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July 25, 2013

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Via Federal Express

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29211

RE: *Wells Fargo Bank, N.A. etc. v. Mooring Secured Liquidity, et al.*,  
Appellate Case No. 2013-001508

Dear Ms. Kitchings:

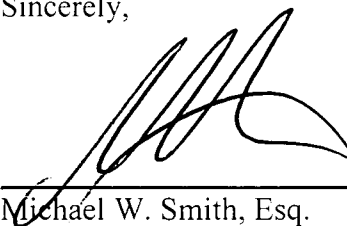
I am in receipt of correspondence from V. Claire Allen, Deputy Clerk, dated July 16, 2013 wherein she requested I provide a copy of the order dated June 10, 2013. She also requested clarification of attorney information per Rule 203(e)(1)(E) SCACR. Enclosed please find a copy of the Order Denying Plaintiff's Motion to Reconsider dated June 10, 2013.

The parties are represented thusly:

- Max T. Hyde represents Mooring Secured Liquidity;
- David Ingalls represents Randy S. Rutherford and Tara P. Rutherford;
- John H. Harris represents the County of Spartanburg;
- Sherman Acquisitions Limited Partnership is not represented by counsel.

Please let me know if you need any additional information.

Sincerely,



Michael W. Smith, Esq.  
S.C. Bar No. 71184  
Baker, Donelson, Bearman,  
Caldwell and Berkowitz, PC  
P.O. Box 1549  
Orlando, FL 32802  
(407) 367-5437  
Attorney for Appellant

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**SC Court of Appeals**

MWS/cmp  
Enclosures

MWS 554243 v1  
2914856-003727 07/25/2013

ALABAMA • FLORIDA • GEORGIA • LOUISIANA • MISSISSIPPI • TENNESSEE • TEXAS • WASHINGTON, D.C.

cc:

Max T. Hyde, Jr., Esq.  
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(864) 804-6330

Sherman Acquisitions Limited  
Partnership  
c/o Steve Beckwith  
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Greenville, SC 29601

David C. Ingalls, Esq.  
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John H. Harris, Esq.  
Senior Deputy County Attorney  
Spartanburg County  
P.O. Box 5666  
Spartanburg, SC 29301  
(864) 596-2526

**FORM 4**

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
IN THE COMMON PLEAS COURT )

JUDGMENT IN A CIVIL CASE

CASE NO. 10 - CP - 42 - 5798

Wells Fargo Bank, N.A., as trustee for Option  
One Mortgage Loan Trust 2000-D, Asset Backed  
Certificates Series 2000-D

Mooring Secured Liquidity, Randy S. and Tara P. Rutherford,  
Spartanburg County Tax Collector, and Sherman Acquisitions

PLAINTIFF(S)

DEFENDANT(S)

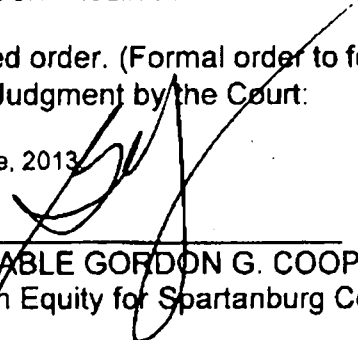
**CHECK ONE:**

- 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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), S.C.R.C.P.;  Rule 41(a), S.C.R.C.P. (Vol. Non-suit);  Rule 43(k), S.C.R.C.P. (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), S.C.R.C.P.;  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:

Dated at Spartanburg, South Carolina, this 10th day of June, 2013.

  
HONORABLE GORDON G. COOPER  
Master in Equity for Spartanburg County

This judgment was entered on the 11 day of June, 2013, and a copy mailed first class  
this 11 day of June, 2013 to attorneys of record or to parties as follows:

Sean M. Foerster, Esquire  
Rogers, Townsend & Thomas, PC  
Post Office Box 100200  
Columbia, SC 29202

Max T. Hyde, Jr., Esquire  
Hyde Law Firm, P.A.  
753 E. Main Street, Suite One  
Spartanburg, SC 29302

John H. Harris, Esquire  
Spartanburg County Attorney's Office  
Post Office Box 5666  
Spartanburg, SC 29304

