filed by Defendants Cora B. Wilks and David C. Wilks ("the Wilks") in this action. Michael J. Anzelmo appeared on behalf of Plaintiff. John Martin Foster appeared on behalf of the Wilks. Based on the record presented, I make the following findings and conclusions.

**DISCUSSION**

Plaintiff initiated this action to foreclose on the Wilks' mortgage executed on May 23, 2005, and recorded on June 1, 2005 at Book 7128, Page 288 in the York County Register of Deeds Office. The Wilks counterclaimed, and the counterclaim centered on allegations that the closing of that mortgage was not supervised by an attorney. They alleged that, as a result, Deutsche Bank was precluded from foreclosing pursuant to *Matrix Financial Services, Corp. v. Frazer*, 394 S.C. 134, 714 S.E.2d 532 (2011), and *BAC Home Loan Financing, LP v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (2012). Thereafter, Deutsche Bank filed the motion to dismiss the counterclaim pursuant to Rule 12(b)(6), SCRCP. Deutsche Bank asserts that the counterclaim failed to state a claim as a matter of law because the rule announced in *Matrix* had prospective application only.

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim, and must be granted if the claim does not set forth sufficient allegations entitling the party to relief. *Williams v. Condon*, 347 S.C. 227, 232–33, 553 S.E.2d 496, 499 (Ct. App. 2001). A motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim. *Chas. Cnty. Sch. Dist. V. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001). The question is whether, in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The “motion must be granted if the facts and inferences reasonably deducible from them show that the [defendant] could not prevail on any theory of the case.” *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 650–51, 492 S.E.2d 272, 274–75 (Ct. App. 1997).

I find and conclude that the counterclaim based on *Matrix* cannot survive as a matter of law. The Supreme Court’s holding in *Matrix* has prospective application only from the date of the issuance of the opinion. The Court stated that the rule announced therein only applied “. . . to all filing dates after the issuance of this opinion.” *Matrix*, 394 S.C. at 140, 714 S.E.2d at 535. The court issued the *Matrix* opinion on August 8, 2011. The prospective application of *Matrix* is confirmed in the *BAC v. Kinder* opinion. The Court stated:

In *Matrix*, we reiterated that the closing of a loan without attorney supervision constitutes the unauthorized practice of law. Furthermore, we held that engaging in this unlawful behavior would preclude a lender from obtaining equitable relief. *Id.* at 140, 714 S.E.2d at 535. However, in a substitute opinion issued on rehearing, we explained that this holding would be prospective only, stating we would “apply this ruling to all filing dates after the issuance of this opinion,” which was August 8, 2011. *Id.* To the extent some confusion apparently exists as to what filing date *Matrix* referred to; we clarify now that it is the date the document a party seeks to enforce was filed. *Kinder*, 398 S.C. at 624, 731 S.E.2d at 549-50.

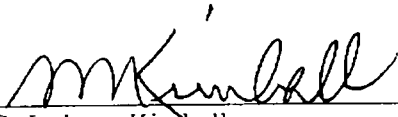
The Court then applied that rule to the claims presented and allowed BAC’s claims to proceed, stating “the mortgage was recorded on April 20, 2007, well before the issuance of *Matrix*. Thus, regardless of whether an attorney participated in the closing of [the mortgage], BAC would not be barred from recovery by the illegality.” *Id.*

This case is governed by that holding. The mortgage in this case was recorded on June 1,

*M*  
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2005, more than six years before the decision in *Matrix*. Accordingly, the Wilks' counterclaim cannot state a claim upon which relief can be granted, and fails as a matter of law. Therefore, I find and conclude that the counterclaim must be dismissed with prejudice.

**AND IT IS SO ORDERED.**

 6/6/13  
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S. Jackson Kimball  
Special Circuit Court Judge  
York County