

LAW OFFICES
ALFORD & HART, P.C.
160 HIDDEN HILL ROAD
POST OFFICE BOX 6326
SPARTANBURG, SOUTH CAROLINA 29304

July 25, 2013

Jenny Abbott Kitchings
Clerk of The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

**Re: JP Morgan Chase Bank NA v. Thomas R. Irby
Appellate Case No. 2013-001441**

Dear Ms. Kitchings:

Per your request, attached are copies of the original summons and complaint in the above-referenced case.

Sincerely,

Erin C. Frazer

Enclosures

cc: Thomas R. Irby
Lawrence Michael Hershon
Jerry Allen Gaines, II

RECEIVED

JUL 29 2013

SC Court of Appeals

BUSINESS
LAW

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Thomas R. Irby, Roy C. Irby a/k/a Roy C. Irby
II and Bank of America, N.A.,

DEFENDANT(S).

(100268.00054)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

AMENDED
SUMMONS
Foreclosure - Non-Jury

FILED-CLERK OF COURT
GREENVILLE CO. SC

2010 APR 10 PM 3:55

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof; exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the

date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

March 8, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Thomas R. Irby, Roy C. Irby a/k/a Roy C. Irby
II and Bank of America, N.A.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

AMENDED
COMPLAINT
Foreclosure - Non-Jury
(Deficiency demanded)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
MAR 10 P 3:51

(100268.00054)

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Greenville County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification by virtue of the property not being owner-occupied.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).
6. Heretofore, under date of August 17, 2007, Thomas R. Irby made, executed and delivered to M&T Bank a certain mortgage note ("Note") in writing wherein and whereby Thomas R. Irby promised to pay to M&T Bank the principal sum of \$95,000.00.
7. In order to secure the payment of said note, the said Thomas R. Irby and Roy C. Irby did on the same date, to-wit, August 17, 2007, make execute and deliver to Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of

Deeds for Greenville County, on August 28, 2007, in Book 4840, at Page 234; subsequently, the Note and Mortgage were assigned to Chase Home Finance, LLC

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat July 10, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Plat Book 1048 at Page 66, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149. The said Thomas R. Irby did thereafter convey a one-half interest to Roy C. Irby, II by deed dated March 16, 2007 and recorded on March 23, 2007 in the RMC Office for Greenville County in Deed Book 2258 at page 437 and by corrective deed from Thomas R. Irby, Melvin C. Irby and Benjamin R. Irby dated August 16, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Deed Book 2286 at Page 921. Thereafter, conveyed to Roy C. Irby, II by deed of Thomas R. Irby dated March 16, 2007 and recorded on November 13, 2008 in Book 2346 at Page 1649.

TMS No. 0597.01-01-001.09

Property address: 156 Pearson Road
Belton, SC 29627

8. Plaintiff is informed and believes that its mortgage herein described constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action as well as the After Acquired Property Doctrine.

9. That the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defenses or objections as to any applicable banking laws by the Plaintiff.

10. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the

mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

11. In and by the terms of the said note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

12. The installments of principal and interest falling due from and after September 1, 2009 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$92,700.96, together with interest thereon at the rate of 6.0% percent per annum from August 1, 2009, together with reasonable attorney's fees for the collection thereof and the costs of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

13. Upon information and belief, the Defendant(s) below named claim(s) or may claim a lien or interest upon or interest in the subject property:

(a) The Defendant, Bank of America, N.A. by virtue of a mortgage given by Thomas R. Irby and Roy C. Irby dated May 16, 2007 in the original amount of \$69,000.00 and recorded on May 17, 2007 in the Office of the Greenville County Register of Deeds in Book 4779 at Page 1103. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate; or in the alternative, this mortgage should be equitably subordinated or subrogated to the mortgage lien of the Plaintiff.

14. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Thomas R. Irby is also made a defendant by virtue of that Lis Pendens against Roy C. Irby et al dated January 13, 2010 and recorded on January 14, 2010 in the Office of the Greenville County Clerk of Court in Book BB4 at Page 004.

15. The Plaintiff demands a personal or deficiency judgment against Thomas R. Irby and any right to the same is specifically demanded.

16. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

17. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

1. 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 the costs of this action.

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

4. Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and/or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

5. Issue an order directing the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile home collateralized under the security documents of the Plaintiff.

6. Plaintiff have judgment against the Defendant(s) Thomas R. Irby for the full amount found to be due Plaintiff on the note and mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

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By: 

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March 8, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Thomas R. Irby, Roy C. Irby aka Roy C. Irby II and Bank of America, N.A.

DEFENDANT(S).

(100268.00054)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

AMENDED
LIS PENDENS

FILED-CLERK OF COURT
GREENVILLE
2010 MAR 10 2 31 PM

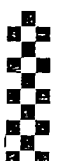
NOTICE IS HEREBY GIVEN that an action has been commenced by the Plaintiff above named against the Defendants above named for the foreclosure of a certain mortgage given by Thomas R. Irby and Roy C. Irby to Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank, dated August 17, 2007, recorded August 28, 2007, in the office of the Clerk of Court/Register of Deeds for Greenville County, in Book 4840, at Page 234; subsequently, the Note and Mortgage were assigned to Chase Home Finance, LLC

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat July 10, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Plat Book 1048 at Page 66, and having the metes and bounds, courses and distances as upon said plat appear.


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TMS No. 0597.01-01-001.09



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