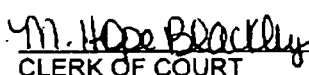
David Ingalls, Esquire  
Post Office Box 2196  
Spartanburg, SC 29304

Attorney for the Plaintiff(s)

Attorney for the Defendant(s)

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CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Wells Fargo Bank, N.A., as Trustee )  
 For Option One Mortgage Loan Trust )  
 2000-D, Asset Backed Certificates, )  
 Series 2000-D, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 Mooring Secured Liquidity, Randy S )  
 and Tara P. Rutherford, Spartanburg )  
 County Tax Collector, and Sherman )  
 Acquisitions, )  
 )  
 Defendants. )

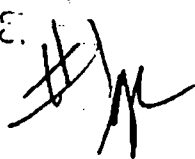
IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-42-5798

**ORDER**

This action came before the Court on the Plaintiff's Motion to Reconsider this Court's final Order of March 6, 2013, pursuant to Rule 59(e), SCRPC at a hearing on May 29, 2013. Sean M. Foerster, Esquire, appeared on behalf of the Plaintiff, Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2000-D, Asset Backed Certificates, Series 2000-D ("Wells Fargo"). Max T. Hyde, Jr., Esquire, and Alexander P. Lewis, Esquire, appeared on behalf of Defendant Mooring Secured Liquidity ("Mooring"). David Ingalls, Esquire, appeared on behalf of Defendants Randy S. and Tara P. Rutherford ("the Rutherfords"). John H. Harris, Esquire, appeared on behalf of Defendant Spartanburg County Tax Collector ("Spartanburg County").

The Court has reviewed the submissions of the parties and the arguments of counsel, and for the reasons hereinafter set forth, the Plaintiff's motion is DENIED.

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## STANDARD OF REVIEW

“The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” Arnold v. State, 309 S.C. 157, 172 (1992). A Rule 59(e) motion is not a vehicle through which a party can inject new issues for the court to pass on, not a way to get new arguments in through the back door. See Hickman v. Hickman, 301 S.C. 455, 456 (Ct. App. 1990). Reconsideration of a judgment pursuant to Rule 59(e) is an “extraordinary remedy which should be used sparingly.” Pacific Ins. Co. v. Am. Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Accordingly, such motions will not be granted absent “highly unusual circumstances.” McDowell v. Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999). See also U.S. ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (“[m]ere disagreement” with the court’s ruling will not support Rule 59(e) relief).

Relief under Rule 59(e) is only considered under three grounds: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Pacific Ins. Co., 148 F.3d at 403. The purpose of Rule 59(e) is not “to give an unhappy litigant one additional chance to sway the judge.” E.g. Phillips v. McKie, C.A. No. 1:12-438-CMC-SVH, 2012 U.S. Dist. LEXIS 138562 (D.S.C. Sept. 25, 2012) (citing Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625 (S.D. Miss. 1999)). Likewise, Rule 59(e) motions may not be used to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance.” Perry v. Williams, C.A. No. 4:12-cv-1001-TLW, 2012 U.S. Dist. LEXIS 150477 (D.S.C. Oct. 19, 2012),

(quoting Russell v. Delco Remy Div of Gen. Motors Corp., 51 F.3d 746, 749 (7th Cir. 1995))  
(quotations omitted).

**CONCLUSIONS OF LAW**

Wells Fargo seeks to alter or amend this Court's March 6, 2013, Order on five issues. First, Wells Fargo asks that Court to reverse its Order barring Wells Fargo's Complaint on the doctrine of laches. Second, Wells Fargo asks the Court to reverse its Order barring Wells Fargo's Complaint on the doctrine of unclean hands. Third, Wells Fargo asserts that the Court erred in not issuing a ruling on the Tax Collector's alleged violation of a Federal Bankruptcy stay. Fourth, Wells Fargo asserts that the Court erred in not issuing a ruling on the alleged use of artificial deadlines by the Tax Collector in its notice to the Rutherfords. Finally, Wells Fargo challenges the Court's analysis on the equities that have been presented in the instant case. The Court finds that Wells Fargo has offered no new argument and as such has failed to set forth a legitimate basis for post judgment relief, and its instant Motion is therefore denied.

With respect to Wells Fargo's challenge to the Court's holding on the doctrine of laches, the Court finds no basis to disturb the holding. The Court properly determined in its March 6, 2013 Order that Wells Fargo's conduct surrounding the tax sale at issue in the case *sub judice* created prejudice to each of the Defendants, especially Defendant Mooring Secured Liquidity. While Plaintiff's Counsel has taken issue with this Court's ruling, they have failed to raise any proper grounds upon which relief can be given. The Court has carefully considered the arguments of counsel in post-judgment briefs, and at the May 29<sup>th</sup> hearing, and finds no error of law exists in its holding regarding the application of the doctrine of laches based on the facts and equities that have been presented.

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As to the challenge by Wells Fargo that the Court's March 6, 2013, Order improperly applied the doctrine of unclean hands to the instant case, the Court finds no basis to disturb its holding. The Court properly determined that the conduct of Wells Fargo as it relates to the tax sale at issue in this case rose to such a level as to bar the Plaintiff's instant action as they have come before this Court with unclean hands. Again, while Plaintiff's Counsel has taken issue with this Court's ruling, they have failed to raise any proper grounds upon which post judgment relief can be given. The Court has carefully considered the arguments of counsel in post-judgment briefs, and at the May 29<sup>th</sup> hearing, and finds no error of law exists in its holding as to the application of the doctrine of unclean hands based on the facts and equities presented.

The Court finds that the March 6, 2013. Order properly withheld issuing any ruling on the alleged violation of the bankruptcy stay and the alleged artificial deadlines in the tax notices. Neither of these issues should be reached or ruled upon in light of this Court's holding that the Plaintiff's action itself is barred by the doctrines of laches and unclean hands. The Court issued no ruling because it would be improper for the Court to do so.

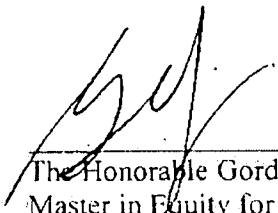
Finally, Wells Fargo seeks reconsideration of the Court's application of the equities that have been presented in the instant litigation. The Court carefully considered all evidence and facts that were presented throughout the course of the instant litigation, and properly determined that the conduct of Wells Fargo created a situation where to grant Wells Fargo the relief it sought would create an inequitable and prejudicial result on the Defendants, especially Defendant Mooring Secured Liquidity. Therefore, the Court finds that no error of law exists to overturn the Court's rulings in its Order of March 6, 2013.

FILED  
2013 JUN 11 AM 11:00  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
BY: [Signature]  
[Signature]

**IT IS THEREFORE ORDERED THAT:** Plaintiff's Motion to Alter or Amend the Court's March 6, 2013, Order is **DENIED**.

**AND IT IS SO ORDERED.**

This 10<sup>th</sup> day of June, 2013



The Honorable Gordon G. Cooper  
Master in Equity for Spartanburg County

Spartanburg, South Carolina

A CERTIFIED COPY

M. Hope Beasley

CLERK OF COURT  
SPARTANBURG COUNTY  
BY: [Signature]  
DATED: 6-11-13

FILED  
JUN 11 11 26 AM '13  
#5  
MK

Alexander P. Lewis  
Attorney at Law

**HYDE LAW FIRM, P.A.**

Telephone: 864-804-6330  
Facsimile: 864-804-6449

June 10, 2013

**Via Hand-Delivery**

The Honorable Gordon G. Cooper  
Spartanburg County Master-in-Equity  
180 Magnolia Street, Suite 901  
Spartanburg, South Carolina 29306


**Re: Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust  
2000-D, Asset Backed Certificates, Series 2000-D v. Mooring Secured  
Liquidity, et al.  
C.A. No.: 2010-CP-42-5798**

Dear Judge Cooper:

Enclosed, please find the proposed Order in the above referenced matter. Per the Courts instructions, all counsel have been afforded the opportunity to offer their input in the drafting of this Order prior to its submission. By way of this letter I am copying all counsel of record.

If the Court should have any inquiries, or if I may be of some further assistance I await the Court's instructions.

Yours truly,



Alexander P. Lewis

Encl.  
APL/crs

cc: Sean Foerster, Esquire  
John Harris, Esquire  
David Ingalls, Esquire

alex@maxhydelawfirm.com  
753 E. Main Street, Suite One • Spartanburg, SC 29302

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SC Court of Appeals